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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 23 2022

BY: Sophia A. Smith
Sophia A. Smith, Deputy

Attorneys for Plaintiff(s),
MARGARITA PEREZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

MARGARITA PEREZ, on behalf of
herself and as an "Aggrieved Employee"
on behalf of other "Aggrieved Employees"
under the Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

WORKFORCE PERSONNEL, INC.,
California corporation; DIAMOND
WIPES INTERNATIONAL, INC.,
California corporation; and DOES 1-50,
inclusive,

Defendant(s).

Case No.:

CIV SB 2225774

COMPLAINT FOR VIOLATIONS OF THE
LABOR CODE AND CIVIL PENALTIES
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
LABOR CODE §§ 2698, ET SEQ.

JURY TRIAL DEMANDED

BY FAX



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1 Plaintiff, Margarita Perez (hereafter “Plaintiff” or “Perez”), on behalf of herself, the state
2 of California, and all other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action for alleged violations of the California
5 Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), and
6 the California Business and Professions Code against Defendants Workforce Personnel, Inc., a
7 California Corporation, Diamond Wipes International, Inc., a California Corporation, and Does 1
8 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
11 relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Indemnify for necessary work-related expenditures;

19 (G) Issue only accurate and complete itemized wage statements; and

20 (H) Timely pay wages upon termination of employment

21 Accordingly, Plaintiff now seeks to recover civil penalties, attorneys’ fees, costs, and related relief
22 through this action.

23 **II. THE PARTIES**

24 3. Plaintiff Margarita Perez is a resident of California. At all relevant times, Plaintiff
25 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11090,
26 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

27 4. Defendant Workforce Personnel, Inc. is a corporation organized and existing under
28 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

5. Defendant Diamond Wipes International, Inc. is a corporation organized and
existing under the laws of California and also a citizen of California based on Plaintiff’s



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information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

7. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Aggrieved Employees or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees as described below in accordance with applicable laws as alleged herein.

III. STATEMENT OF FACTS

10. The “Aggrieved Employees” are all individuals Defendants employed in California as non-exempt, hourly employees, including non-exempt, hourly assistant general managers and store managers, and persons in other comparable positions, at any time during the period beginning September 7, 2021 and ending on the date that final judgment is entered in this action.

11. IWC Wage Order 9-2001 (“the Wage Order”) applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to



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1 another whether by rail, highway, air, or water, and all operations and services in connection
2 therewith; and also includes storing or warehousing of goods or property, and the repairing,
3 parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times
4 during the applicable limitations period, the Defendants, Perez, and all of the Aggrieved
5 Employees were covered by the Wage Order because the Defendants operated, and Perez, and all
6 of the Aggrieved Employees worked for, one or more establishments operated as a warehouse.
7 Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the
8 Wage Order provides.

9 12. On approximately July 2018, the Defendants began to employ Perez in Chino in
10 the position of hourly, non-exempt packer. The Defendants continuously employed her in that
11 capacity until on or about September 23, 2021 when her employment ended.

12 13. At all relevant times, the Defendants issued wages to Perez and all of the other
13 Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all
14 relevant times, the Defendants classified Perez and all of the other Aggrieved Employees as non-
15 exempt employees entitled to the protections of the Labor Code and the Wage Order.

16 14. At all relevant times, the Defendants failed to compensate Perez and all of the
17 other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of
18 pay. The Defendants required Perez and the Aggrieved Employees to work off the clock without
19 compensation. The Defendants required Perez and the Aggrieved Employees to submit to security
20 checks and temperature checks off the clock and without pay before they could clock in. Further,
21 frequent malfunctions of the Defendants' time keeping required Perez and the Aggrieved
22 Employees wait for several minutes to record entries and exits from duty. The Defendants also
23 arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours
24 worked and failed to compensate them for all hours worked.

25 15. At all relevant times, the Defendants failed to compensate Perez and all of the
26 other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day,
27 over 40 in a week, and for the first eight hours of the seventh day of the workweek. Time spent
28 in the activities described above, combined with other hours worked by Perez and the Aggrieved
Employees, resulted in Perez and the Aggrieved Employees working overtime hours. However,
the Defendants did not pay overtime premium wages to Perez and the Aggrieved Employees for
such work time.



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16. At all relevant times, the Defendants failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Time spent in the activities described above, combined with other hours worked by Perez and the Aggrieved Employees resulted in Perez and the Aggrieved Employees working doubletime hours. However, the Defendants did not pay doubletime premium wages to Perez and the Aggrieved Employees for such work time.

17. At all relevant times, the Defendants failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved Employees to delay their meal periods for more than five (5) hours into their daily work shifts. The Defendants also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Defendants also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

18. At all relevant times, the Defendants failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved Employees to delay their rest periods for more than four hours into their daily work shifts. The Defendants also failed to provide Perez and the Aggrieved Employees with three periods when they worked more than 10 hours in a workday. The Defendants also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

19. At all relevant times, the Defendants required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Defendants required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

20. At all relevant times, the Defendants failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the

1 correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to
2 state on the wage statements they issued to Perez and all of the other Aggrieved Employees the
3 unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all
4 regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period
premium wages earned, all rest break premium wages earned, and related information.

5 21. At all relevant times, the Defendants also failed to timely pay Perez and all of the
6 other Aggrieved Employees all earned wages as described above during and at the conclusion of
7 employment.

8 22. At all relevant times, the Defendants failed to maintain accurate employee records
9 of Perez and all of the other Aggrieved Employees.

10 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
11 unlawful practices and policies, Plaintiff and the Aggrieved Employees were:

- 12 A. Not provided with all off duty meal periods;
- 13 B. Not authorized and permitted to take all rest break periods;
- 14 C. Not paid one hour's pay for each workday in which Defendants failed to
15 authorize and permit them to take one or more timely rest periods;
- 16 D. Not paid one hour's pay for each workday in which Defendants failed to
17 provide them with one or more timely meal periods;
- 18 E. Not paid all wages earned, including, but not limited to, minimum, regular,
19 overtime, and doubletime wages for work performed while clocked out;
- 20 F. Not indemnified for all necessary business expenditures incurred during
the discharge of their duties;
- 21 G. Not provided with accurate and complete wage statements; and
- 22 H. Not timely paid all earned and unpaid wages at the time their employment
23 ended.

FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

**(By Plaintiff, on behalf of himself and the other Aggrieved Employees,
against all Defendants)**

24. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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25. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

26. Section 2 of the Wage Order defines “hours worked” 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.”

27. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.

28. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

29. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the



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first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

30. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

31. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

32. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

33. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

34. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

35. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked at the correct rates of pay as required by California law.

B. UNPAID REPORTING TIME PAY

36. Under Section 5 of the Wage Order

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled



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day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

37. The Defendants required Perez and all of the other Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more of their usual scheduled day's work, sent them home. Furthermore, the Defendants failed to pay Perez and all of the other Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198).

38. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Aggrieved Employees at least two (2) hours at their regular rates of pay as required by California law.

C. FAILURE TO PAY SPLIT SHIFT PREMIUMS

39. Wage Order § 2(M) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by § 2 (N) as "a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

40. Wage Order § 4(C) pertaining to "Minimum Wages" states: "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

41. Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

42. The Defendants directed Perez and all of the Aggrieved Employees to regularly work split shifts. However, the Defendants intentionally failed to pay Perez and all of the Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday as required by California law.



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1 **D. FAILURE TO PROVIDE MEAL PERIODS**

2 43. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

3 44. At all relevant times during the applicable limitations period, Plaintiff and the
4 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
5 protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

6 45. In relevant part, California Labor Code § 1198 states:

7
8 The maximum hours of work and the standard conditions of labor fixed by the
9 commission shall be the maximum hours of work and the standard conditions of
10 labor for employees. The employment of any employee for longer hours than those
11 fixed by the order or under conditions of labor prohibited by the order is unlawful.

12 46. In relevant part, In relevant part, California Labor Code § 512 states:

13 An employer shall not employ an employee for a work period of
14 more than five hours per day without providing the employee with
15 a meal period of not less than 30 minutes, except that if the total
16 work period per day of the employee is no more than six hours, the
17 meal period may be waived by mutual consent of both the
18 employer and employee.

19 An employer shall not employ an employee for a work period of
20 more than 10 hours per day without providing the employee with
21 a second meal period of not less than 30 minutes, except that if the
22 total hours worked is no more than 12 hours, the second meal
23 period may be waived by mutual consent of the employer and the
24 employee only if the first meal period was not waived.

25 47. In relevant part, Section 11 of the Wage Order states:

26 Meal Periods:

27 (A) No employer shall employ any person for a work period of more
28 than five (5) hours without a meal period of not less than 30
minutes, except that when a work period of not more than six (6)
hours will complete the day's work the meal period may be waived
by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of
more than ten (10) hours per day without providing the employee
with a second meal period of not less than 30 minutes, except that



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1 if the total hours worked is no more than 12 hours, the second meal
2 period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

3 (C) Unless the employee is relieved of all duty during a 30 minute meal
4 period, the meal period shall be considered an "on duty" meal
5 period and counted as time worked. An "on duty" meal period shall
6 be permitted only when the nature of the work prevents an
7 employee from being relieved of all duty and when by written
8 agreement between the parties an on-the-job paid meal period is
9 agreed to. The written agreement shall state that the employee
10 may, in writing, revoke the agreement at any time.

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

15 (E) In all places of employment where employees are required to eat
16 on the premises, a suitable place for that purpose shall be
17 designated.

18 48. In relevant part, California Labor Code § 226.7 states:

19 (b) An employer shall not require an employee to work during
20 a meal or rest period mandated pursuant to an applicable
21 statute, or applicable regulation, standard, or order of the
22 Industrial Welfare Commission, the Occupational Safety
23 and Health Standards Board, or the Division of
Occupational Safety and Health.

24 (c) If an employer fails to provide an employee a meal period
25 or rest period in accordance with a state law, including, but
26 not limited to, an applicable statute or applicable
27 regulation, standard, or order of the Industrial Welfare
28 Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, 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.



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1 49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
2 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
3 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
4 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.
5 Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all
6 required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
7 prohibited Perez and the other Aggrieved Employees from leaving the premises during their
8 meal periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved
9 Employees to delay their meal periods for more than five (5) hours into their daily work shifts.
10 The Defendants also failed to provide Perez and the Aggrieved Employees with a second meal
11 period when they worked more than 10 hours in a workday.

12 50. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
13 Employees with all timely rest and meal periods. Defendants denied Plaintiff and the other
14 Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work.
15 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
16 Plaintiff and the other Aggrieved Employees with timely meal periods.

17 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
20 meal periods required by California law.

21 52. As a result of Defendants' unlawful conduct, Plaintiff and the Aggrieved
22 Employees have suffered damages in amounts subject to proof to the extent they were not paid
23 additional wages owed for all meal periods not provided to them.

24 **E. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

25 53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

26 54. At all relevant times during the applicable limitations period, Plaintiff and the
27 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
28 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

 55. In relevant part, California Labor Code § 1198 states:

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The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

56. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) 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 (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) 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 for each workday that the rest period is not provided.

57. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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



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period is not provided.

58. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

59. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. The Defendants prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest periods. Further, understaffing by The Defendants compelled Perez and the Aggrieved Employees to delay their rest periods for more than four hours into their daily work shifts. The Defendants also failed to provide Perez and the Aggrieved Employees with three periods when they worked more than 10 hours in a workday.

60. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

62. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved Employees to take all rest breaks required by California law.

63. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required by California law.



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64. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

F. FAILURE TO INDEMNIFY

65. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

66. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.” Additionally, the Wage Order states,

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

(B) When 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 be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(A) and (B).

67. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

68. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties.

69. As described above, the Defendants required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Defendants required Perez and all of the other Class members to supply tools, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Perez and the other Class members for these items. Additionally, the Defendants did not provide tools to Perez and the other Class members they required them to use to perform their



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1 work, nor did they reimburse them for such tools, including gloves, utility knives, and related
2 equipment.

3 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
6 incurred during the course of performing their duties.

7 **G. FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 71. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 72. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
10 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an
11 accurate itemized statement showing:

12 A. Gross wages earned;

13 B. Total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of overtime under
15 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

16 C. The number of piece rate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis;

18 D. All deductions, provided that all deductions made on written orders of the
19 Employee may be aggregated and shown as one item;

20 E. Net wages earned;

21 F. The inclusive dates of the period for which the employee is paid;

22 G. The name of the employee and his or her social security number, except
23 that by January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on the itemized
25 statement;

26 H. The name and address of the legal entity that is the employer; and

27 I. All applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee.

73. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
the employer fails to provide accurate and complete information as required by California Labor



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Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;

D. 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; and

E. The number of piece-rate units earned and the piece rate.

74. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

75. Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee’s social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee’s wages.

76. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock
6 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
7 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
8 separately if wages are paid by personal check or cash, statements to Plaintiff and the Aggrieved
9 Employees that state all minimum wages earned, all regular wages earned, all overtime wages
10 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
premium wages earned, and other required information.

11 77. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
12 accurate wage statements was knowing and intentional. Defendants had the ability to provide
13 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
14 provided wage statements that Defendants knew were not accurate.

15 78. As a result of being provided with inaccurate wage statements by Defendants,
16 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
17 accurate wage statements were violated and they were misled about the amount of wages they
18 had actually earned and were owed. In addition, the absence of accurate information on their wage
19 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
20 discovery and mathematical computations to determine the amounts of wages owed, has caused
21 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
22 submission of inaccurate information about wages to state and federal government agencies.
23 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
statements whether Defendants complied with their obligations under California Labor Code
section 226(a).

24 **H. UNTIMELY FINAL WAGES**

25 79. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 80. At all relevant times during the applicable limitations period, Plaintiffs and the
27 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
28 of California Labor Code §§ 201, 202, and 203, and the Wage Order.



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1 81. Labor Code § 201 provides that all earned and unpaid wages of an employee who
2 is discharged are due and payable immediately at the time of discharge.

3 82. Labor Code § 202 provides that all earned and unpaid wages of an employee who
4 quits after providing at least 72-hours notice before quitting are due and payable at the time of
5 quitting and that all earned and unpaid wages of an employee who quits without providing at least
6 72-hours notice before quitting are due and payable within 72 hours.

7 83. The Defendants failed to pay Perez and all of the other Aggrieved Employees
8 whose employment ended all of the earned but unpaid wages described above by the conclusion
9 of their employment with Perez, including minimum wages, regular wages, overtime wages,
10 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
11 wages, and related compensation.

12 84. By failing to pay such earned wages to Plaintiff and the Aggrieved Employees,
13 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
14 § 201 or § 202.

15 85. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
16 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
17 willful in that, at all relevant times, Defendants have deliberately maintained policies and
18 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
19 relevant times, they have had the ability to comply with those legal requirements.

20 **I. UNTIMELY WAGES DURING EMPLOYMENT**

21 86. Labor Code § 204 states

22 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
23 or 204.2, earned by any person in any employment are due and payable twice
24 during each calendar month, on days designated in advance by the employer as the
25 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
26 calendar month shall be paid for between the 16th and the 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and
28 the last day, inclusive, of any calendar month, shall be paid for between the 1st
and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period



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for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

107. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

J. CIVIL PENALTIES SOUGHT

108. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

109. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

110. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars (\$100) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation (penalty amounts established by California Labor Code § 225.5).

C. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).



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1 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
2 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
3 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
4 established by California Labor Code § 558).

5 E. For violations of California Labor Code § 1197, one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
7 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
8 (regardless of whether the initial violations were intentionally committed) (penalty amounts
9 established by California Labor Code § 1197.1).

10 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
11 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
12 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
13 period for each subsequent violation (penalty amounts established by California Labor Code §
14 2699(f)(2)).

15 111. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letters dated September 7, 2022 and September 19, 2022, Plaintiff filed
17 written notices online with the Labor and Workforce Development Agency (“LWDA”) and gave
18 written notices by certified mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including the facts and theories to support the alleged
20 violations. True and correct copies of the notices to the LWDA dated September 7, 2022 and
21 September 19, 2022 are attached collectively as Exhibit A. Plaintiff accompanied her LWDA
22 notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within
23 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will
24 provide written notice to Plaintiff informing her that it does not intend to investigate these
25 allegations.

26 112. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
27 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
28 connection with their claims for civil penalties.

IV. PRAYER FOR RELIEF

113. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
for relief and judgment against Defendants as follows:



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- 1 A. Civil penalties;
2 B. Costs of suit;
3 C. Reasonable attorneys' fees; and
4 D. Such other relief as the Court deems just and proper.

5 V. **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury
7 trial on all issues so triable.

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10 Dated: November 23, 2022

11 By: 
12 DAVID G. SPIVAK,
13 CAROLINE TAHMASSIAN
14 CHRISTINA J. PREJEAN
15 Attorneys for Plaintiff(s),
16 MARGARITA PEREZ, and all others
17 similarly situated
18
19
20
21
22
23
24
25



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EXHIBIT A



SPIVAK LAW

Stacy Aguirre <stacy.aguirre@spivaklaw.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed, Sep 7, 2022 at 4:07 PM

To: "stacy.aguirre@spivaklaw.com" <stacy.aguirre@spivaklaw.com>

9/7/2022

LWDA Case No. LWDA-CM-906533-22
Law Firm : The Spivak Law Firm
Plaintiff Name : Margarita Martinez Perez
Employer: Workforce Personnel, 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: http://labor.ca.gov/Private_Attorneys_General_Act.htm



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 7, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately July 2018, the Employers began to employ Perez in Chino in the position of hourly, non-exempt packer. The Employers continuously employed her in that capacity until on or about September 24, 2021 when her employment ended.

At all relevant times, the Employers issued wages to Perez and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Employers also failed to include all non-discretionary bonuses when calculating Perez and the other Aggrieved Employees' regular rates of pay for overtime and double-time wage purposes.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks required by law in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools such as tape and utility knife, and box cutter, protective gear and PPE such as gloves, hair net, face mask, goggles or face shield, to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above.

The Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (e) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Employers unlawfully deducted wages belonging to Perez and all of the other Aggrieved Employees;
- (h) The Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with accurate and complete wage statements; and

- (i) The Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended.

Accordingly, Perez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part[.]” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated wipes manufacturing and warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole

source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Employers, Perez and all of the other Aggrieved Employees earned bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Employers failed to pay to Perez and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses.

At all relevant times during the applicable limitations period, the Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (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 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal periods when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) 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 (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) 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 for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks in workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. Moreover, the Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
- ...
- (B) When 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 be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items. Accordingly, Perez seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Perez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements **(Lab. Code § 226)**

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Perez seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including minimum, overtime and premium wages, and related compensation, at the intervals stated above. As a result, the Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including minimum, overtime and premium wages, and related compensation. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Perez seeks civil penalties from the Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Margarita Perez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

LWDA / Workforce Personnel, Inc., et al.
Re: Margarita Martinez Perez
September 7, 2022
Page 19 of 19

formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.
david@spivaklaw.com
cc: Margarita Perez
Louis M. Benowitz Esq.

Workforce Personnel, Inc.
c/o Agent for service of process
Anselmo Soriano
7349 MILLIKEN AVE
#14010
RANCHO CUCAMONGA CA 91730

Diamond Wipes International, Inc.
c/o Agent for service of process
PARACORP INCORPORATED
Registered Corporate 1505 Agent
2804 GATEWAY OAKS DR
#100
SACRAMENTO CA 95833



Stacy Aguirre <stacy.aguirre@spivaklaw.com>

Thank you for your Amended PAGA Claim Notice Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: stacy.aguirre@spivaklaw.com

Mon, Sep 19, 2022 at 4:07 PM

09/19/2022 04:07:36 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

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: http://labor.ca.gov/Private_Attorneys_General_Act.htm



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 19, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.
LWDA Case No.: LWDA-CM-906533-22

To Whom It May Concern:

This is an amended notice and incorporates the original notice dated September 7, 2022 (enclosed) in its entirety.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

The original notice inadvertently stated that Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001. Please note that Perez and all of the other Aggrieved Employees are

LWDA / Workforce Personnel, Inc., et al.

Re: Margarita Martinez Perez

September 19, 2022

Page 2 of 3

“employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter the “Wage Order”).

The Wage Order applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean, “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Sincerely,



David G. Spivak Esq.

david@spivaklaw.com

Encls. as stated

cc: Margarita Perez

Louis M. Benowitz Esq.

Workforce Personnel, Inc.

c/o Agent for service of process

Anselmo Soriano

7349 MILLIKEN AVE

#14010

RANCHO CUCAMONGA CA 91730

Diamond Wipes International, Inc.

c/o Agent for service of process

PARACORP INCORPORATED

LWDA / Workforce Personnel, Inc., et al.

Re: Margarita Martinez Perez

September 19, 2022

Page 3 of 3

Registered Corporate 1505 Agent
2804 GATEWAY OAKS DR
#100
SACRAMENTO CA 95833



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 7, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Margarita Martinez Perez / Workforce Personnel, Inc., et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Margarita Perez (hereafter “Perez” or “Complainant”) provides notice that Workforce Personnel, Inc., a California Corporation, Diamond Wipes International, Inc., a California corporation, and related entities (collectively “the Employers”) violated her rights and those of all other individuals the Employers have employed directly or indirectly or otherwise contracted with in California as non-exempt, hourly employees, including packers and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately July 2018, the Employers began to employ Perez in Chino in the position of hourly, non-exempt packer. The Employers continuously employed her in that capacity until on or about September 24, 2021 when her employment ended.

At all relevant times, the Employers issued wages to Perez and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

As a result of the off-the-clock work and the deductions described above, the Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Employers also failed to include all non-discretionary bonuses when calculating Perez and the other Aggrieved Employees' regular rates of pay for overtime and double-time wage purposes.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees often had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks required by law in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools such as tape and utility knife, and box cutter, protective gear and PPE such as gloves, hair net, face mask, goggles or face shield, to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items.

At all relevant times, the Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above.

The Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (e) The Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Employers unlawfully deducted wages belonging to Perez and all of the other Aggrieved Employees;
- (h) The Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with accurate and complete wage statements; and

- (i) The Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended.

Accordingly, Perez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part[.]” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the “Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated wipes manufacturing and warehousing facilities, and Perez, and all of the Aggrieved Employees worked for, one or more of these establishments operated by Employers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Employers required Perez and the Aggrieved Employees to work off the clock without compensation. The Employers required Perez and the Aggrieved Employees to go through security check and also temperature check (during the Coronavirus pandemic) off the clock and before they could clock in. Further, the Employer's time keeping machine often malfunctioned and caused delays, and as a result, Perez and the Aggrieved Employees had to stand and wait in line several minutes every time they wanted to clock in. The Employers also arbitrarily deducted several minutes each day from Perez and Aggrieved Employees' hours worked and failed to compensate them for all hours worked.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole

source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Employers, Perez and all of the other Aggrieved Employees earned bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Employers failed to pay to Perez and all of the other Aggrieved Employees bonuses overtime and double time premium pay on such bonuses.

At all relevant times during the applicable limitations period, the Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (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 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the

employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their meal periods. Further, due to understaffing and lack of coverage, Perez and the Aggrieved Employees had to delay and take their meal periods after they had already worked more than five (5) hours in a workday. The Employers also failed to provide Perez and the Aggrieved Employees with a second meal periods when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) 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 (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) 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 for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Employers prohibited Perez and the other Aggrieved Employees from leaving the premises during their rest breaks. Further, due to understaffing and lack of coverage, the Employers often failed to provide Perez and the Aggrieved Employees with all 10-minute rest breaks in workday. The Employers also failed to provide Perez and the Aggrieved Employees with a third rest break when they worked more than 10 hours in a workday. Moreover, the Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
- ...
- (B) When 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 be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Employers required Perez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Perez and all of the other Aggrieved Employees to supply tools, protective gear and PPE to perform their job duties. However, the Employers did not provide these items and did not reimburse Perez and the other Aggrieved Employees for these items. Accordingly, Perez seeks civil penalties for these Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions **(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As described above, the Employers arbitrarily deducted several minutes each day from Perez and the Aggrieved Employees’ hours worked in violation of Labor Code § 221. Accordingly, Perez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements **(Lab. Code § 226)**

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Perez seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including minimum, overtime and premium wages, and related compensation, at the intervals stated above. As a result, the Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including minimum, overtime and premium wages, and related compensation. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Perez seeks civil penalties from the Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Margarita Perez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

LWDA / Workforce Personnel, Inc., et al.
Re: Margarita Martinez Perez
September 7, 2022
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formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

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cc: Margarita Perez
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