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May 5, 2025

VIA ELECTRONIC SUBMISSION:

Attn: PAGA Administrator
Labor Workforce Development Agency
455 Golden Gate Ave., 10th Flr.
San Francisco, CA 94102
<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL:

Xerox Business Solutions, LLC
8701 Florida Mining Blvd.
Tampa, FL 33634

Xerox Corporation
800 Phillips Rd., 209-07A
Webster, NY 11580

RE: Private Attorneys General Act (“PAGA”) Notice Concerning Kevin McCarthy

To Whom It May Concern:

Please be advised that the above-captioned firm represents Mr. Kevin McCarthy (hereafter “**Mr. McCarthy**”) concerning his employment with Xerox Business Solutions, LLC’s and/or Xerox Corporation’s (hereafter “**Xerox Business Solutions**” or “**Company**”). Pursuant to California’s Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*, as amended, hereafter “**PAGA**”), Mr. McCarthy hereby provides notice on behalf of himself and Xerox Business Solutions’ other current and former employees who worked in California at any time in the last 365 days from the date of this letter and until this matter is resolved (hereafter “**aggrieved employees**”). These employees include those, like Mr. McCarthy, whom the Company misclassified as exempt (*i.e.*, salaried) employees as explained in the sections below.

Mr. McCarthy and the aggrieved employees are, or were, the Company’s “employees” within the meaning of Labor Code §§ 2775-2787, Section 2(E) of Industrial Welfare Commission Order No. 4-2001 (8 Cal. Code of Regs. § 1104, hereafter the “**Wage Order**”), and *Martinez v. Combs* (2010) 49 Cal.4th 35. They are also “aggrieved employees” within the meaning of Labor Code § 2699(c). At all relevant times, Mr. McCarthy and the other aggrieved employees were entitled to the full protection of both the California Labor Code and the Wage Order.

Despite these facts, Mr. McCarthy alleges that Xerox Business Solutions consistently violated (in the form of a policy and/or practice) the Wage Order and the Labor Code. Mr. McCarthy alleges that the Company's violations include breaches of (or penalties owed under) the Wage Order and Labor Code §§ 201, 202, 203, 204, 206, 206.5, 210, 218.5-218.6, 226, 226.2, 226.7, 247.5, 432, 432.5-432.6, 510, 512, 551-552, 1102.5, 1174(c)-(d), 1194, 1194.2, 1197, 1197.1, 1197.5(e), 1198, 1198.5, 1198.7(e), 2751, 2800-2802, and 2810.5.

STATEMENT OF FACTS

Mr. McCarthy is informed and believes that his employer was Xerox Business Solutions, LLC (DBA Xerox Business Solutions West), however, given his incomplete record production from this entity and his prior employer, Mr. Copy, Inc., this is presently difficult to ascertain with certainty. Accordingly, Mr. McCarthy names both Xerox Corporation and Xerox Business Solutions, LLC in this PAGA Notice in order to preserve any statute of limitations applicable to either entity.

Accordingly, Xerox Business Solutions, as defined above, employed Mr. McCarthy in California as a Sales Consultant (or similar title) from approximately January 1, 2023 to January 17, 2025. Xerox Business Solutions, at all relevant times, compensated Mr. McCarthy and the aggrieved employees on a bi-weekly basis.

Note that some of the following information is slightly less concrete than I hoped given that Xerox Business Solutions still has not produced Mr. McCarthy's time-entry records, pay stubs, **or** complete personnel file despite numerous, written requests that it do so. (Lab. Code § 226, 247.5, 432, 1198.5.) This includes written requests on December 20, 2024 and April 7, 2025, and subsequently emailed requests. Accordingly, please consider this Mr. McCarthy's best effort to give notice of the facts as they are presently known to him (or believed to be true) so as to put the LWDA and the Company on notice of his claims.

A. PAGA Claims As To Xerox Business Solutions' Misclassified Aggrieved Employees.

Xerox Business Solutions misclassified Mr. McCarthy and everyone on his sales team in California as exempt (*i.e.*, salaried) employees because they did not meet any of the exemptions set forth in the Wage Order during their employment. (Wage Order No. 4-2001 §§ 1(A)(1)-(3), (B)-(E), and (3) as amended on Jan. 1, 2024.) For limited example, they were not:

(1) *Executives* at Xerox Business Solutions (*i.e.*, their "responsibilities [did not] involve the management of the enterprise ...") because they were salespeople working for a regional division of the Company;

(2) *Administrators* as they were primarily "production employees" given that their day-to-day tasks involved finding and trying to sell the Company's services and equipment (*see, e.g., Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 820-823);

(3) *Professionals* because, in their joint capacity as salespeople, they did not primarily work in any of the fields this State recognizes as “professionals” (e.g., lawyers, doctors, architects, dentists, teachers, accountants, etc.);

(4) *Outside Sales* since they did not spend at least half of their time each pay period (or month) traveling to meet with current and/or prospective clients (re-examined quarterly); or

(5) *Computer Software Engineers* given that they clearly did not generate software for the Company.

Because Xerox Business Solutions misclassified Mr. McCarthy and those on his sales team as exempt employees, the Company never tracked their hours worked (or fraction thereof) or their meal and rest break times. (Lab. Code §§ 226, 226.2, 247.5, 1174(c)-(d), 1197.5(e); and Wage Order § 7 [employers must keep accurate records of their employees’ hours worked]; *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1080-1081 [missing or incomplete time records create a presumption of liability sufficient for employees to prevail on their wage and hour claims in summary judgment because the employer requires these records to mount a defense to the employee’s unpaid wage claims *and* because the Labor Code requires employers to keep accurate copies of such records].) **For the same reason, the Company did not pay these employees for their hours worked or their missed, interrupted, or untimely meal and rest breaks.**

This is problematic because these employees – almost as a rule – worked far more than the 40 hours per week that the Company paid them for. Mr. McCarthy for example, worked more than 60 hours per week on average (often working between six and seven consecutive days each workweek). (Lab. Code §§ 551-552.) This means that Xerox Business Solutions was underpaying these individuals by about 20 hours each week, with all (or nearly all) of this time qualifying as overtime or doubletime.

Furthermore, given that these particular aggrieved employees also earned sales commissions and bonuses, their “regular rates of pay,” which forms the basis of overtime and doubletime computations, was much higher than their “base hourly rates of pay” shown on their wage statements.¹ (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 871-872 [an employee’s “regular rate of pay” is their “base hourly rate of pay” *plus* the sum of any non-discretionary bonuses and/or commissions earned (divided across the hours worked in the same pay period)].)

So, for instance, if Mr. McCarthy earned a “salary” of \$96,000 per year, his base rate of pay would be approximately \$46.15 per hour. And if he earned \$85,000 in sales

¹ Because Labor Code § 226 requires it, employers often show that their exempt (*i.e.*, salaried) employees were being paid for 40 hours of work each workweek, multiplied by their “base hourly rates of pay” that is sufficient to arrive at those employees’ salary payment for that pay period. Accordingly, we use “base hourly rates of pay” as their baseline hourly rates, which is then coupled with the sums arising from their sales commissions and bonuses.

commissions *and* bonuses, this would bring his gross pay to \$181,000, meaning his “regular rate of pay” was \$87.02. ($\$181,000 / 2,080 \text{ business hours per year} = \87.02 .)

This means that his “regular rate of pay” for overtime and doubletime computations would be \$130.53. ($\$87.02 \times 1.5 = \130.53 .) Accordingly, his overtime rate would be \$211.50 per hour and his doubletime rate would be \$174.04 per hour. ($\$87.02 \times 2 = \174.04 .)

However, the Company did not pay Mr. McCarthy or the other misclassified aggrieved employees their earned overtime and doubletime wages.

As briefly explained above, Xerox Business Solutions also failed to pay these employees the one-hour penalty for each of their missed, untimely, short, and/or interrupted meal and rest breaks. And these violations occurred regularly given the grueling number of hours these employees worked as detailed above, and that they were always “on call” (either actually or conceptually “engaged to wait”) because they had to respond to internal and external phone calls, emails, text messages, and more at any given time. Thus, each of these employees – like Mr. McCarthy – consistently suffered between three to seven meal and rest break violations each day. (Lab. Code §§ 226.7, 512, 516; Wage Order §§ 11-12.)

Finally, the Company short-changed the misclassified aggrieved employees to the extent they earned sales commissions. This is exemplified by Xerox Business Solutions refusing to pay Mr. McCarthy all of his earned sales commissions before they fired him without cause and despite any forfeiture provisions in his sales commission agreement. (Lab. Code §§ 200 [sales commissions are wages], 221 [employers may not claw back or retain wages earned by their employees].) Mr. McCarthy estimates this sum to be at or above \$140,000. Furthermore, the Company paid such aggrieved employees their sales commissions only once per month, and often the month after they were earned, in violation of Labor Code section 204. (*Contrast* Lab. Code § 204.1 [allowing only sales commissions paid by *licensed vehicle dealers* to be paid once per month].)

As shown below, the foregoing claims also apply to Xerox Business Solutions’ other aggrieved employees whom the Company properly classified as non-exempt (*i.e.*, hourly).

B. PAGA Claims Regarding The Company’s Properly-Classified Aggrieved Employees.

Xerox Business Solutions also had a policy and/or practice of violating the Wage Order and Labor Code as to its non-exempt aggrieved employees. This included failing to track all of the hours that they worked (and fractions thereof) resulting in the Company not paying them all of the wages that these aggrieved employees earned each pay period. This included encouraging employees not to record all of their time through indirect means. This included “limiting” overtime and reprimanding employees if they incurred overtime, while also reprimanding employees if they did not complete their assignments on time. These aggrieved employees got the hint: work the overtime, but do not report it or the Company will probably fire you.

This meant that the properly-classified aggrieved employees worked time off-the-clock, which Xerox Business Solutions knew (or should have known) of. As a result, the Company did not pay these aggrieved employees all of their minimum, base, regular, overtime, or doubletime wages that they earned each pay period.

The foregoing created a domino effect. For example, because these aggrieved employees had to rush to get their work done, they frequently worked through their meal and rest breaks, were forced to take short breaks, or to skip them entirely. (Lab. Code §§ 227.3, 510; Wage Order §§ 11-12.) However, the Company did not pay these employees their missed break premiums. (*Ibid.*; *see also* Lab. Code § 226.2.)

Therefore, the properly-classified aggrieved employees suffered the same violations as their misclassified counterparts (minus, *perhaps*, unpaid commissions),² just to a slightly different extent.

C. PAGA Claims Shared By All Aggrieved Employees Without Variation.

Given the aggrieved employees' unpaid wages, examined above, Xerox Business Solutions regularly failed to pay these individuals all of their wages in the pay period they earned them in. (Lab. Code §§ 204, 210.) Furthermore, Xerox Business Solutions did not pay Mr. McCarthy, or many of the other aggrieved employees, all wages they earned within the time required after their separation from the Company. (Lab. Code §§ 201, 202, 203.)

Furthermore, Xerox Business Solutions required all of the aggrieved employees to sign contracts the Company knew to be illegal at the time. (Lab. Code §§ 432.5-432.6.) For example, the Company required its aggrieved employees to sign, as a condition of employment, contracts including non-solicitation agreements (Bus. & Prof. §§ 16600-16602.) and overbroad non-disclosure agreements that functionally operate as non-compete and non-solicitation agreements while violating the Silenced No More Act. (Code of Civ. Proc. § 1001; Lab. Code § 1102.5; Gov. Code § 12964.5.) These also included non-compliant sales commission agreements, which it gave to its salespeople like Mr. McCarthy. (Lab. Code § 2751.)

Xerox Business Solutions also failed to reimburse Mr. McCarthy and the aggrieved employees for their reasonable business expenses. (Lab. Code §§ 2800-2802.) These include, *but are not limited to*: (1) home internet expenses incurred so the aggrieved employees could work from home whenever they were not in the office; (2) costs related to use of personal computing equipment (*e.g.*, mice, monitors, keyboards, etc.); and (3) printers and scanners, including paper and toner used for the Company's benefit.

² For purposes of this Notice, we reasonably believe that the Company also underpaid (in a similar fashion) the properly classified employees who also earned commissions.

Finally, Xerox Business Solutions regularly failed to timely provide the aggrieved employees with their complete employment records upon request. (Lab. Code §§ 226, 247.5, 432, 1198.5.) This is primarily because the Company did not keep accurate copies of these records in violation of California law. (Lab. Code §§ 226(a), 353, 1174(c)-(d), 1197.5(e), 1198.5(d), 2810.5.)

For example, on December 20, 2024, Mr. McCarthy requested copies of his pay records, time-entries (*i.e.*, records of all hours worked, or fraction thereof), documents he signed in the course and scope of obtaining and retaining his employment with the Company, and his personnel file. But the Company ignored his request entirely. So, Mr. McCarthy sent Xerox Business Solutions another written request for these files on April 7, 2025.

While the Xerox Business Solutions finally produced *some* of Mr. McCarthy's personnel file on April 14, 2025 (followed by another production on April 28, 2025), the Company omitted *all* of Mr. McCarthy's pay stubs and dozens of records that Mr. McCarthy is aware of. These omitted records include Mr. McCarthy's: (1) release from his prior employer, Mr. Copy, Inc. and his hire by one of the two entities previously defined as Xerox Business Solutions; (2) sales commission agreements ever since he departed Mr. Copy, Inc. in or around 2023; and (3) his performance evaluations. And there are, assuredly, many other categories of records that the Company did not produce that are responsive to Mr. McCarthy's requests that Xerox Business Solutions failed to disclose.

PAGA VIOLATION SUMMARY

For the reasons stated herein, Mr. McCarthy alleges Xerox Business Solutions has violated and/or continues to violate, among other statutes, California Labor Code §§ 201, 202, 203, 204, 206, 206.5, 210, 218.5-218.6, 226, 226.2, 226.7, 247.5, 432, 432.5-432.6, 510, 512, 551-552, 1102.5, 1174(c)-(d), 1194, 1194.2, 1197, 1197.1, 1197.5(e), 1198, 1198.5, 1198.7(e), 2751, 2800-2802, and 2810.5, and the applicable Wage Order. These violations include, but are not limited to:

1. **Unpaid Minimum Wages.** Xerox Business Solutions failed to compensate Mr. McCarthy and the aggrieved employees with minimum wages for all hours worked, including pay for nonproductive time in violation of Labor Code §§ 204, 226.2, 1194, 1197, 1198, and any local minimum wage ordinance(s), thus incurring additional penalties and liability under Labor Code §§ 210, 218.5, 218.6, 1194.2, 1197.1;
2. **Unpaid Regular Wages.** Xerox Business Solutions failed to compensate Mr. McCarthy and the aggrieved employees with all wages earned above minimum wage, including pay for nonproductive time, in violation of Labor Code Labor Code § 204, thus incurring additional penalties and liability under Labor Code §§ 210, 218.5, 218.6;
3. **Unpaid Overtime and Doubletime Wages.** Xerox Business Solutions failed to compensate Mr. McCarthy and the aggrieved employees with overtime wages for all time worked in excess of eight hours in a day and 40 hours in a week, and doubletime wages for

all time worked in excess of twelve (12) hours in a day and all hours worked in excess of eight on the seventh consecutive day of work. This conduct violates Labor Code §§ 204, 510, 1194, and 1198, thus incurring additional penalties and liability under Labor Code §§ 210, 218.5, 218.6;

4. **Failure to Compensate Late, Interrupted, and Unprovided Meal Periods.** Xerox Business Solutions failed to compensate Mr. McCarthy and the aggrieved employees with one hour's pay for each late, interrupted, and/or unprovided meal period in violation of Labor Code §§ 204, 226.7, 512, and 1198;
5. **Failure to Compensate Late, Interrupted, and Unprovided Rest Breaks.** Xerox Business Solutions failed to compensate Mr. McCarthy and the aggrieved employees with one hour's pay for each late, interrupted, and/or unprovided rest break in violation of Labor Code §§ 204, 226.7, 1198;
6. **Unreimbursed Business Expenses.** Xerox Business Solutions failed to reimburse Mr. McCarthy and the aggrieved employees for their reasonable business expenses in violation of Labor Code §§ 2800-2802;
7. **Inaccurate Itemized Wage Statements.** Xerox Business Solutions failed to provide Mr. McCarthy and the aggrieved employees with accurate and complete wage statements stating, among other things, correct rate(s) of pay and hours worked including minimum, base, regular, overtime, doubletime, and piece-rate (*e.g.*, commissions), and paid sick leave, PTO, and meal and rest break penalties earned. This conduct violates Labor Code §§ 226, 226.2;
8. **Failure to Timely Pay All Wages Owed.** The Company regularly failed to pay Mr. McCarthy and the other aggrieved employees all wages they had earned (and were owed) within the appropriate pay period in violation of Labor Code §§ 204, 210. *Furthermore*, Xerox Business Solutions failed to pay each of the aggrieved employees who left the Company during the PAGA period (*i.e.*, the last 365 days) all the wages they were owed at the time of their separation (or the appropriate period thereafter) in violation of Labor Code §§ 201, 202, 203, 204;
9. **Failure to Maintain Accurate Employee Records.** Xerox Business Solutions failed to maintain accurate employee records of Mr. McCarthy and the aggrieved employees in violation of the Wage Order § 7, and Labor Code §§ 247.5, 1174(d), 1197.5(e), 2810.5;
10. **Requiring Non-Competition/Solicitation and/or Non-Disclosure Agreements as a Condition of Employment.** Xerox Business Solutions required Mr. McCarthy and the aggrieved employees to consent to non-compete and non-disclosure agreements in violation of Labor Code §§ 432.5-432.6; and

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11. **Failure to Produce All Employment Records Upon Request.** Xerox Business Solutions failed to fully and/or timely produce to Mr. McCarthy and the aggrieved employees all of their paystubs, records of hours worked (*e.g.*, their work schedules and punch in/out times), documents they signed in the course of securing and maintaining employment with Xerox Business Solutions, and their personnel files. As a result, Xerox Business Solutions has violated Labor Code §§ 226(c), 247.5, 432, and 1198.5(b).

Accordingly, Mr. McCarthy now seeks civil penalties on behalf of himself and the aggrieved employees based on Xerox Business Solutions' foregoing violations of the California Labor Code and the Wage Order.

CONCLUSION

This letter constitutes Mr. McCarthy's notice to the Company and the LWDA as required under California's Private Attorneys General Act of 2004. (Lab. Code § 2699.3(a)-(c).) Please be advised that Mr. McCarthy will seek both reasonable attorneys' fees and costs under Labor Code § 2699(k)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as formal notice under the catalyst theory and Code of Civil Procedure § 1021.5 to resolve this matter before litigation.

Respectfully.



Erik J. Christensen