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Labor and Workforce Development Agency
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

Via Certified U.S. Mail – Return Receipt Requested

American Vision Windows, Inc.
Agent for Service of Process
Legal Zoom
7083 Hollywood Boulevard
Los Angeles, California 90028

Re: Notice Pursuant to California Labor Code § 2699.3

To American Vision Windows, Inc. and Representatives of the LWDA:

This office represents Mr. Ralph Guzman (“Mr. Guzman”), a former non-exempt, hourly employee of American Windows, Inc. (hereinafter referred to as “Employer”), who has cause and/or committed the wage and hour violations as set forth herein. Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, and all amendments relating thereto, this letter sets forth the specific provisions of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 16-2001¹ and any other applicable wage order, which Mr. Guzman alleges that Employer has violated, including the facts and theories to support the alleged violations.

¹Hereinafter, when reference is made to IWC Wage Order No. 16-2001, it shall include reference to corresponding sections of IWC Wage Order Nos. 1-2001, IWC Wage Order No. 2-2001, IWC Wage Order No. 4-2001, IWC Wage Order No. 7; and any other Wage Orders that are or may be applicable.

Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employer (“aggrieved employees”) in the State of California regarding Employer’s unlawful policies and practices. Among other things, Mr. Guzman, and other aggrieved employees allege that Employer is liable for the following: failure to provide meal, recovery and rest periods to non-exempt employees, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and §§ 11-12 of Wage Order, No. 16-2001 and any other applicable wage order and California Code of Regulations, Title 8, Section 3395; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal, recovery or rest period is not provided, in violation of Labor Code § 226.7 and §§ 11(B) and 12(B) of the applicable wage orders; failure to pay non-exempt employees overtime wages, and failure to properly calculate and pay overtime wages, in violation of Labor Code §§ 510, 1194, 1198, and § 3 of Wage Order, No. 16-2001 and any other applicable wage order; failure to pay non-exempt employees the unpaid balance of the full amount of minimum and straight time wages, including interest, in violation of Labor Code § 1194; failure to pay reporting time pay in violation of California law, including Wage Order No. 16-2001, § 5; § 4(c); failure to timely pay all wages due, in violation of Labor Code Labor Code §§ 200, 204 and 210; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code §§ 200-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 226.6, 1174, and 1174.5, failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5, and § 7 of Wage Orders, No. 4-2001 and any other applicable

wage order; failure to indemnify for reasonable and necessary expenses, in violation of California Labor Code § 2802(a); failure to implement a Workplace Prevention Policy, in violation of California Labor Code §§6401.7 and 6401.9; and the failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations.

This letter also serves as notice of Mr. Guzman’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Guzman’s employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

FACTS AND THEORIES

Mr. Guzman was initially hired by American Vision Windows, Inc. Mr. Guzman’s job title was crew chief, a non-exempt position paid at an hourly rate of \$28.00. Mr. Guzman’s duties and responsibilities included but were not limited to remodeling houses, window framing, waterproofing, and demolition. Mr. Guzman was employed by Employer starting on or around March of 2008, through September 13, 2024. Employer exercised control over Mr. Guzman and the other aggrieved employee’s wages, hours, and working conditions and suffered and permitted them to work.

Aggrieved employees other than Mr. Guzman include, but are not limited to, all non-exempt employees who similarly experienced wage and hour violations at each of the locations of Employer’s located in the State of California. Mr. Guzman on behalf of himself and other aggrieved employees of Employer in the State of California during the one (1) year preceding the date of this notice letter, alleging the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512, 558 and § 11 of IWC Wage Order No. 16-2001 and any other applicable wage order, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employees who work more than ten (10) hours in a day are entitled to a second 30-minute meal break. California employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees.

Here, Employer regularly did not allow non-exempt employees, including Mr. Guzman and the other aggrieved employees, the opportunity to take a full thirty-minute meal period, and meal

periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). Among other things, Employer also did not properly notify their non-exempt employees of their rights under California law to take timely, uninterrupted meal periods, instead Employer dictated when aggrieved employees like Mr. Guzman were allowed to take their meal period and the length of the meal period. Thus Mr. Guzman and the aggrieved employees were left in the dark as to when or for how long they could take their meal periods.

Next, Employer consistently denied Mr. Guzman and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Mr. Guzman and other aggrieved employees could not leave their locations and/or no one was available to cover for them which resulted in taking non-compliant meal periods.

Employer further violated California Labor Code § 226.7, 510, 1194, 1197 and IWC Wage Order No. 16-2001 and any other applicable wage by willfully failing to compensate Mr. Guzman and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a legally compliant meal period was not provided. Employer also violated California Labor Code § 226.7, 510, 558, 1194, 1197, and IWC Wage Order No. 16-2001 and any other applicable wage order by failing to compensate Mr. Guzman and other aggrieved employees for all hours worked during their meal periods

II. Rest Period Violations

Employer failed to authorize and permit Mr. Guzman and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 16-2001 and any other applicable wage order. California employers are required to provide a ten (10) minute rest period for every four hours worked, or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As with meal periods, Employer's policies and practices caused Mr. Guzman and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. Further, as set forth above, Employer implemented skeletal staffing policies which resulted in the inability of Mr. Guzman and other aggrieved employees to take compliant rest periods.

In addition, Mr. Guzman and other aggrieved employees always needed to get permission from their supervisor in order to take their rest periods because they were either too busy due to insufficient staffing. When Mr. Guzman and the other aggrieved employees did get a chance to take rest periods, these rest periods were regularly interrupted because Mr. Guzman and other aggrieved employees were required to perform work during their rest periods.

Employer further violated California Labor Code § 226.7 and § 12 of IWC Wage Order No. 16-2001 and any other applicable wage order, by failing to pay Mr. Guzman and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally compliant rest period was not provided.

III. Recovery Period Violations

Employer knowingly and willfully failed to provide recovery periods to the aggrieved employees as required under California Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Employers are required to provide recovery or “cooldown” periods to non-exempt employees, who are working outdoors, in order to prevent heat illness. Further, Employers are required to pay one (1) additional hour of compensation at the non-exempt employee’s regular rate of pay for each workday in which the recovery period is not provided.

Mr. Guzman and the other aggrieved employees worked and continue to work outdoors. This work is frequently performed over the course of many hours in heat exceeding 85 degrees Fahrenheit. Despite these work conditions, Employer has failed to implement any policy or practice of providing proper recovery periods to their non-exempt employees.

Employer has similarly failed to make any efforts to comply with heat illness prevention regulations by providing proper places of shade for recovery periods or by supplying sufficient amounts of drinking water. There have been many days when Employer did not provide aggrieved employees with any water, and aggrieved employees had no knowledge they were entitled to take recovery periods and thus they never took them.

Employer further violated California Labor Code § 226.7 by failing to pay aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a recovery period was not provided.

IV. Failure to Pay Overtime Wages

Employer failed to pay overtime wages to Mr. Guzman and the other aggrieved employees as they are entitled to under the protections of the California Labor Code. Pursuant to California Labor Code §§ 510, 1194 and § 3 of IWC Wage Order No. 16-2001, Employer is required to compensate Mr. Guzman and the other aggrieved employees for all overtime, which is calculated

at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Employer failed to compensate Mr. Guzman and other aggrieved employees for all overtime wages, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by the California Labor Code §§ 510, 1194 and § 3 of IWC Wage Order No. 7-2001; requiring, permitting or suffering Mr. Guzman and other aggrieved employees to work off the clock; requiring, permitting or suffering Mr. Guzman and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; failing to keep track of hours worked; illegally and inaccurately recording time in which Mr. Guzman and other aggrieved employees worked.

Employer has failed to perform its obligations to compensate Mr. Guzman and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and § 3 of IWC Wage Orders, No. 16-2001 and any other applicable wage order.

V. Failure to Pay Minimum Wages and Straight Time Wages

Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 16-2001, § 4, payment to a non-exempt employee of less than the applicable minimum and straight-time wages for all hours worked in a payroll period is unlawful.

Employer failed to pay Mr. Guzman and other aggrieved employees minimum and straight time wages for all hours worked by, among other things: requiring, permitting or suffering Mr. Guzman and other aggrieved employees to work off the clock; implementing an illegal rounding policy which resulted in the underpayment of wages to Mr. Guzman and the aggrieved employee, not properly compensating Mr. Guzman and other aggrieved employees for all hours worked; requiring, permitting or suffering Mr. Guzman and other aggrieved employees to work through meal, recovery and rest periods but not compensating them for this time and failing to include this time in all hours worked; illegally and inaccurately recording time that Mr. Guzman and other aggrieved employees worked; failing to pay reporting time pay, in violation of Wage Order No. 16-2001, and other methods to be discovered.

VI. Failure to Timely Pay All Wages Earned

Employer has violated California Labor Code §§200, 204 and 210. California Labor Code §200 provides an employer must compensate an employee for wages earned based upon the employee's labor. Further, California Labor Code § 204 provides that 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. Next, California Labor Code §210 provides that an employer is liable for penalties in the amount of one hundred dollars (\$100) for each failure to pay each employee, and for each subsequent violations, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee in addition to twenty-five (25) percent of the amount unlawfully withheld.

Mr. Guzman alleges that Employer failed to pay him and the other aggrieved employees all wages due on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Guzman and other aggrieved employees for work they performed off the clock, requiring them to work through their meal and rest periods without proper compensation, and other methods to be discovered.

Employer knew it as required to pay Mr. Guzman and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet Employer willfully failed to do so and are subject to penalties.

VII. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-exempt employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, requires Mr. Guzman and other aggrieved employees to work off the clock without compensation, fail to pay them overtime and minimum wages, failing to pay reporting time pay, in violation of Wage Order No. 16-2001, § 5, and failing to pay premium payments for noncompliant meal, recovery and rest periods, Employer has willfully failed and continues to fail to pay wages due to Mr. Guzman and other aggrieved employees in

accordance with California Labor Code §§ 201 and 202.

VIII. Failure to Maintain Required Records

Employer failed to maintain records as required under California Labor Code §§ 226, 247.5, 1174, and § 7 of IWC Wage Order No. 7-2001, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal and recovery periods; time records showing when each employee begins and ends each work period; and provide accurate itemized statements that reflect all compensation and remuneration owed and due to them. Employer has knowledge that they are not providing their non-exempt employees with proper meal, recovery and rest periods but omit from the wage statements such compensation and/or other remuneration. Additionally, Employer requires aggrieved employees to work through meal and rest periods and work off the clock and fail to record this time or compensate them for this time, and reporting time premium payments.

IX. Failure to Furnish Accurate Itemized Wage Statements

Employer failed to provide Mr. Guzman and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the complete correct names of the legal entity or entities employing Mr. Guzman and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and § 7 of IWC Wage Order, No. 16-2001 and any other applicable wage orders.

Employer's wage statements violate Labor Code § 226 on their face by failing to provide Mr. Guzman and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. In addition, Employer requires Mr. Guzman and other aggrieved employees to work off the clock without compensation, which is not listed on the wage statements. Employer has also failed to pay Mr. Guzman and other aggrieved employees overtime and minimum and straight-time wages, and reporting time pay premiums, as described herein, rendering its wage statements incomplete and inaccurate.

X. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires an employer to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Employer failed to indemnify Mr. Guzman and the other aggrieved employees for all business

expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to, all expenses incurred relating to the usage of personal cell phones, purchase of tools, construction materials; and other items which were not reimbursed, in violation of California Labor Code §2802.

XI. Failure to Implement a Workplace Violence Prevention Policy

California Labor Code §§6401.7 and 6401.9 required Employer to develop and implement a workplace violence prevention plan in accordance with newly codified Labor Code section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Employer was required to establish, implement, and maintain a Workplace Violence Prevention Plan that includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain records relating to workplace violence which includes, records of workplace violence hazard identifications, evaluations, and correction must be created and maintained for a minimum of five years; training records must be created and maintained; incident logs; and records of workplace violence incident investigations under must be maintained.

Here, Employer willfully failed to implement a Workplace Violence Prevention Policy starting on or about July 1, 2024. *During Mr. Guzman's employment with Employer, he was not provided with nor is he aware of the existence of the implemental of a workplace violence prevention policy. Mr. Guzman is informed that Employer failed to implement a violence prevention policy during his employment and thereafter.* Mr. Guzman on behalf of himself and the other aggrieved employees, are entitled to recover penalties up to \$25,000 for serious violations, and up to \$158,727 for "willful" violations. See, Labor Code §§6401.7, 6401.9, 6428, and 6429.

XII. Failure to Implement Indoor Heat Prevention Policies

Employer failed to implement Indoor Heat Prevention policies applicable to Mr. Guzman and the other aggrieved employees throughout the State of California. Pursuant to California Labor Code §6721, Employer was mandated to implement an indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard.

Section 3396 required Employer to establish, implement, and maintain an effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in writing and include procedures for water provision, access to cool-down areas, temperature measurement, emergency response, and acclimatization. Employer failed to establish, implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor places of employment for Mr. Guzman and the other aggrieved employees.

Employer's failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations will result in the imposition of substantial civil penalties. *During Mr. Guzman's employment with Employer, he was not provided with nor is he aware of the existence of the implementation of any type of indoor or outdoor heat prevention policy. Mr. Guzman is informed that Employer failed to implement a heat prevention policy during his employment and thereafter.* In particular, California Labor Code §6428 provides that any employer which violates any occupational safety or health standard shall be assessed a civil penalty of up to \$25,000 for each serious violation. In that respect, an employer who operates without an injury prevention program can be assessed heightened penalties of up to \$124,709. See, California Labor Code §6429.

XII. Failure to Produce Personnel File Pursuant to Labor Code § 1198.5.

Labor Code Section § 1198.5, provides:

“(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request....”.

Mr. Guzman requested his personal file on January 14, 2025 and once again February 14, 2025. Each of the requests included an Authorization signed by Mr. Guzman authorizing the release of his personnel file and wage records to his attorney. Employer failed to respond to Mr. Guzman's requests pursuant to Labor Code § 1198.5.

This notice shall further represent Mr. Guzman's reasonable attempt to settle his dispute with Employer prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Employer of Mr. Guzman aforementioned grievances and the proposed remedies as detailed below, while affording Employer a reasonable opportunity to meet Mr. Guzman's demands.

DEMAND

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Mr. Guzman and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, the

following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all current and former hourly aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of rest periods and meal periods each employee missed during their work shifts including, but not limited to second meal periods, and about discharging their duties, with the investigation to be completed within thirty (30) days;
2. Employer shall immediately implement a heat prevention policy and provide for recovery periods, and pay premium payments for missed recovery periods for a period of the past twelve (12) months on days that are over 85 degrees Fahrenheit;
3. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by Labor Code § 226.7;
4. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to §§ 510, 1194, 1198, and pursuant to all applicable wage orders;
5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer, and to begin providing uniforms to aggrieved employees;
6. Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein;
7. Employer shall immediately implement a Workplace Violence Prevention Policy and take all reasonable steps to reduce excessive heat at each of its facilities;
8. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid wages;
9. Employer shall immediately implement an indoor heat prevention policy consistent with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations, and conduct an audit of the indoor temperatures at its worksites since July 1, 2024; and

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10. Employer shall agree to pay all penalties and civil penalties due arising from the violations of the California Labor Code and IWC wage order sections referenced above and pursuant to PAGA, California Labor Code § 2698 *et seq.*

Employer shall further agree to pay all statutory and civil penalties arising from the violations of the Labor Code and IWC wage order sections referenced herein, including but not limited to Labor Code §§ 2698 *et seq.* (PAGA), 210, 218.5, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, 2802, 2699, Wage Order No. -42001, § 20, and all other applicable IWC Wage Orders. Employer shall further agree to create and implement policies and practices that ensure compliance with the California laws referenced herein.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

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Thank you for your prompt attention to this matter.

Very Truly Yours,



Scott Ernest Wheeler, Esq.

SEW/yc