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June 6, 2025

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VIA ELECTRONIC SUBMISSION

California Labor & Workforce Development
Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL

Rossetta's Enterprises, Inc.
dba Rossetta's Roofing
c/o Susan Bishop
Berliner & Cohen LLP
10 Almaden Blvd., 11th Floor
San Jose CA 95113-2233

Daniel Rossetta, CEO
Rossetta's Enterprises, Inc.
dba Rossetta's Roofing
c/o Susan Bishop
Berliner & Cohen LLP
10 Almaden Blvd., 11th Floor
San Jose CA 95113-2233

Subject: *Reynaldo Bajo-Islas adv. Rossetta's Enterprises, Inc.*
dba Rossetta's Roofing and Daniel Rossetta
Cal. Labor Code section 2699.3 Notice of Labor Code Violations

Dear LWDA PAGA Administrator:

This office represents Reynaldo Bajo-Islas ("COMPLAINANT") in connection with his claims under the California Labor Code. Complainant is a former employee of Rossetta's Enterprises, Inc. dba Rossetta's Roofing and its CEO/owner Daniel Rossetta (together, "EMPLOYER").

Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed directly and/or via a staffing agency by EMPLOYER in California within one year of the date of this notice ("AGGRIEVED EMPLOYEES").

This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and EMPLOYER via certified mail care of their counsel Susan Bishop, Esq., in lieu of their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by EMPLOYER to AGGRIEVED EMPLOYEES.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER are on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT and the AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1197, 1197.1, and 2802, and all applicable Wage Orders.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. CEO/Owner Daniel Rossetta, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and/or 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

<u>Employer is Liable for All Temporary Agency Workers</u>

Labor Code section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business.

Pursuant to section 2810.3, if EMPLOYER secured temporary labor from a labor contractor, EMPLOYER shares in all legal responsibility and civil liability with its labor contractor(s), for all workers supplied by such labor contractor(s), for payment of wages.

General Information

EMPLOYER owns, operates, manages and/or staffs a roofing contracting business. Although EMPLOYER may operate a successful business or have a noble mission, EMPLOYER do not comply with California's labor laws.

COMPLAINANT worked for EMPLOYER as a non-exempt employee from approximately February 2018 to approximately April 2025. COMPLAINANT regularly worked shifts lasting at least eight (8) or more per day, at least five (5) days per week. At times EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked, while at other times EMPLOYER paid Complainant on a piece-rate basis. During the liability period, EMPLOYER failed to pay COMPLAINANT separately for rest periods and non- productive time, failed to pay overtime wages when required, required COMPLAINANT take late and shortened meal periods, failed to provide rest periods or work during owed rest periods, and complete pre-shift off-the-clock work. As a result of being denied meal and rest period premiums and all owed wages, COMPLAINANT was denied accurate and complete wage statements, in violation of Labor Code section 226. EMPLOYER wage statements also are inaccurate and incomplete on their face and fail to include all hours worked, all applicable hourly rates and the number of hours worked at each rate, the total hours of compensable rest and recovery periods, the rate of compensation and the gross wages paid for those rest and recovery periods during the pay period, the total hours of other nonproductive time, and the rate of compensation and the gross wages paid for nonproductive time during the pay period. EMPLOYER also failed to reimburse COMPLAINANT for all business expenses, including, for personal cell phone use and use of COMPLAINANT'S personal vehicle for business purposes. Furthermore, COMPLAINANT was not provided with any final paycheck for at least approximately several days after COMPLAINANT's termination date.

<u>Labor Code Violations</u>

<u>Failure to Pay Wages Due (Minimum Wages and Overtime)</u>: California Labor Code section 1197 requires that employees must be paid at least the minimum wage fixed by the IWC for all hours worked. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. The minimum wage standard applies to each hour employees worked for which they were not paid. An employer's failure to pay for any time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. California Labor Code section 510 and the IWC Wage Orders also require employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week.

Employees who are paid on a piece rate basis also must be compensated for rest and recovery periods and other nonproductive time separate from any piece rate compensation. Rest and recovery periods must be paid at a regular hourly rate that is no less than the higher of an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or the applicable minimum wage, while other non-productive time must be paid a rate no less than the applicable minimum wage.

On shifts where COMPLAINANT and other aggrieved employees were paid on an hourly basis, they worked hours for which they were not paid at least the applicable minimum wage, including without limitation hours worked off the clock, including compensable travel time and time spent performing pre- and post-shift duties, that were not paid for at the applicable minimum or overtime wage. Accordingly, EMPLOYER failed to pay COMPLAINANT and other aggrieved employees for all compensable hours worked at the appropriate minimum wage, regular rate, and/or overtime rate.

On shifts where CCOMPLAINANT and other AGGRIEVED EMPLOYEES were paid on a piece rate basis, they were not compensated for rest and recovery periods and other nonproductive time separate from any piece rate compensation at the appropriate regular hourly rate and/or applicable minimum wage, and in fact were not compensated for such time at all. Accordingly, EMPLOYER failed to pay Complainant and other aggrieved employees for all compensable hours worked at the appropriate minimum wage, regular rate, and/or overtime rate.

EMPLOYER's failure to pay for all hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES, failure to properly calculate and pay for overtime, and failure to compensate for rest and recovery periods and other nonproductive time separate from any piece rate compensation all violate Labor Code sections 226.2, 512, 1194-1199, and Wage Order 16-2001, sections 3-4. These violations subject EMPLOYER to civil penalties under said sections and Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty

<u>Meal Period Violations</u>: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code § 512; IWC Wage Order 16-2001, § 10(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived.

Employers covered by Wage Order 16-2001 have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 16-2001, § 6(A)(3) ("Meal periods . . . shall also be recorded"); *Donohue v. AMN Servs.* (2021) 11 Cal.5th 58, 61.

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; IWC Wage Order 16-2001, § 10(B) ("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").

EMPLOYER failed to maintain a company meal period policy compliant with California law and failed to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal periods, and/or meal periods were not provided until after the start of the fifth hour work. COMPLAINANT and other AGGRIEVED EMPLOYEES had their meal periods interrupted by work or otherwise cut short. Liability for aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Orders requirements. The fact that employees may legally waive meal breaks does not affect this result. Because EMPLOYER failed to maintain a compliant written meal period policy, failed to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with all required meal periods, failed to provide COMPLAINANT and other aggrieved employees with timely meal periods and/or meal periods lasting a full 30 minutes free from all EMPLOYER control, it also failed to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with all meal breaks required under California law. EMPLOYER failed to pay them premiums for such missed and non-compliant meal breaks in violation of California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 16-2001, § 10(A) and (C). These violations subject EMPLOYER to civil penalties under Labor Code sections 226.7 and 2699, and Wage Order 16-2001, § 18. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.[1]

<u>Rest Period Violations</u>: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 16-2001, § 11(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 16-2001, § 11(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 work day that the rest period is not provided").

[1] See Lab. Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 16-2001, § 18 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

EMPLOYER did not maintain a company rest period policy and/or practice compliant with California law, and EMPLOYER frequently did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with appropriate rest periods. Per EMPLOYER's policy and/or practice, COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed and instructed about, and thereby were not afforded an adequate opportunity to take, proper rest breaks per California law and, in particular, COMPLAINANT and other AGGRIEVED EMPLOYEES were not permitted and/or were not able to take rest breaks. Further, EMPLOYER failed to pay COMPLAINANT and other AGGRIEVED EMPLOYEES with an additional hour of pay at the regular rate of pay for each missed or improper rest period.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 16-2001, § 11(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 226.7 and 2699, and Wage Order 16-2001, § 18. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.[2]

<u>Wage Statement Violations</u>: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (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; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (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. Lab. Code § 226.

For employees paid by piece rate, the wage statements must also set forth the total hours of compensable rest and recovery periods, the rate of compensation, the gross wages paid for those periods during the pay period, the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period. Lab. Code § 226.2

EMPLOYER did not provide wage statements at all to COMPLAINANT and other AGGRIEVED EMPLOYEES and, to the extent it did, as a result of EMPLOYER's violations of various Labor Code and Wage Order provisions, as discussed herein, EMPLOYER failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, including without limitation gross wages earned, total hours worked, and net wages earned, and therefore EMPLOYER violated section 226. EMPLOYER's wage statements further were inaccurate and incomplete on their face and failed to include all hours worked, all

[2] See Lab. Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 16-2001, § 18 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

applicable hourly rates and the number of hours worked at each rate, the total hours of compensable rest and recovery periods, the rate of compensation and the gross wages paid for those rest and recovery periods during the pay period, the total hours of other nonproductive time, and the rate of compensation and the gross wages paid for nonproductive time during the pay period, and further violated Labor Code sections 226 and 226.2.

These violations subject EMPLOYER to civil penalties under Labor Code sections 226, 226.2, 226.3, and 2699. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with respect to employees who resign. EMPLOYER still has not paid COMPLAINANT and other AGGRIEVED EMPLOYEES all wages earned and unpaid at the time of discharge, including without limitation: (1) hours worked "off the clock," and overtime hours worked that were paid at the incorrect rate, (2) separate compensation for rest and recovery periods; (3) separate compensation for non-productive time, and (4) an additional hour of pay for meal and rest periods not provided and/or that were not compliant. These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.[3]

Failure to Reimburse Reasonable and Necessary Business Expenses: under Labor Code section 2802, California law requires an employer to reimburse employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Accordingly, an employer must fully reimburse employees for, inter alia, all expenses incurred by the employee for using his or her personal mobile phone in furtherance of their job duties, and for use of his or her personal automobile in furtherance of their job duties. *Gattuso v. Harte Hanks Shoppers, Inc.*, 42 Cal.4th 554, 569-75 (2007); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

EMPLOYER did not fully and accurately record and reimburse all of COMPLAINANT'S and AGGRIEVED EMPLOYEES' expenses incurred using their personal mobile phones for work purposes, such as communicating with management during shifts, and taking pictures of projects. EMPLOYER did not fully reimburse COMPLAINANT and AGGRIEVED EMPLOYEES for driving their personal vehicles for work purposes, including traveling to and from job sites in excess of a reasonable commute.

The aforementioned conduct results in violations of Labor Code section 2802. These violations subject EMPLOYER to civil penalties under Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes were violated

[3] (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty…for each failure to pay each employee").

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699 and 2699.3(a) prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce & Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the Labor Code.

If the Labor Commissioner elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of himself and all other AGGRIEVED EMPLOYEES.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Thank you for your attention to this matter.

Sincerely,
LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly