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County of San Diego
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Clerk of the Superior Court
By J. Ortler ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DAVID JEREZ PEREZ, on behalf of others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

B-PER ELECTRONIC, INC.; MY WIRELESS; and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU043549C

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Action Filed:

Plaintiff DAVID JEREZ PEREZ, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants B-PER ELECTRONIC, INC. and MY WIRELESS; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action complaint brought under the California Private Attorneys General Act (Labor Code 2968 et seq.).

2. Defendants failed to compensate Plaintiff and aggrieved employees for all hours suffered or permitted to work in violation of the applicable IWC Wage Orders.

3. Defendants failed to provide, authorize, and/or permit the aggrieved employees to take all meal and rest periods to which they were entitled. Further, Defendants did not pay Plaintiff and the aggrieved employees all corresponding meal or rest period premiums.

4. Defendants also failed to properly reimburse Plaintiff and aggrieved employees for costs incurred for work-related purposes in direct consequence of their job duties.

5. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

6. Defendants are further liable for derivative claims for wage statements, untimely payment, and other associated violations.

7. Defendants also underpaid the aggrieved employees' wages by failing to include all forms of remuneration, including commissions, into the regular rate of pay calculation for overtime, sick pay, and premiums.

8. Plaintiff seeks to recover the damages, wages, interest, and penalties, in addition to attorneys' fees and costs, according to proof.

JURISDICTION & VENUE

9. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

10. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

11. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff David Jerez Perez

13. Plaintiff Jerez Perez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 1, 2022 to April 18, 2025. Plaintiff worked as a Retail Sales Associate.

14. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd*. (Feb. 26, 2025, D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

15. Defendant B-Per Electronic, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

16. Defendant My Wireless is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

17. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued

by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

18. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

19. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

20. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

21. Defendants failed to pay Plaintiff and the aggrieved employees' overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Specifically, Plaintiff and the aggrieved employees earned non-discretionary forms of additional remuneration, like commissions. However, as a matter of policy and practice, Defendants failed to incorporate all additional forms of remuneration in the regular rate of pay when paying overtime wages. An illustrative example of this violation can be found on Plaintiff's wage statement for the pay period February 1, 2025, through February 15, 2025. During that pay period Plaintiff earned a commission totaling $478.00 and worked .22 hours of overtime. However, Defendants failed to incorporate Plaintiff's commission payment in the regular rate of pay.

22. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As previously discussed, Plaintiff and the aggrieved employees earned non-

discretionary forms of remuneration including commission. Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay when paying sick leave to Plaintiff in the same pay period that he earned commission. An illustrative example of this violation can be found on Plaintiff's wage statement for the period of June 1, 2024, through June 15, 2024, which shows Defendants failed to include Plaintiff's commission into the regular rate of pay when calculating paid sick leave. Instead, Defendants paid Plaintiff paid sick leave at his straight rate.

23. Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums they were owed at the regular rate of pay, resulting in unpaid meal period premiums. Defendants often forced Plaintiff and the aggrieved employees to take late meal periods to keep up with the demands of the job. For example, Defendants maintained a policy and practice of understaffing. On busy, understaffed days, Defendants forced Plaintiff and the aggrieved employees to stay clocked in until they completed sales, without stopping to take a meal period. Furthermore, Plaintiff and the aggrieved employees earned additional forms of remuneration including commission. However, as a matter of practice, Defendants failed to incorporate these additional forms of remuneration in the regular rate of pay when Defendants owed Plaintiff and the aggrieved employees meal period premiums. An illustrative example of this violation can be found in Plaintiff's wage statement for the pay period November 1, 2024, through November 15, 2024, which shows Defendants failed to incorporate Plaintiff's commission in the regular rate of pay. Instead, Defendants paid Plaintiff a meal period premium at his straight rate.

24. Defendants failed to pay Plaintiff and the aggrieved employees rest period premiums at the regular rate of pay, resulting in unpaid rest period premiums. Defendants did not permit Plaintiff and the aggrieved employees to take 10-minute rest periods during their shifts. Instead, Defendants required Plaintiff and the aggrieved employees to work through their shifts, only stopping for one thirty-minute meal period. However, as a matter of policy and practice, Defendants failed to pay rest period premiums. To the extent Defendants did pay rest period premiums, they were underpaid. Plaintiff and the aggrieved employees earned additional forms of remuneration, including commission, however, defendants failed to include these forms of non-discretionary remuneration in the regular rate of pay when paying all rest period premiums.

25. Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to download scheduling apps on their personal cell phone to clock in and out for their shifts. However, Defendant failed to reimburse Plaintiff and the aggrieved employees for the required use of their personal cell phones, resulting in unreimbursed employee expenses.

26. Additionally, Defendants required Plaintiff and the aggrieved employees to attend work-related events during their shifts. However, Defendants did not provide transportation for these events. Instead, Defendants required Plaintiff and the aggrieved employees to use their personal vehicles to attend these events, while on the clock. However, Defendants failed to pay gas or mileage payments to those employees, resulting in unreimbursed employee expenses.

27. Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

28. Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

29. Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and conceal the underlying problems and underpayments of employee wages.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

30. All outside paragraphs of this Complaint are incorporated into this section.

31. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

32. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

33. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

34. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil

action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3. "

35. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

36. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

37. On or about **June 5, 2025**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

38. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

39. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

40. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

41. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

42. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

g. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

h. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders

43. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: August 18, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Lauren N. Vega
Mariela R. Romo
Attorneys for Plaintiff David Jerez Perez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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June 5, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

B-Per Electronic, Inc.
1600 N Broadway Ste 1010
Santa Ana, CA 92706

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

My Wireless
1600 N Broadway Ste 1010
Santa Ana, CA 92706

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DAVID JEREZ PEREZ** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

B-PER ELECTRONIC; MY WIRELESS

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v.*

Reins International California, Inc. (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Retail Sales Associate from about July 1, 2022 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny 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;" and "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;" and "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." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Specifically, Plaintiff and the aggrieved employees earned non-discretionary forms of additional remuneration including commission. However, as a matter of policy and practice, Defendants failed to incorporate all additional forms of remuneration in the regular rate of pay when paying overtime wages. An illustrative example of this violation is shown below:

Earnings Statement — JEREZ PEREZ, DAVID DANIEL

Pay Date: 02/26/2025
Period Start: 02/01/2025
Period End: 02/15/2025

Company: 10W45 - B-PER ELECTRONIC, INC
1600 N BROADWAY STE 1010
SANTA ANA CA 92706

Emp #: A0K7
Dept: RS - Retail Sales
Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year To Date
Regular	17.25	72.76	1255.11	5198.82
Overtime	25.88	0.22	5.69	99.17
Meal Premium - CA	17.25	0.00	0.00	34.50
Sick	17.25	0.00	0.00	340.16
Commission			478.00	859.23
Commission MP			6.17	8.61
Commission OT			4.09	7.81
Gross		**72.98**	**1749.06**	**6548.30**

Extract of Plaintiff's wage statement for the pay period 02/01/2025-02/15/2025 showing Plaintiff earned commission in the same pay period he worked overtime hours.

Here, Defendants failed to incorporate Plaintiff's commission payment in the regular rate of pay. Instead, Defendants paid overtime at Plaintiff's straight rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As discussed in the above section, Plaintiff and the aggrieved employees earned non-discretionary forms of remuneration including commission. Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay when paying sick leave to Plaintiff in the same pay period that he earned commission. An illustrative example of this violation is shown below:

Earnings Statement — JEREZ PEREZ, DAVID DANIEL

Pay Date:	06/26/2024	Company: 10W45 - B-PER ELECTRONIC, INC	Emp #: A0K7
Period Start:	06/01/2024	1600 N BROADWAY STE 1010	Dept: RS - Retail Sales
Period End:	06/15/2024	SANTA ANA CA 92706	Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year To Date
Regular	17.12	83.38	1427.47	16110.43
Overtime	25.68	4.41	113.25	771.16
Hourly Vacation	17.12	0.00	0.00	684.80
Meal Premium - CA	17.12	2.00	34.24	222.56
Sick	17.12	8.00	136.96	136.96
Commission			941.42	4320.57
Commission MP			5.18	62.31
Commission OT			9.53	51.91

Extract from Plaintiff's wage statement for the period 6/1/2024-6/15/2024 showing Plaintiff earned paid sick leave in the same pay period that he earned commission.

Here, defendants failed to include Plaintiff's commission into the regular rate of pay when calculating paid sick leave. Instead, Defendants paid Plaintiff paid sick leave at his straight rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums they were owed at the regular rate of pay, resulting in unpaid meal period premiums.

First, Defendants often forced Plaintiff and the aggrieved employees to take late meal periods to keep up with the demands of the job. For example, Defendants maintained a policy and practice of understaffing. On busy, understaffed days, Defendants forced Plaintiff and the aggrieved employees to stay clocked in until they completed sales, without stopping to take a meal period. Furthermore, Plaintiff and the aggrieved employees earned additional forms of remuneration including commission. However, as a matter of practice, Defendants failed to incorporate these additional forms of remuneration in the regular rate of pay when Defendants owed Plaintiff and the aggrieved employees meal period premiums. An illustrative example of this violation is shown below:

Pay Date: 11/26/2024
Period Start: 11/01/2024
Period End: 11/15/2024

Company: 10W45 - B-PER ELECTRONIC, INC
1600 N BROADWAY STE 1010
SANTA ANA CA 92706

Emp #: A0K7
Dept: RS - Retail Sales
Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year To Date
Regular	17.12	83.16	1423.70	30040.97
Overtime	25.68	1.94	49.82	2170.46
Hourly Vacation	17.12	0.00	0.00	1095.68
Meal Premium - CA	17.12	1.00	17.12	376.64
Sick	17.12	0.00	0.00	273.92
Commission			850.32	8384.58
Commission MP			5.34	108.77
Commission OT			4.24	182.18
Gross		**86.10**	**2350.54**	**42633.20**

Extract from Plaintiff's wage statement for the pay period 11/01/2024-11/15/2024 showing that Plaintiff earned commission in the same period Defendant's owed a meal period premium.

Here, Defendants failed to incorporate Plaintiff's commission in the regular rate of pay. Instead, Defendants paid Plaintiff a meal period premium at his straight rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Unpaid Rest Period Premium Wages</u>
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

<u>Labor Code sections 226.7</u> and <u>516</u> and the <u>IWC Wage Orders</u> require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. <u>Labor Code section 226.7</u> requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). <u>Labor Code section 1198</u> renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The <u>IWC Wage Orders</u>, including <u>Section 12</u> (<u>Rest Periods</u>), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Upon information and belief, Defendants failed to pay Plaintiff and the aggrieved employees rest period premiums at the regular rate of pay, resulting in unpaid rest period premiums. Defendants did not permit Plaintiff and the aggrieved employees to take 10-minute rest periods during their shifts. Instead, Defendants required Plaintiff and the aggrieved employees to work through their shift, only stopping for one thirty-minute meal period. However, as a matter of policy and practice, Defendants failed to pay rest period premiums.

To the extent Defendants did pay rest period premiums, they were underpaid. Plaintiff and the aggrieved employees earned additional forms of remuneration, including commission. However, defendants failed to include these forms of non-discretionary remuneration in the regular rate of pay when paying all rest period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Untimely Payment of Wages During Employment</u>
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

<u>Labor Code section 204(a)</u> requires payment of "all wages" for non-exempt employees at least twice each calendar month. <u>Labor Code section 204(d)</u> states all wages due must be paid "not more than seven calendar days following the close of the payroll period." <u>Labor Code section 204b</u> applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. <u>Labor Code section 210</u> provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Non-Compliant Wage Statements</u>
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

<u>Labor Code section 226(a)</u> requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Unreimbursed Employee Expenses</u>
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

<u>Labor Code section 2802</u> requires an employer to "indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

<u>Labor Code section 2804</u> affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to download scheduling apps on their personal cell phone to clock in and out for their shifts. However, Defendant failed to reimburse Plaintiff and the aggrieved employees for the required use of their personal cell phones, resulting in unreimbursed employee expenses.

Additionally, Defendants required Plaintiff and the aggrieved employees to attend work-related events during their shifts. However, Defendants did not provide transportation for these events. Instead, Defendants required Plaintiff and the aggrieved employees to use their personal vehicles to attend these events, while on the clock. However, Defendants failed to pay gas or mileage payments to those employees, resulting in unreimbursed employee expenses.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Mariela Romo

Cc Plaintiff David Jerez Perez

Rommel Concepcion, Human Resources Representative
hr@mywirelessgroup.com