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September 11, 2025

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

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

Ferrari Express, Inc.
215 Mill Street
Lawrence, NY 11559

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

Dear LWDA Officer and Company Representatives:

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

FERRARI EXPRESS, INC.

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 Armed Security from about August 2020 to June 2025. 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 Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

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 California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

Defendants engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock and making unauthorized edits to time records. Specifically, Plaintiff and the aggrieved employees worked through their meal periods as a result of an unlawful on-duty meal period, addressed in further detail in the meal period section below. Additionally, Plaintiff and the aggrieved employes sometimes arrived at their shift early or stayed later to prepare themselves before their shift (or the shift the next day), including printing paperwork necessary for deliveries, responding to emails, getting the vans ready, however, despite clocking in early or late to complete these tasks, Defendants routinely edited Plaintiff and the aggrieved employees time records. Plaintiff and the aggrieved employees were entitled to minimum wages for all hours worked.

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 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.

First, to the extent Defendants' policy and practice of requiring off-the-clock work including their unpaid meal period(s) and engaging in unauthorized time editing resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this unlawful practice resulted in unpaid overtime wages.

Second, Defendants failed to pay overtime at the "regular rate of pay" inclusive of all additional, non-excludable remuneration including non-discretionary bonuses. As a result, underpaying overtime. An illustrative example of this violation is shown below:

FERRARI EXPRESS INC.
215 MILL ST
LAWRENCE, NY 11559-1257

Period Beginning: 04/07/2025
Period Ending: 04/13/2025
Pay Date: 04/17/2025

TIMOTHY M RIVERA
[redacted]

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Tax blocked

Social Security Number: XXX-XX-5016

Earnings	rate	hours	this period	year to date
Regular	30.2820	40.00	1,211.28	18,156.33
Overtime	45.4230	16.27	739.03	7,642.76
Paid Lunch	30.2820	3.00	90.85	1,390.32
Float Hol				484.52
Holiday				477.46
Personal				484.51
Sick				1,211.29
Vacation				484.51
	Gross Pay		$2,041.16	30,331.70

Your federal taxable wages this period are $1,781.58

Other Benefits and Information	this period	total to date
Sick Available	16.00	
Vacation Day	72.66	
Totl Hrs Worked	56.27	

Important Notes

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

CO. FILE DEPT. CLOCK VCHR. NO. 020
W4F 000280 000630 0000167014 1

FERRARI EXPRESS INC.
215 MILL ST
LAWRENCE, NY 11559-1257

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Tax blocked

Social Security Number: XXX-XX-5016

Earnings Statement ADP

Period Beginning: 04/07/2025
Period Ending: 04/13/2025
Pay Date: 04/18/2025

TIMOTHY M RIVERA
[redacted]

Earnings	rate	hours	this period	year to date
Bonus			250.00	250.00
Regular				18,156.33
Overtime				7,642.76
Float Hol				484.52
Holiday				477.46
Paid Lunch				1,390.32
Personal				484.51
Sick				1,211.29
Vacation				484.51
Gross Pay			$250.00	30,581.70

Important Notes
COMPANY PH#:(516) 239-6141

BASIS OF PAY: HOURLY

Additional Tax Withholding Information
Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

Here, during the pay period from April 7, 2025 to April 13, 2025, Plaintiff earned a $250.00 non-discretionary bonus and worked 16.27 hours of overtime. However, Plaintiff's overtime rate was paid at a straight 1.5x Plaintiff's base rate of $30.2820, rather than 1.5x Plaintiff's regular rate of pay inclusive of the additional remuneration earned during this pay period.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code section 510(a) 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.

<u>Unpaid Paid Sick Leave</u>
Violation of Labor Code §§ 246 through 248.7

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

<u>Labor Code section 246</u> 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 <u>Labor Code sections 246, 246.5, 247</u>, and must further ensure that they maintain the paid sick leave records required by <u>Labor Code section 247.5</u>. 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. To the extent the aggrieved employees earned sick pay in the same period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave "in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek," as the regular rate should have included bonuses and all other forms of additional non-excludable remuneration.

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq*. was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned non-discretionary bonuses or other forms of non-excludable remuneration and also received paid sick leave.

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 provide compliant meal periods to Plaintiff and the aggrieved employees.

First, Plaintiff and the aggrieved employees experienced missed, late, short, and interrupted first and second meal periods due to the high demands of the job. However, Defendants maintained an unlawful policy and practice requiring Plaintiff and the aggrieved employees to clock out to make it appear as if they took compliant meal period, in reality Plaintiff and the aggrieved employees missed or otherwise experienced noncompliant meal periods. Further, Defendants failed to pay all owed meal period premiums. Specifically, Plaintiff and the aggrieved employees regularly worked over 10 hours without a meal period or corresponding meal period premium for such violations.

Second, as discussed above, Plaintiff and the aggrieved employees earned non-discretionary bonuses and other forms of non-excludable remuneration. However, as a matter of common policy and practice, Defendants failed to factor in these additional forms of remuneration into the meal period premium rate.

An illustrative example of this violation is shown below.

FERRARI EXPRESS INC.
215 MILL ST
LAWRENCE, NY 11559-1257

Period Beginning: 04/07/2025
Period Ending: 04/13/2025
Pay Date: 04/17/2025

TIMOTHY M RIVERA
[redacted]

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Tax blocked

Social Security Number: XXX-XX-5016

Earnings	rate	hours	this period	year to date
Regular	30.2820	40.00	1,211.28	18,156.33
Overtime	45.4230	16.27	739.03	7,642.76
Paid Lunch	30.2820	3.00	90.85	1,390.32
Float Hol				484.52
Holiday				477.46
Personal				484.51
Sick				1,211.29
Vacation				484.51
	Gross Pay		$2,041.16	30,331.70

Your federal taxable wages this per
$1,781.58

Other Benefits and Information	this period
Sick Available	16.00
Vacation Day	72.66
Totl Hrs Worked	56.27

Important Notes

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	020
W4F	000280	000630		0000167014	1

Earnings Statement ADP

FERRARI EXPRESS INC.
215 MILL ST
LAWRENCE, NY 11559-1257

Period Beginning: 04/07/2025
Period Ending: 04/13/2025
Pay Date: 04/18/2025

TIMOTHY M RIVERA
[redacted]

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Tax blocked

Social Security Number: XXX-XX-5016

Earnings	rate	hours	this period	year to date
Bonus			250.00	250.00
Regular				18,156.33
Overtime				7,642.76
Float Hol				484.52
Holiday				477.46
Paid Lunch				1,390.32
Personal				484.51
Sick				1,211.29
Vacation				484.51
	Gross Pay		$250.00	30,581.70

Important Notes
COMPANY PH#:(516) 239-6141

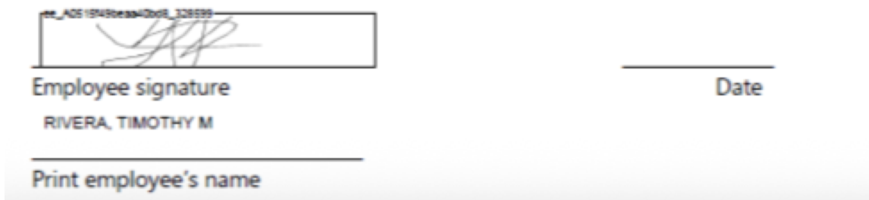
BASIS OF PAY: HOURLY

Additional Tax Withholding Information
Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

Here, during the pay period from April 7, 2025 to April 13, 2025 Plaintiff earned a non-discretionary bonus in the amount of $250.00 and three meal period premiums. However, these premiums were paid at Plaintiff's base hourly rate of $30.282, rather than his regular rate of compensation, inclusive of this additional non-excludable remuneration. Defendants committed the same regular rate of compensation violations against Plaintiff and the aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

Further, Defendant maintained an unlawful on-duty meal period agreement. Section 11(A) of the IWC Wage Orders and the the California Supreme Court requires (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" in order for such an agreement to be enforceable. *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). Here, Defendants cannot show that the nature of the work was such that they cannot schedule the aggrieved employees in such a way in which they would be able to provide relief to one another. Additionally, the purported agreement was not entered into by *both* the employee and the employee in writing, because the employer did not sign the agreement. Instead, the agreement reveals a lone undated signature by Plaintiff and unentered in by Defendant. Additionally missing from the agreement is any language as to when the purported on-duty meal break should be taken and for long. Therefore, the on-duty agreement is unlawful and unenforceable.


Employee signature

Date

RIVERA, TIMOTHY M

Print employee's name

Extract from Plaintiff's On-Duty Meal Period Agreement

As a result of this unlawful agreement, each time Plaintiff and the aggrieved employees worked through their unpaid meal periods they were owed meal period premiums. Defendants failed to provide all owed meal period premiums each time they remained on duty during a meal period.

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.

Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff and the aggrieved employees experienced non-compliant meal periods, like the pressure to keep up with the high demands of the job, including time restrictions and deliveries, they also experienced non-compliant rest periods. Plaintiff and the aggrieved employees were similarly owed rest period premiums every time they remained on duty during their rest periods.

As a matter of policy and practice, Defendants failed to pay all owed rest period premiums at the regular rate. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation which would have factored in all non-excludable remuneration and other forms of compensation.

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.

Untimely Payment of Wages During Employment
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.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 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.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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.

Unreimbursed Employee Expenses
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.

Labor Code section 2802 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)).

Labor Code section 2804 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, Plaintiff and the aggrieved employees used their personal cell phones to complete work duties including scheduling deliveries, communicating with clients, using GPS to route their deliveries, and other related tasks.

Additionally, Plaintiff and the aggrieved employees incurred lunch costs when they were scheduled to go on day-trips to make deliveries. Plaintiff recalls being told by Defendant he would be reimbursed for these meals, but despite requesting it they failed to do so.

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.

Non-Compliant Wage Statements
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).

Labor Code section 226(a) 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.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time for off-the-clock work and unauthorized edits to time records.

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.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendant violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Non-solicitation agreements are illegal under California law. Business and Professions Code 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Defendants required that Plaintiff and the aggrieved employees sign non-solicitation agreements restricting their ability to receive business from Defendants' customers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-solicitation agreements prohibited by California law. Specifically, as part of Plaintiff's onboarding paperwork, he was required to sign a non-solicitation agreement.

6.2 Nonsolicitation/Nondistribution Policy

To avoid disruption of business operations or disturbance of employees, visitors, and others, Ferrari Express Inc has implemented a Nonsolicitation/Nondistribution Policy. For purposes of this policy, "solicitation" includes, but is not limited to, selling items or services, requesting contributions, and soliciting or seeking to obtain membership in or support for any organization. Solicitation performed through verbal, written, or electronic means is covered by the Nonsolicitation/Nondistribution Policy.

You are prohibited from soliciting other employees during your assigned working time. For this purpose, working time means time during which either you or the employees who are the object of the solicitation are expected to be actively engaged with assigned work. You may conduct solicitations during your lunch period, coffee breaks, or other authorized nonworking time, so long as you do so when the other employees are also on nonworking time.

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 <u>must be suspended immediately</u>.

- 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,

Elyssa Martinez

Elyssa Martinez

Cc Plaintiff Timothy Rivera

Hadja Bangoura - Hadja.Bangoura@ferrarigroup.net
Defendant's HR Representatives