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September 2, 2025

VIA CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

ANDEK STAFFING SERVICES, INC.
1744 W. KATELLA, STE 200
ORANGE, CA 92867

ANDEK STAFFING SERVICES, INC.
Raymond Clawson, Agent for Service of Process
31 ATLANTIS COVE
NEWPORT COAST, CA 92657

WESTAMERICA COMMUNICATIONS, INC.
26012 ATLANTIC OCEAN DR.
LAKE FOREST, CA 92630

WESTAMERICA COMMUNICATIONS, INC.
WILLIAM E. BERNDT, Agent for Service of Process
7436 MARISA DRIVE
HUNTINGTON BEACH, CA 92648

In Re NORMA PELAYO v. ANDEK STAFFING SERVICES, INC., WESTAMERICA COMMUNICATIONS, INC.

Dear Sir/Madam:

Our firm represents the interests of **NORMA PELAYO** (Plaintiff), former employee of **ANDEK STAFFING SERVICES, INC., WESTAMERICA COMMUNICATIONS, INC.** (referred to as the “Defendants”). Plaintiff was employed by the Defendants during January 2024 - October 18, 2024.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendants; employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- 1. Violation of Labor Code §§ 226.7, 516 and 1198 (Missed Rest Breaks);**
 - 2. Violation of Labor Code §§ 226.7, 512, 516 and 1198 (Missed Meal Breaks);**
 - 3. Violation of Labor Code §§ 1182.12, 1194, 1194.2, and §1197-98 (Failure to Pay Minimum Wages);**
 - 4. Violation of Labor Code § 510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
 - 5. Violation of Labor Code §§ 204, 210 (Failure to Pay All Wages Earned);**
 - 6. Violation of Labor Code §§ 226, 1174, 1198.5, 2810.5 and 226, (Failure to Keep Records, Improper Wage Statements and Maintain Accurate Personnel and Payroll Records);**
 - 7. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Wages Upon Separation);**
 - 8. Violation of Labor Code §§ 233, 245, 246(a), 246.5, 248.1, 248.2, 248.5, 248.6 (Failure to Pay for Sick Days);**
 - 9. Violation of Labor Code § 2802 (Failure to Reimburse Business Expenses);**
 - 10. Violation of Labor Code §§1102-1102.5 (Retaliating Against “whistleblowing” Employees);**
 - 11. Violation of CA Labor Code § 6310 (Retaliatory termination);**
 - 12. Violation of CA Labor Code § 6311 (Dangerous work condition);**
 - 13. Violation of Applicable Wage Order;**
-

During the relevant timeframe, Defendants employed Plaintiff as non-exempt hourly employee. Plaintiff was employed as a machine operator/packer. She was working at 26012 Atlantic Ocean Drive., Lake Forest, CA 92630. Her last hourly rate was \$18.00 per hour.

Plaintiff was hired to work shifts of over four hours, but was not allowed to take full 10 minutes rest breaks.

Defendants’ conduct, as alleged herein, violates applicable Wage Order and Labor Code § 226.7, and also California Code of Regulations, Title 8, sections 3396 and Labor Code Section 6400, which provide for safe working places for Employees.

Plaintiff was physically assaulted while performing her duties. Defendants created unbearable work conditions for Plaintiff, same which caused her constructive discharge.

Specifically, Plaintiff contends, among other things, that Defendants required and/or suffered and permitted Plaintiff and the other Aggrieved Employees to perform work off-the-clock without compensation including, but not limited to, the time associated with off-the-clock work area preparation, before Plaintiff started her shift, failed to pay overtime wages, including, but not limited to, the time associated with off-the-clock tasks as well as misclassifying overtime hours as regular hours, and deducting meal time when in fact

Plaintiff and Aggrieved Employees had to work during the meal periods, failed to include, shift differentials, piece rate compensation, prevailing wages, fringe benefits, and other non-discretionary bonuses and incentive compensation when calculating and paying overtime, failed to provide timely and duty-free first meal periods within the first five (5) hours of Aggrieved Employees' shifts and failing to authorize and permit Aggrieved Employees who worked more than five (5) hours, but less than six (6) hours a meal period, failed to provide a second rest period on shifts worked in excess of six (6) hours, but less than eight (8) hours, failed to include shift differentials, incentive payments, prevailing wages, fringe benefits, and other non-discretionary bonuses, and piece rate compensation when calculating and paying meal/rest period premiums, failed to maintain accurate time records, since the actual working hours are not recorded by an accurate time recording device, but rounded by the Employer or employee is ordered to round the working hours to benefit the Employer, failed to timely pay all wages owed during employment, and failed to timely pay all wages owed upon separation.

Defendants have violated the requirements of the California Labor Code and applicable Wage Order, which gives rise to penalties.

Employer also failed to provide expense reimbursement under Labor Code section 2802 for expenses related with purchase of safety shoes pens and black markers.

Labor Code § 204 requires California employers to pay employees for all wages earned.

California Labor Code §§1194, 1197, 1197.1, 1198 and 1199 require minimum wage payments.

Plaintiff and Aggrieved Employees were not paid accurate wages for all the hours they worked. They were not paid accurate overtime. They were not paid premium wages for missed rest break and meal breaks. They were not paid for any vacation time. They were not paid for the business expenses.

Plaintiff was required to keep track of her own working hours but was not allowed to use a reliable biometric software to record all the “minutes” she was working.

Since Aggrieved Employees were working during the meal periods or the meal periods were interrupted, not only they should receive premium pay but also the 30 minutes which was deducted from their pay should be added to their working hours and get paid as overtime.

Plaintiff and Aggrieved Employees were not reimbursed for business expenses.

Defendants have implemented company-wide practices and/or policies, to require Aggrieved Employees to buy their safety shoes, pens and black markers in order to perform their work tasks and duties. Plaintiff and Aggrieved Employees were not reimbursed for such expenses.

Defendants failed to maintain accurate payroll records, such that Plaintiff and Aggrieved Employees were given wage statements which were inaccurate and Plaintiff and Aggrieved Employees were not paid for all the wages and overtime compensation.

Defendants constructively discharged Plaintiff, but failed to tender her final paycheck with accurate dollar amount, for all the hours worked, and without all the premium wages she was entitled to, within the timeframe prescribed by law. As such, Plaintiff is seeking her accurate final paycheck, along with waiting time penalties. Plaintiff is informed and believes that based on the other wage violations, Aggrieved Employees terminated during the period covered by this notice likewise did not receive an accurate final paycheck.

In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding language explaining that an “employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required” by subdivision (a) of that statute, and “the employee cannot promptly and easily determine from the wage statement alone one or more” of several of the required items, including total hours worked, all applicable hourly rates in effect, and the corresponding number of hours worked at each rate. (Lab. Code, § 226, subd. (e)(2)(B).) The amended statute further provides that “ ‘promptly and easily determine’ means a reasonable person would be able to readily ascertain the information without reference to other documents or information.” (Lab. Code, § 226, subd. (e)(2)(C).) This provision renders the inquiry an objective one; the amendment “clarifies that injury arises from defects in the wage statement, rather than from a showing that an individual experienced harm as a result of the defect.” (*Lubin, supra*, 5 Cal.App.5th at p. 959; see also *Garnett v. ADT, LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1133 [“Whether an employee suffered injury is based solely on the information provided on the wage statement.”].) Because the inquiry is objective, relying on whether a “reasonable person would be able to readily ascertain the information” (Lab. Code, § 226, subd. (e)(2)(C)), and not on whether any particular plaintiff could have, the inquiry now appears to be one easily amenable to common proof in a class action.¹⁵(*Lubin*, at p. 959.)

Furthermore, Plaintiff and Aggrieved Employees were not allowed to take all their uninterrupted rest breaks for full day of work which lasted minimum of 4 hours.

Also, during the employment, Plaintiff and Aggrieved Employees frequently did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift that lasted more than five hours.

Defendants failed to keep accurate records to document Plaintiff’s and Aggrieved Employee’s working hours and meal breaks. Recently the Supreme Court of California held that:

“Every employer shall keep accurate information with respect to each employee [¶] ... [¶] ... Meal periods ... shall also be recorded.”.) It is important that employers keep accurate records so that enforcement agencies can “ ‘adequately investigate and enforce’ a wage order's meal period provisions.” (*Brinker*, at p. 1053, 139

Cal.Rptr.3d 315, 273 P.3d 513 (conc. opn. of Werdegar, J.)) Because time records are required to be accurate, it makes sense to apply a rebuttable presumption of liability when records show noncompliant meal periods. If the records are accurate, then the records reflect an employer's true liability; applying the presumption would not adversely affect an employer that has complied with meal period requirements and has maintained accurate records. If the records are incomplete or inaccurate — for example, the records do not clearly indicate whether the employee chose to work during meal periods despite bona fide relief from duty — then the employer can offer evidence to rebut the presumption. It is appropriate to place the burden on the employer to plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods. (*Ibid.*) “To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and a potential windfall from the failure to record meal periods.” (*Id.* at p. 1053, fn. 1, 139 Cal.Rptr.3d 315, 273 P.3d 513.) “ ‘ “[W]here the employer has failed to keep records required by statute, the consequences for such failure should fall on the employer, not the employee.” ’ ” (*Ibid.*)

Donohue v. AMN Servs., LLC, (2021) 11 Cal. 5th 58, 76, 481 P.3d 661, 674

Plaintiff claims that because Defendants did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees’ wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendants provided all its past and present employees with improper wage statements.

Defendants did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law and Plaintiff is informed and believes that Defendants did not provide other Aggrieved Employees who separated from employment accurate final paychecks in accordance with the timeframes prescribed by law.

Plaintiff claims on her own behalf and also on behalf of all past and present Aggrieved Employees that she worked in excess of statutory hours per day and per week but did not receive compensation for all the hours worked and was not paid accurate overtime.

California Labor Code section 226.7 mandates that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. Further, Labor Code section 226.7 provides that if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses, incentive pay, prevailing wages, fringe benefits, etc.

Based upon information and belief, to the extent Aggrieved Employees should or were paid bonuses, such as sign-on bonuses, or incentives, prevailing wages, fringe benefits, and those payments have not been included in regular rate of compensation for calculating meal period and/or rest period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

Plaintiff is further informed and believes, and based thereon allege, that such wages were not compensated at the “regular rate” of compensation as provided under Labor Code sections 226.7 and 510, subsection (a). Consequently, Plaintiff is informed and believes, and based thereon allege, that Plaintiff and other Aggrieved Employees are entitled to relief under, without limitation, Labor Code sections 212, 213, 226.7, and 510 subsection (a). Defendants would thus be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Plaintiff is further informed and believes, and based thereon allege that Defendants failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide employees and other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendant, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Plaintiff is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Plaintiff is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, Aggrieved Employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Moreover, Defendants failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who were fired or stopped working for the Defendant.

Plaintiff claims on her own behalf and also on behalf of all past and present employees that Defendants violates CA Labor Code § 6310 which states in pertinent part:

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by their employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative, of unsafe working conditions, or work practices, in their employment or place of employment, or has participated in an employer-employee occupational health and safety

committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

Defendants retaliate against employees for complaining about unsafe working conditions, or work practices, in their employment or place of employment.

Plaintiff claims on her own behalf and also on behalf of all past and present Aggrieved Employees that Defendants violates CA Labor Code § 6311 which states in pertinent part:

No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

Defendants retaliate against employees for refusing to perform work which would create a real and apparent hazard to the Plaintiff or her fellow employees.

If Plaintiff or any employee was paid for sick days, it did not include all the enumeration and the compensation was inaccurate. Plaintiff alleges that Defendant, as a matter of policy and practice, consistently paid sick pay wages at an employee's base hourly rate, and not the regular rate.

Plaintiff claims that Defendants' conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying their Aggrieved Employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, and not reimbursing business expenses, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through the attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.

Los Angeles, California 90077

Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiff, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 227.3, 256, 233, 234, 246, 246.5, 248.1, 248.2, 248.5, 248.6, 512, 551-553, 558, 558.1, 1102-1102.5, 1174, 1174.5, 1182.12, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699, 2699.5, 2802, 6310, 6311 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendants are interested in attempting to resolve this matter, please contact us by **October 30, 2025**.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.