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Attorneys for Plaintiff Cesar Ramirez

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

CESAR RAMIREZ, individually and on behalf
of all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

YELLOW CORPORATION; YELLOW
LOGISTICS, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00028547-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff CESAR RAMIREZ, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”), brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants YELLOW CORPORATION;
4 YELLOW LOGISTICS, INC.; and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this representative action as an aggrieved employee of Yellow
8 Corporation and Yellow Logistics, for their violations of the California Labor Code.

9 2. Plaintiff seeks to recover civil penalties for the violations set forth in the PAGA Notice
10 attached to this Representative Action Complaint as Exhibit 1, in addition to attorneys’ fees and costs.

11 **JURISDICTION & VENUE**

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

14 4. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
15 the Superior Court.

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

20 6. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
21 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
22 of the alleged violations in this county.

23 **PARTIES**

24 **A. Plaintiff Cesar Ramirez**

25 7. Plaintiff Ramirez is an individual over 18 years of age who worked for Defendants in
26 California as a non-exempt employee from about March 2019 to January 2023. Plaintiff worked as a
27 Warehouse Worker.
28

1 8. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
3 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
4 in interest.”])

5 **B. Defendants Yellow Corporation and Yellow Logistics**

6 9. Defendant Yellow Corporation is a Delaware corporation that maintains operations and
7 conducts business throughout the State of California, including in this county.

8 10. Defendant Yellow Logistics is a Delaware corporation that maintains operations and
9 conducts business throughout the State of California, including in this county.

10 11. The true names and capacities, whether individual, corporate, or otherwise, of the
11 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
12 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
13 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
14 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
15 true names and capacities once ascertained.

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

20 13. Defendants maintained common employment policies and practices, common
21 ownership, common management, centralized control over labor operations and payroll, and operated
22 as a single entity with subsidiaries operating as divisions rather than separate companies.

23 14. For example, Plaintiff’s paystubs list Yellow Corporation as his employer and signed
24 various documents and policies with Yellow Corporation as an applicant and during his employment.

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

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

5 **GENERAL ALLEGATIONS**

6 17. Defendants together maintained a policy and practice of time editing or rounding of
7 time that eliminated hours worked and rendered them non-compensable. This is evident from the time
8 records required to be maintained by Defendants. Defendants maintained a policy of editing or
9 rounding or otherwise adjusting time, despite maintaining accurate time entries entered by the
10 aggrieved employees. This resulted in unpaid minimum wage and violations of the California Labor
11 Code.

12 18. For the same reasons as set forth in the preceding paragraph, when Defendants
13 unlawfully adjusted hours worked (rendering such time non-compensable) this created unpaid
14 overtime liability in those pay periods where employees would have exceeded the daily or weekly
15 overtime hours thresholds but did not as a result of the practice of adjusting or rounding time records.
16 This resulted in unpaid overtime violations.

17 19. Defendants failed to pay meal period premiums when due, as evident from the face of
18 the time records Defendants maintained for Plaintiff and other aggrieved employees. The time records
19 show facial violations without payment of a corresponding premium on the employee paystubs.

20 20. Defendants' noncompliance with California's meal period laws extended to rest
21 periods, whereas Defendants did not authorize timely or complete rest periods for Plaintiff and other
22 aggrieved employees. Plaintiff was not consistently provided with sufficient relief allowing him to
23 take one or more 10-minute rest periods.

24 21. These practices resulted in further liability for failing to pay all wages and premiums
25 owed each pay period and upon separation of employment.

26 22. Lastly, Defendants' wage statements, issued by Yellow Corporation to all aggrieved
27 employees, failed to comply with Labor Code § 226(a) in three important respects. Because of the
28 underlying wage claims, the wage statements do not accurately state net and gross wages, total hours

1 worked, or all hourly rates in effect and the accurate number of hours worked at each rate, in violation
2 of subdivision (a)(1), (2), (5), and (9).

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

7 23. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

20 27. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
21 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
22 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
23 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
24 action brought by an aggrieved employee on behalf of himself or herself and other current or former
25 employees pursuant to the procedures specified in Section 2699.3. “

26 28. Labor Code section 2699(f) provides: “For all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
28 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

29. 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.”

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

31. On or about **March 22, 2023**, 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.

32. 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”).

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

34. 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.

35. 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.*

36. 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 Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- 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. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

37. 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(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For this action to be maintained as a representative action under the PAGA;
- b. 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;
- c. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 d. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 2699, and Code
3 of Civil Procedure section 1021.5; and
4 e. For such other relief the Court deems just and proper.

5
6 Dated: July 7, 2023

Ferraro Vega Employment Lawyers, Inc.

7 

8 Nicholas J. Ferraro

9 Attorneys for Plaintiff Cesar Ramirez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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March 23, 2023

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

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

Otay Mesa Sales, Inc.
8530 Avenida Costa Norte
San Diego, CA 92154

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

Otaysales.com, Inc.
8530 Avenida Costa Norte
San Diego, CA 92154

Dear LWDA Officer and Company Representatives:

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

OTAY MESA SALES, INC.;
OTAYSALES.COM, 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. 73, 79.

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(k). 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 Yard Worker from about August 2018 to December 2022. 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 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. Plaintiff’s timekeeping records demonstrate these violations on their face:

April 5, 2022			9.28	
6:44am	12:06pm	5.36	Shift Total	Yes
12:06pm	12:35pm	0.49	Lunch Break	
12:35pm	4:30pm	3.92	Shift Total	Yes
April 6, 2022			9.11	
6:51am	12:09pm	5.30	Shift Total	Yes
12:09pm	12:40pm	0.52	Lunch Break	
12:40pm	4:29pm	3.81	Shift Total	Yes
April 7, 2022			9.20	
6:47am	12:07pm	5.33	Shift Total	Yes
12:07pm	12:37pm	0.50	Lunch Break	
12:37pm	4:29pm	3.87	Shift Total	Yes

Excerpt of Plaintiff’s Timekeeping Records Demonstrating Meal Period Violations

Earnings	rate	hours/units	this period
Regular	20.0000	80.00	1600.00
Overtime	30.0000	11.42	342.60
Sick			0.00
Gross Pay			\$1,942.60

Extract of Plaintiff's Wage Statement from the Period 04/04/2022 to 04/17/2022

Plaintiff and, on information and belief, the aggrieved employees, routinely experienced late meal periods due to staffing issues, employees' job responsibilities, and the steady flow of business. Plaintiff's wage statements for the corresponding pay periods indicate that he was not paid meal period premiums for these violations.

Furthermore, Defendants maintained a policy and practice of prohibiting Plaintiff and the aggrieved employees from leaving the premises during their meal periods. All meal periods were effectively "on duty," although Defendants did not maintain any lawful on-duty meal period agreements. Defendant required Plaintiff and the aggrieved employees to remain on the premises during their meal periods in the event a machine needed to be serviced or delivered immediately, circumstances that do not satisfy the narrow statutory carve-out for lawful on-duty meal periods.

On information and belief, Defendants have not provided all meal period premiums owed to other aggrieved employees as well, based on the same policy and practice applied to Plaintiff. Defendants liability for underpaid meal period premiums can be fully assessed by comparison of employees' timekeeping records with the corresponding wage statements showing Defendants' failure to pay the owed meal 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 as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
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.

Labor Code sections 226.7 and 516 and the IWC Wage Orders 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. Labor Code section 226.7 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”). 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 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction 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 expressly prohibited employees from leaving the premises during rest breaks for the same reasons discussed in the meal periods section above. This unlawful practice is reflected in Defendants’ workplace policies:

5. Employees shall take rest periods in the designated break area only, and may not leave the work area without their supervisor’s approval.

Excerpt of Defendants’ Rest Period Policy

Furthermore, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take compliant rest periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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. For all time spent under the employer’s control during uncompensated meal breaks where aggrieved employees were required to stay on premises, Defendants failed to pay aggrieved employees at the lawful minimum wage, as a matter of company policy.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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. For all time spent under the employer’s control during uncompensated meal breaks where aggrieved employees were required to stay on premises, to the extent those “hours worked” increased the workday

to overtime hours, Defendants failed to pay aggrieved employees at the lawful overtime rate, as a matter of company policy.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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 explained above, Defendants underpaid Plaintiff and the aggrieved employees’ meal period premium pay at the lawful rate of compensation. Defendants are separately liable for not paying the full amount owed to Plaintiff and the aggrieved employees each pay period in violation of Labor Code sections 204 and/or 204(b).

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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 on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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 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 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, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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. Plaintiff and the aggrieved employees were expected and required to purchase and bring their own tools to perform work for Defendants, such as

wrenches, punch kits, and grinders. To the extent that Defendants provided “starter kits” with some tools, these kits did not contain all or most of the tools the employees needed to carry out their work duties. Defendants were aware that the aggrieved employees supplied their own work tools and did not provide 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. As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

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(g).

- 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 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,



Nicholas J. Ferraro

R.B.

Cc Plaintiff Alejandro Esparza Esparza

Tom Parashos, Defense Counsel
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