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File 1316.001
Via Certified U.S. Mail

January 27, 2026

W SERVICES GROUP, LLC
Attn: Legal Department
150 MOTOR PKWY, STE 300
HAUPPAUGE, NY 11788-5145

W SERVICES GROUP, LLC
Attn: Alisia Mojarro
(Agent For Service)
2804 GATEWAY OAKS DR.
SACRAMENTO, CA 95833

Raul DOE
c/o W SERVICES GROUP, LLC
150 MOTOR PKWY, STE 300
HAUPPAUGE, NY 11788-5145

ROSS STORES, INC.
Attn: Legal Department
5130 HACIENDA DRIVE
DUBLIN,CA 94568

ROSS STORES, INC.
Attn: GLADYS AGUILERA
(Agent For Service)
330 N BRAND BLVD
GLENDALE, CA 91203

Emily Tapia
Area Supervisor
c/o ROSS STORES, INC.
5130 HACIENDA DRIVE
DUBLIN,CA94568

Re: *Ofelia Martinez v.* W Services Group, LLC*, et al.*
(Employment Matter)
LWDA-

To the Above Addressed Parties:

Our office provides legal representation for Ms. Ofelia Martinez ("Martinez") regarding her employment with W SERVICES GROUP, LLC ("WSG"), Raul DOE ("Raul"), ROSS STORES, INC. ("Ross Stores"), and Emily Tapia ("Tapia") (collectively "Employers"). We are writing in a good faith attempt to resolve employment claims Martinez, and possibly others similarly situated, have against Employers, without having to resort to litigation. This letter is also being mailed and uploaded to the California Labor & Workforce Development Agency, consistent with *Labor Code* § 2698 et seq. As set forth in greater detail below, Martinez, and possibly others similarly situated, have several meritorious claims against Employers related to their employment, including, but not limited to:

1) Failure to pay minimum wage, regular wages, and overtime wages;
2) Failure to provide compliant meal and rest breaks;
3) Failure to provide accurate itemized wage statements;
4) Unlawful withholding of wages;
5) For unfair business practices.

Martinez's claims include relief under *California Business and Professions Code* § 17200 et. seq. and the Private Attorney General Act ("PAGA") as set forth in *Labor Code* §2698 et seq. as to Martinez and possibly others. These claims are briefly discussed below.

FACTS

On or around January 20, 2022, Martinez was hired by WSG as a non-exempt cleaning person. Through bi-weekly direct deposits from Employers, Martinez was paid $16.00/hour, which is her most recent rate of pay. Martinez was typically scheduled to work seven days a week for 2.5-hour shifts. She was assigned to work at Ross Stores.

The conditions of her employment and the wage and hour practices over Martinez were controlled by Employers, including Raul on the WSG side and Tapia on the Ross Stores side. These practices resulted in wage and hour violations against Martinez and others similarly situated. For example, she was typically supposed to start working at 8:30 am. However, on occasion Ross Stores would not open the doors for her to enter on time, and she would be forced to wait outside anywhere from 30 minutes to an hour and half. At other times, Raul would require her to arrive earlier than the starting time. Sometime as early as 5:30 am. Again, this would result in her often having to wait to actually start cleaning. She was not paid for this extra time although Employers had control over her. It is Martinez' understanding and belief that other employees similarly situated experienced the same issues.

Although Martinez worked seven days a week, she was not paid any overtime. Moreover, on occasion she would be called back to work after leaving to attend to issues like graffit removal or bathroom accidents and the like. When this occurred she was sometimes paid an extra flat $50 regardless of how much time it took, and sometimes she was not paid at all.

There were also days when Employers caused Martinez to be at work, even if just waiting, for over 3.5 hours. She was not afforded a rest break during these longer shifts.

Martinez was required to communicate with Employers and check-in to work from her cellular telephone. However, she was not reimbursed for her telephone usage. She also was not given any paystubs so that she may check and confirm her wages.

January 27, 2025 was her last date of work. Thereafter, she was told that they no longer needed her services purportedly due to a missing cellphone box.

VIOLATIONS IN RELATION TO WAGE AND HOUR

1. Failure to Pay Minimum Wage, Regular Wages, and Overtime Wages

Under *Labor Code* § 510, an employee must be paid overtime after working eight (8) hours in a day and forty (40) hours in a week, and on the first eight (8) hours of the seventh consecutive day worked in a week. Overtime must be paid at one-and-a-half times the regular rate of pay. The overtime rate becomes two times the regular rate of pay for hours over twelve in a day, or over eight hours on the seventh consecutive day worked. The "regular rate of pay" is comprised of more than just the employee's hourly rate of pay it includes many kinds of monetary remuneration an employee earns for his labor, including commissions, spiffs, and bonuses. (29 U.S.C. 207(e)).

Specifically, *Labor Code* § 1194.2(a), in pertinent part, states, "[i]n any action… to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

Martinez and others were not properly paid for all hours worked including minimum wages, regular wages, and overtime. This is due to being required to wait for facilities to open so they may clean them, due to being required to show up early, and due to working seven consecutive days, among other things. Since there were times when Martinez, and possibly others, were not paid at all for work performed, she and others were deprived of minimum wages in that her regular wages were not paid. This, under both Federal and State laws, also entitles the aggrieved parties to liquidated damages equal to the sums earned but not paid. Also, some unpaid wages included overtime wages. Martinez believes that others similarly situated experienced the same illegal wage practices experienced by Martinez.

2. Failure to provide rest breaks

State law requires employers to authorize rest period of specified minimum duration (generally 10 minutes of paid rest for every four hours of works). [*8 California Code Regulations ("Cal. C. Regs.")* §§11010-11150 ¶2 and §11160 ¶1]. An IWC Wage order mandates that no employer may require an employee to work during any meal or rest period [*Labor Code* §226.7(a)]. An employer who fails to provide meal or rest periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that a meal or rest period was not provided. [*Labor Code.* §226.7(b), 8 Cal. C. Regs. §§11010 et seq. ¶11].

Furthermore, an employer may not undermine a formal policy of providing meal or rest breaks by pressuring employees to perform their duties in ways that omit breaks. *(see. e.g., Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962-963 [35 Cal.Rptr.3d 243]; see also *Jaimez v. Daiohs USA, Inc.*, supra, 181 Cal.App.4th at pp. 1304-1305 [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC* (S.D.Cal. 2010) 267 F.R.D. 625, 638 [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand'" would be illegal].) The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks. (See *Brinker Restaurant Corp. v. WSG Court* (2012) 53 Cal.4th 1004.)

In addition, employees must be relieved from all duties during their time of breaks. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and-authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."

In this case, Martinez and other similarly situated employees, were at times, not given complaint rest breaks when their actual shift exceeded the majority of four hours. Martinez and others were also not allowed to leave the premises when waiting for the facilities to open as they had to complete the work within 2.5 hours.

3. <u>Failure to Provide Accurate Itemized Statements</u>

Labor Code §226(a) requires employers to provide accurate itemized wage statements for each wage payment. *Labor Code* §226(e) provides for a recovery of the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000) (per employee).

Labor Code §226.3 provides in relevant part that any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation for which the employer fails to provide the employee a wage deduction statement or fails to keep the record required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law[1].

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[1] Section 226.3 is subject to private enforcement. *Brewer v. Premier Golf Properties* (2008) 168 Cal.App.4th 1243, 1252.

In this case, Employers did not provide Martinez and other similarly situated employees with accurate and proper itemizations in wage statements due to their failure to account for all withholdings, hours, and overtime, meal and rest break premiums, among other things.

4. <u>Unlawful Withholding of Wages</u>

California Labor Code §216 provides that it is a misdemeanor for an employer to "willfully refuse… to pay wages due and payable after demand has been made" or "falsely den[y] the amount or validity thereof." *California Labor Code* §225.5 provides a penalty of $100 for an initial violation and $200 for any subsequent violation of §216 plus 25% of the withheld amount.

This letter is a demand in conformity with §216. Failure to pay the wages (including commissions) owed here is an unlawful withholding of wages.

5. <u>Failure to Reimburse Business Expenses</u>

In California, employers must cover employees' expenses. Pursuant to Labor Code §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures and 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..." This includes, "all reasonable costs" as defined in Labor Code §2802(c). Further, Labor Code §2804 states the employee may not waive these rights. Martinez and others similarly situated were not reimbursed for cellphone usage or for buying certain cleaning supplies (e.g., graffiti removal spray).

6. <u>Waiting Time Penalties</u>

California Labor Code §§ 201, 202, and 203 provide for specific time limits to pay employees all wages earned after quitting or being fired. Failure to due so results in a wage penalty of up to 30 days of wages. This is exactly what occurred here due to the failure to properly pay as stated above.

7. <u>Violation of the Unfair Business Practices Act</u>

For carrying out these and other unlawful, unfair, or fraudulent business acts and/or practices Employers has violated the *California Business and Professions Code* § 17200 et. seq. For such violations, Martinez is entitled to the restoration of any money or property which Employers may have acquired by means of such unlawful, unfair, or fraudulent business acts and/or practices. (*California Business and Professions Code* § 17203).

<u>NOTICE OF PRESERVATION OF EVIDENCE</u>

Please be further advised that you are hereby given notice to immediately take all steps necessary to prevent the destruction, loss, concealment, or alteration of any paper, document, or electronically stored information or other data or information generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes, etc.) and e-mail related to this matter. Because hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for ESI. If information exists in both electronic and paper form, you should preserve them both.

Adequate preservation of ESI required more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques to safeguard all such evidence.

With regard to documents, tangible things, and ESI that are created or come into your custody, possession, or control subsequent to the date of delivery of this letter, potentially relevant evidence is to be preserved. You should take all appropriate action to avoid destruction of potentially relevant evidence.

REQUEST FOR EMPLOYEE FILE

Martinez also requests that Employers forward her personnel file, all W2 information, all signed documents pursuant to *Labor Code* § 432, all wage related documents in his file pursuant to *Labor Code* § 226(b) and all personnel files pursuant to *Labor Code* § 1198.5. In the event you refuse to provide her personnel file, please let us know when we may accompany Martinez to inspect the file pursuant to *Labor Code* §1198.5. You are requested to produce these documents within the time prescribed by the law.

ATTORNEY'S FEES AND COSTS

The provisions provided in this letter entitle an employee to recover attorney's fees and costs in an action on such claims.

If you have any questions or concerns regarding the foregoing, do not hesitate to contact us. Otherwise, please respond to this letter by no later than **February 15, 2026,** and confirm that we will be receiving the files requested.

Regards,
BITTON & ASSOCIATES

OPHIR J. BITTON

OJB/gc

cc: Client