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Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Building Maintenance Services, Inc.
4270 S. K Street
Tulare, CA 93274

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant(s): Maribel Rubio

Employer(s): Building Maintenance Services, Inc., Anna Fernandez

Dear Sir or Madam:

Maribel Rubio ("Claimant") has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent Claimant, and all other aggrieved employees, for conditions of employment and wage and hour claims against former employers, Building Maintenance Services, Inc. and Anna Fernandez (hereafter "Employer").

Employer operates a building management company. Claimant worked for Employer from June 9, 2021 to December 31, 2025 as a janitor primarily at Employer's Taft location. Claimant worked as an hourly, nonexempt employee earning approximately \$16.50 per hour at the time of separation.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 203.1, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

During Claimant's employment, Claimant personally experienced the Labor Code violations described below. We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act on behalf of the Labor and Workforce and development Agency and the State of California in a representative

action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked based on the employees regular rate of pay, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time.

For example, employees were required to notify management of their arrival by calling or texting as soon as they reached the premises, before they could access the sign-in sheet located inside the building entrance. After sending the required call or text, employees were still required to walk approximately five minutes from the exterior gate to the entrance, during which time they remained under Defendant’s control but were off-the-clock. Further, because only one key to the building entrance was shared amongst employees, Claimant and her coworkers were often forced to wait outside until the key-holding employee arrived. When that employee was late, others were unable to enter the building or sign in, resulting in additional uncompensated off-the-clock time.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§203.1, 204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employees frequently receive their wages 3-5 days after they are due. When their paychecks are issued, they are frequently non-negotiable due to insufficient funds. When employees attempted to contact owner Anna Hernandez or supervisor Nelida regarding these non-negotiable checks, they failed to respond in a timely manner. When they did respond, they instructed employees to cash the checks the following day, at which point the checks often

remained non-negotiable. Employer's reasoning for the delayed paychecks was that they would not issue paychecks until time records were received from all employees.

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and premium wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Wages in the Form Required by Labor Code Section 212
(Cal. Labor Code §§ 203.1, 212, 213, 558.1, 2698 *et seq.*)

Cal labor code section 212 states:

(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

Claimant and her coworkers were repeatedly issued non-negotiable paychecks. Employees frequently receive their wages 3-5 days after they are due. When their paychecks are issued, they are frequently non-negotiable due to insufficient funds. When employees attempted to contact owner Anna Hernandez or supervisor Nelida regarding these non-negotiable checks, they failed to respond in a timely manner. When they did respond, they instructed employees to cash the checks the following day, at which point the checks often remained non-negotiable. Employer's reasoning for the delayed paychecks was that they would not issue paychecks until time records were received from all employees. By failing to provide payment in checks or other negotiable instruments, Employers have violated Labor Code sections 212 and 213, and are further liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Pay Wages in the Form Required by Labor Code Section 203
(Cal. Labor Code § 203.1, 2698 *et seq.*)

Cal labor code section 203.1 states:

If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.3, 201.5, 201.6, 201.7, 201.8, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or

voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced.

Claimant and her coworkers were repeatedly issued paychecks that were rejected by the bank due to Employer's insufficient funds. For example, on June 21, 2023, Employer issued non-negotiable check number 0003175. Wages were not paid until July 19, 2023. On December 15, 2023, Employer issued non-negotiable check number 003175.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3 and 2698 et seq.)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Permit Compliant Meal Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

Employer violated Labor Code sections 226.7 and 512 and the applicable IWC Wage Order by failing to provide Claimant and other aggrieved employees with timely, uninterrupted, off-duty meal periods of not less than 30 minutes for each work period exceeding five hours.

As the California Supreme Court held in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, employers have an affirmative duty to keep accurate meal period records, and the absence of such records gives rise to a rebuttable presumption that compliant meal periods were not provided. Employer's failure to maintain these records both facilitated and concealed its meal period violations. When meal periods were noncompliant, Employer failed to pay the required one-hour premium at the employee's regular rate of pay. As a derivative violation, Employer issued inaccurate itemized wage statements that failed to reflect meal period premium pay, in violation of Labor Code section 226(a).

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Orders)

Employer failed to maintain a compliant rest period policy and practice that provided employees with off-duty, uninterrupted rest periods in a suitable rest area, as required by California law. Claimant reports that Employer did not provide a designated or suitable break room or rest area, and as a result, employees were unable to take lawful rest breaks. Instead, employees were required to remain at or near their workstations, remain on call, remain under Employer's control, or otherwise lacked any location where they could meaningfully rest. Consequently, rest periods were effectively "on duty," interrupted, shortened, delayed, or not provided at all.

Rest periods were noncompliant because they were less than ten minutes, not provided, interrupted, taken while remaining on duty, or not scheduled at appropriate times during shifts exceeding six hours. These violations occurred because Employer: (1) failed to provide a suitable rest area or break room where employees could be relieved of all duties; (2) failed to adequately inform and train employees regarding their right to off-duty, uninterrupted ten-minute rest breaks and premium pay for noncompliant breaks; (3) failed to inform employees when, where, and how to take lawful rest periods; (4) failed to staff sufficient personnel to permit lawful rest breaks; and/or (5) maintained and enforced policies and practices that discouraged, obstructed, or prevented employees from taking compliant rest breaks.

The rest period requirement obligates employers to authorize and permit employees to take off-duty rest periods, meaning the employer must relieve employees of all duties and relinquish control over how they spend their time. *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257, 269. Under California law, rest periods must be a "net" ten minutes in a suitable rest area. *Id.*

at 268 (relying on DLSE Opinion Letters dated Jan. 3, 1986 and Feb. 22, 2002, which clarify that rest periods must consist of ten minutes of actual rest time and cannot include the time it takes to walk to and from a rest area). Where no suitable rest area is provided, employees cannot take a lawful “net” ten-minute rest break. The burden is on the employer to clearly communicate and meaningfully authorize employees’ right to compliant rest periods. *Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1199.

Employer failed to authorize and permit Claimant and other hourly, non-exempt employees to take a lawful, off-duty, uninterrupted ten-minute rest period for every four hours worked or major fraction thereof, as required by Labor Code section 226.7 and the applicable Wage Orders. When rest periods were not provided in a compliant manner, Employer failed to pay the required one-hour premium at the employee’s regular rate of pay. As a derivative violation, Employer issued inaccurate wage statements that failed to reflect rest period premium pay, in violation of Labor Code section 226(a).

Failure to Provide Suitable Resting Facilities/Breakroom

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

Employer’s locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Employer could have provided employees with a resting facility within the facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, employees were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of Employer’s premises which are not designated or reserved for rest, such as their personal vehicles.

Employer did not provide employees with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Employer’s failure to provide suitable resting facilities to aggrieved employees violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2698 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Accordingly, Employers are liable for civil penalties under PAGA §2698 *et seq.*

Claimant and aggrieved employees are required to use their personal vehicles for work related purposes. Employees are also required to use their personal cell phones for work related communications, including to notify management when they arrive on the premises. However, Employer did not reimburse them for these work-related expenses as required by the Labor Code.

Failure to Provide Potable Drinking Water

(Cal. Labor Code §2441)

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

Derivative of the claims above, the statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,

or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing, the total hours worked, and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked.

Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws and is therefore liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant