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# NOTICE OF LABOR CODE VIOLATIONS - PAGA

## (Labor Code § 2699.3)

**DATE** March 30, 2026

**DELIVERY** Online Filing and Certified U.S. Mail

**RECIPIENTS** California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

**SUBJECT: *JOSE HERNANDEZ v. LUXOTTICA OF AMERICA INC.* — NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3**

To LWDA and to Employer:

This office represents JOSE HERNANDEZ ("Mr. Hernandez" or Complainant) with respect to his claims against LUXOTTICA OF AMERICA INC. ("LUXOTTICA" or "Employer") for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employer by certified mail.

LUXOTTICA OF AMERICA INC. is an Ohio corporation doing business in the State of California. Employer employed Mr. Hernandez from approximately March 20, 2022, to about December 8, 2025. During his employment with Employer, Mr. Hernandez was employed as a "Manager". Mr. Hernandez performed his job duties at Employer's location, at 533 E Shaw Ave, Space L-2, Fresno, California 93710.

Mr. Hernandez intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 ("PAGA"). Mr. Hernandez is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt hourly employees of any of the Employers working within California holding various positions who experienced at least one or more of the same violations as Complainant as set forth in this notice. ("Aggrieved Employees"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Complainant's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, California Code of Regulations, Title 8, section 3395, the applicable Industrial Welfare Commission

Wage Orders ("IWC Wage Order") and 13(b) of the applicable Industrial Welfare Commission Wage Order. The claims made on behalf of Complainant and Aggrieved Employees are based upon the following facts and theories:

## 1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Complainant and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Complainant and Aggrieved Employees received non-discretionary compensation entitled "SPIFFS", "OTHER BONUS", and "MTHLY BONUS" on their wage statements that was not included in the calculation of their regular rate of pay. This deprived Complainant and Aggrieved Employees of all compensable wages they were owed.

First, Employers regularly require Complainant and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Complainant and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Complainant and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Specifically, Employer required Complainant to attend weekly conference calls between managers while off-the-clock, which lasted between 30 and 45 minutes and often occurred on Complainant's days off. In addition, Complainant was frequently required to adjust associates' schedules and respond to calls or texts from his regional manager regarding work-related tasks while off-the-clock. Complainant and Aggrieved Employees were not paid for this off-the-clock work.

Employer also failed to accurately record the actual time worked by Complainant and Aggrieved Employees. Complainant is informed and believes that Employer unlawfully adjusted Complainant and Aggrieved Employees' time records such that the time records do not accurately reflect the start and end times of their shifts. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Complainant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration and all compensable work time.

As a result of the foregoing practices, Employer has failed to pay Complainant and Aggrieved Employees all owed wages for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Complainant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

## 2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers required Complainant and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Complainant and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Complainant and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Complainant and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short to answer customer's questions brought to his attention by his associates or to answer calls from his regional manager regarding work related tasks.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Complainant and Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Complainant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Complainant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Complainant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; and (6) Employers' policy and culture prevented Complainant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Accordingly, Employers violated of the applicable IWC Wage Order and California Labor Code sections 226.7(a), 512(a) and 1198.

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties of the applicable IWC Wage Order; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

## 3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employers failed to authorize and permit Complainant and Aggrieved Employees to take legally compliant 10-minute periods. Employers required Complainant and Aggrieved Employees to work through rest periods. Complainant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Complainant and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Specifically, Employer failed to schedule enough employees

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to permit Complainant and Aggrieved Employees to take their uninterrupted, duty-free rest periods. Moreover, Complainant and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc., 2* Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Complainant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Complainant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Complainant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Complainant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Complainant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Complainant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Complainant and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), and 1198.

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to the applicable IWC Wage Order; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

**4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

As to each pay period, Employers have failed to timely pay all wages earned because Complainant and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, and meal and rest period premiums at the correct rate of pay. Accordingly, Employers violated California Labor Code section 204(a).

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

**5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES/WAITING TIME PENALTIES**

Employers have failed to timely pay all wages earned either at the time Complainant and Aggrieved Employees were terminated or resigned because Complainant and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, and meal and rest period premiums at the correct rate of pay. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

### 6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Complainant and Aggrieved Employees did not include the actual hours worked and the correct amount of wages owed, as the time worked was either not recorded, detrimentally rounded, did not include the correct name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Complainant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

### 7. FAILURE TO MAINTAIN ACCURATE RECORDS

Employers have failed to maintain accurate records relating to Complainant and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant the applicable IWC Wage Order; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

### 8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employers. IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Complainant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Complainant and Aggrieved Employees' use of their personal cell phones to communicate supervisors and colleagues regarding job duties and for other work-related purposes, as well as use of Complainant's home internet and personal laptop to perform work from home, which included preparing training modules and creating work schedules for his associates.

Accordingly, Employers violated IWC Order and California Labor Code sections 2800 and 2802.

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order; and attorneys' fees and costs.

## 9. FAILURE TO PAY VACATION TIME

Pursuant to California Labor Code section 227.3, ". . .whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employer failed to pay Complainant and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Complainant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

## 10. FAILURE TO PAY SICK TIME

Pursuant to California Labor Code section 246(l), all sick pay must be paid at the regular rate of pay. Employers have failed to pay Complainant and Aggrieved Employees their sick pay at the correct rate of pay. Accordingly, Employers have violated California Labor Code section 246(l).

Complainant and Aggrieved Employees will therefore seek PAGA penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; relief under California Labor Code 248.5, and attorneys' fees and costs.

Sincerely,

Justin Lo

**JUSTIN LO, ESQ.**

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***Notice to Employer via Certified Mail***

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