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March 16, 2026

<u>Filed Via LWDA's PAGA Claim Notice Online Form</u>

<u>Copy Sent Via Certified Mail to:</u>

Human Resources
Lewis Management Corp.
1156 N Mountain Avenue
Upland, CA 91786

Lewis Management Corp.
P.O. Box 670
Upland, CA 91785

Lewis Management Corp.
Registered Agent for Service
Jean-Jacques B Dupre
1156 N Mountain Avenue
Upland, CA 91786

Re: *<u>Justin Villarreal v. Lewis Management Corp.,</u>*
<u>California Labor Code § 2699 Penalties; Notice of Intent to File Suit</u>

Dear Counsel:

This office represents Plaintiff Justin Villarreal ("Plaintiff") and a proposed group of current and former employees working for Lewis Management Corp. ("Defendants") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 1197, 1198, and IWC Wage Order No. 5. Plaintiff wishes to bring a representative action, individually, and on behalf of the State of California and the following groups of aggrieved employees:

(1) *all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt maintenance technicians, who worked shifts in excess of five hours, from one year prior to the mailing of this notice through the present ("meal period aggrieved employees");*

(2) *all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt maintenance technicians, who worked shifts in excess of three and a half hours, from one year prior to the mailing of this notice through the present ("rest period aggrieved employees");*

(3) *all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt maintenance technicians from one year prior to the mailing of this notice through the present ("wage statement aggrieved employees");*

(4) *all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt maintenance technicians, who were placed on on-call status once every four weeks, from one year prior to the mailing of this notice through the present ("on-call aggrieved employees")*

Collectively, hereinafter referred to as the "Aggrieved Employees" or "aggrieved employees."

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*[1]

Factual Background

Plaintiff and the aggrieved employees are and were employed by Lewis Management Corp., a Delaware corporation based in Upland, CA. It is a real estate developer and manager.

In or about 2023, Plaintiff was hired by Defendants as a maintenance technician assigned to work in Rancho Cucamonga, California. Defendants paid Plaintiff $27.98 per hour.

Like all aggrieved employees, Plaintiff is required to take all meal and rest periods on-call. Defendants require Plaintiff and the aggrieved employees to continue monitoring their walkie talkies and assisting employees even during breaks. Thus, the breaks of Plaintiff and the aggrieved employees are often interrupted or not taken at all.

In addition, while employed by Defendants, Plaintiff and the aggrieved employees are placed on on-call status once every four weeks, even if such is not needed in their position. Plaintiff and the aggrieved employees are required by Defendants to respond to any emergency calls during that time. Furthermore, Defendants required Plaintiff and the aggrieved employees to respond to calls immediately, and they had to be on-site in no less than 30 minutes after the call.

Claims Asserted by Plaintiff

[1] See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

i. <u>Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time</u>

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have "found that the nature of the work exception applies: '(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." (*Id*. at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the employer's obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period." (*Lubin*, *supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer "discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty." (*Id*. at p. 947; *Benton*, *supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required***—it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

As a result of its meal period policies requiring Plaintiff and the aggrieved employees to remain on-call during meal periods, Defendants violated Labor Code § 512 by failing to provide duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more. Defendants required Plaintiff and the aggrieved employees to continue monitoring their walkie talkies and assisting employees even during breaks. Thus, the breaks of Plaintiff and the aggrieved employees were often interrupted or not taken at all.

Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). *See*

Augustus v. ABM Security Services, Inc. (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees frequently did not receive duty-free thirty-minute duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period.

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7.

ii. Plaintiff and the Aggrieved Employees were not Provided Duty Free Compliant Rest Periods

Pursuant to Labor Code § 226.7, Defendant failed to provide Plaintiff and the other rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

Labor Code § 226. 7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")."

Defendant failed to implement a lawful rest period policy that informed Plaintiff and the aggrieved employees of their right to receive lawful rest periods for shifts greater than 3.5 hours. To the extent that Plaintiff and the rest period aggrieved employees could stop work during their shifts, they were nonetheless on-call, and were not provided with duty-free rest periods. *See Augustus v. ABM Security Services, Inc*., 2 Cal.5th 257 (2016) (holding that on-duty rest breaks violate California law).

Pursuant to Labor Code § 226.7, Defendant failed to provide Plaintiff and the rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required***-it has violated the wage order and is liable***.

Brinker Rest. Corp. v. Sup. Ct., supra, 53 Cal.4th at 1033. (Emphasis added.)

Since Defendant did not offer employees the opportunity to receive a compliant off-duty ten-minute rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care,* (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct., supra,* 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.,* 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

In addition, Plaintiff and the rest period aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period.

iii. Defendant Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

Due to Defendant's failure to pay Plaintiff and the aggrieved employees for all rest and meal period premiums,[2] Defendant failed to timely pay the aggrieved employees within

[2] Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant's motion for summary judgment on the plaintiff's claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 "concerned only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5'"); *Parson v. Golden State FC, LLC,* 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for summary judgment because "the premium payments due under section 226.7 are to be considered "wages" for purposes of sections 203 and 226."]; *Abad v. Gen. Nutrition Centers, Inc*. (C.D. Cal. Mar.

seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC,* 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

iv. <u>Defendant's Violation of Labor Code §§ 201-203</u>

As a result of Defendant's failure to pay wages to Plaintiff and the aggrieved employees for meal period minimum wages and meal/rest period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendant has failed to pay all aggrieved employees for all meal period premiums and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

v. <u>Defendant's Violation of Labor Code §§ 226(a) and 226.3</u>

Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

(1) gross wages earned;
(2) total hours worked by the employee;
(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
(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…;
(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…

7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby,* and finding "Plaintiffs' section 203 claim for failure to pay wages…can be based on amounts owed under section 226.7.".)

Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

Labor Code § 226.3 provides that "[a]ny 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 violation 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 required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.").[3]

vi. Plaintiff and the Aggrieved Employees Were Not Paid for On-Call Time

As discussed above, while employed by Defendants, Plaintiff and the aggrieved employees are placed on on-call status once every four weeks, even if such is not needed in their position. Plaintiff and the aggrieved employees are required by Defendants to respond to any emergency calls during that time. Furthermore, Defendants required Plaintiff and the aggrieved employees to respond to calls immediately, and they had to be on-site in no less than 30 minutes after the call.

Several court cases have addressed the issue of reporting time pay, standby time, and on-call time. The courts found that an employee hired to wait for something to happen is entitled to compensation for those hours if the time was subject to the control of the employer. (*Armour & Co. vs. Wantock*, 323 U.S. 126 (1944)).

Time spent on standby or on-call is work-related if the time is spent primarily for the

[3] *Accord Singer v. Becton, Dickinson & Co., Med–Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

employer's benefit. The regular rate of pay for standby or on-call time might be lower than for regular working time. However, the rate of pay must be at least minimum wage.

Courts have used different factors to determine if an employee is entitled to pay for on-call and standby time. The main requirement being that the hours worked on-call must be controlled by the employer. In the case of *Berry v. County of Sonoma* (1994) 30 F.3d 1174, the court listed the following factors to consider: (1) geographical restrictions on employee's movements; (2) the frequency of the calls prevents the employee from effectively using his time for personal purposes; (3) a fixed time is set for the employee to respond or return to work; (4) how easy it is for the employee to trade on-call duties with another employee and if the employee is subject to negative consequences for not showing up; and (5) if an employee can continue his personal activities with minimal disruption or not while on-call.

In the case of *Mendiola v. CPS Security Solutions, Inc.* 60 Cal.4th 833, 182 Cal. Rptr. 3d 124, 340 P.3d 355 (Cal. 2015), the court ruled that even sleep time may be included when calculating hours worked during on-call time.

All of these are applicable to Plaintiff and the aggrieved employees' situation, and thus, Defendants should have paid them for on-call time.

Conclusion

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

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **April 6, 2026**. If we do not hear from you on or before **April 6, 2026**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

Kindly include the following addresses in all correspondence that you will send me:

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Respectfully submitted,

/s/ James M. Treglio

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