Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299809)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550

Electronically FILED by Superior Court of California, County of Los Angeles 11/16/2023 10:09 AM David W. Slayton, Executive Officer/Clerk of Court, By G. Carini, Deputy Clerk

Attorneys for Plaintiff MARTIN COSIO DIAZ as a designated Private Attorney General, pursuant to the Private Attorney General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARTIN COSIO DIAZ, as a designated Private Attorney General, pursuant to the Private Attorney General Act, Plaintiff, v. MEDILAND CORPORATION DBA PREMIUM WINDOWS; and DOES 1 through 50, inclusive, Defendants.	Case No.: 23STCV28114 **COMPLAINT FOR DAMAGES** 1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime; 2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Meal Periods; 3. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods; 4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements; 5. Violation of the Private Attorneys General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and 6. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

Plaintiff MARTIN COSIO DIAZ ("Plaintiff") complains and alleges as follows:

INTRODUCTION

1. This is an action brought on behalf of state of California as a Private Attorney General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code §2698 et seq. as a result of one or more of the violations of the California Labor Code alleged herein by Defendant MEDILAND CORPORATION DBA PREMIUM WINDOWS ("Defendant"). The term "RELEVANT TIME PERIOD" or "TIME PERIOD" is defined as one (1) year and sixty-five (65) days prior to the filing of the complaint. Plaintiff as a Private Attorney General, reserves the right to amend this complaint to reflect a different "Time Period" as further discovery is conducted.

2. Plaintiff, on behalf of the State of California as a Private Attorney General seeks relief against Defendant for its: (1) failure to pay all wages due, including minimum and overtime wages; (2) failure to provide accurate itemized wage statements; (3) failure to reimburse for necessary business expenses; (4) failure to provide meal periods or compensation in lieu thereof, (5) failure to provide rest periods or compensation in lieu thereof; and (6) failure to pay wages due upon termination of employment.

3. At all relevant times herein, Defendant has consistently maintained and enforced the following unlawful policies and practices against its workforce by:

(a) Willfully refusing to pay all hours worked, including both minimum and overtime wages;

(b) Willfully refusing to furnish accurate itemized wage statements upon payment of wages;

(c) Willfully refusing to reimburse necessary business expenses;

(d) Willfully refusing to provide timely uninterrupted meal and rest periods or adequate compensation in lieu thereof; and

(e) Willfully refusing to pay all wages due upon separation of employment;

///

///

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the causes of action alleged in this complaint because the Court is a court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action.

5. Venue is proper in the County of Los Angeles because Defendant, transacts business in this county, the obligations and liability arise in this county.

6. The California Superior Court has jurisdiction in the matter, because of the individual claims are under the seventy-five thousand dollars ($75,000.00) jurisdictional threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled in the County of Los Angeles, State of California.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

THE PARTIES

Plaintiff

8. Plaintiff was employed by Defendant as a non-exempt employee from approximately 2006 through on or around May 3, 2023, at Defendant's Paramount, California location. At all relevant times herein, Plaintiff was employed by Defendant in a paid hourly non-exempt position. At all relevant times herein, Plaintiff was entitled to compensation for all hours worked, including minimum, regular, and overtime wages, as well as meal and rest period premiums from Defendant.

Defendant

9. Plaintiff is informed and believe and based thereon allege that Defendant conducts a substantial amount of business in California and is headquartered in California. Defendant is window service company that conducts business throughout California.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendant is legally responsible for the

violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise and/or are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

13. Plaintiff brings this case as Private Attorney General pursuant to the Private Attorney General Act (2004), and mores specifically, Labor Code section 2698 et seq. seeking penalties, as provided by the Private Attorney General Act, Labor Code section 2698 et seq. (“PAGA”).

14. Prior to filing this complaint, on September 11, 2023, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff’s original letter dated September 11, 2023, sent to the LWDA on September 11, 2023, is attached hereto as Exhibit A.

15. More than sixty-five (65) days have passed since Plaintiff submitted his notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant; intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action as a Private Attorney General with regard to his PAGA notice.

FACTUAL ALLEGATIONS

16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its employees the benefits due under California's wage and hour laws for work performed in California. Defendant wrongfully refused to compensate its employees for minimum wages, overtime compensation, provide timely uninterrupted meal and rest periods, provide accurate wage statements, reimbursement and pay wages owed at the end of the employment, as required under California law.

17. Throughout the Relevant Time Period, Defendant employed hourly non-exempt positions throughout California. Defendant in compensated said positions at an hourly rate less than twice that of the state minimum wage and such positions remained under the direct control and supervision of Defendant. Accordingly, these positions remain non-exempt from California's wage and hour laws yet Defendant failed to pay overtime, and otherwise pay all wages due to these non-exempt employees as required by law.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common within the State of California.

19. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that by not compensating its employees for all hours worked, including minimum, regular, and overtime wages, for work that was required to be performed was in

violation of the California labor code. In violation of the Labor Code and IWC Wage Orders, Defendant failed to pay its employees earned wages by failing to compensate at the mandatory minimum wage. Defendant also failed to pay its employees at the requisite overtime rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.

21. Plaintiff alleges that Defendant failed to compensate its employees at the legally mandated wage rates for all hours worked. Specifically, Defendant failed to pay Plaintiff and other non-exempt hourly employees earned wages by failing to pay for all hours worked and failing to pay for all hours worked and the proper overtime rate of pay, among other things. Plaintiff and other non-exempt hourly employees were frequently required to work through meal periods and attend to work responsibilities while off-the-clock. Further, Defendant failed or refused to provide premium compensation to Plaintiff and other non-exempt hourly employees for all late meal periods, short meal periods, and all missing meal periods. Further, Defendant failed to record and/or pay Plaintiff and other non-exempt hourly employees for all hours worked wherein Defendant's employees were denied pay each workday while attempting to clock in for their shifts.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that it was required to provide its employees with itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period in accordance with California law. In violation of the Labor Code, Defendant failed to provide its employees with accurate itemized wage statements showing their rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the total hours work per pay period.

23. By failing to include on its wage statements all minimum wage and overtime owed, Defendant failed to keep and provide accurate wage statements in violation of the California labor code.

24. Defendant willfully failed to reimburse its employees for necessary business expenses incurred during their employment with Defendant. Specifically, Defendant failed to

indemnify Plaintiff and other employees for expenditures they incurred on their behalf, including without limitation, the reimbursement of utilizing their personal vehicles in the discharge of their duties.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that its employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Defendant failed to pay all wages due, within permissible time periods, upon separation of employment.

<u>FIRST CAUSE OF ACTION</u>

VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND OVERTIME

(Plaintiff As a Private Attorney General Against All Defendants)

26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

27. Any work in excess of eight (8) hours in any workday and any work in excess of forty (40) hours in a workweek shall be compensated at a rate of no less than one and one-half (1 & ½) times the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 9-2001, Sect. 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay for an employee. (*Ibid*.)

28. Defendant's employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay its employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant. Defendant's failure to compensate Plaintiff and other non-exempt hourly employees the proper rate for meal period premiums when they missed meal breaks is a violation of the Labor Code. Employer also failed to accurately calculate the overtime rate for Plaintiff and other non-exempt hourly employees. Employer further failed to adequately pay Plaintiff and other non-exempt hourly employees at their regular rate of pay for sick days.

///

29. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a Private Attorney General, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

30. Plaintiff is informed and believes that Defendant have violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

31. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

32. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(Plaintiff As a Private Attorney General Against All Defendants)

33. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

34. Labor Code sections 226.7 and 512 and IWC Wage Order 9-2001, sect. 11 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes.

35. Labor Code section 226.7 provides that if an employer fails to provide an employee with a meal period in accordance with this section, the employer shall pay the employee

one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

36. At all times relevant hereto, Plaintiff and other non-exempt hourly employees have worked shifts more than five (5) hours in a workday.

37. Plaintiff and other non-exempt hourly employees did not voluntarily or willfully waive meal periods.

38. Pursuant to Labor Code section 226.7, Plaintiff and other non-exempt hourly employees are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in an amount to be proven at trial.

39. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

40. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

THIRD CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(Plaintiff As a Private Attorney General Against All Defendants)

41. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

42. Labor Code section 226.7 and IWC Wage Order 9-2001, section 12 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or major fraction thereof.

43. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided. Plaintiff and other employees consistently worked over four (4) hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

44. As described above, Defendant failed to reasonably make available rest breaks to Plaintiff and other non-exempt hourly employees throughout the Relevant Time Period.

45. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

46. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

FOURTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Plaintiff As a Private Attorney General Against All Defendants)

47. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

48. Labor Code section 226, subdivision (a), states in pertinent part that, "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 . . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (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 (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee…" (Lab. Code, § 226.)

49. Defendant knowingly and intentionally failed to provide timely and accurate itemized wage statements to its employees in accordance with Labor Code section 226, subdivision (a), by failing to record the accurate number of hours worked, the accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to its employees in violation of the California labor code.

50. Plaintiff, as a Private Attorney General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code section 2698, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA.

51. Additionally, Plaintiff is entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

FIFTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES

(Plaintiff As a Private Attorney General Against All Defendants)

52. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

53. Labor Code section 2802 states that "An employer shall 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..."

54. Defendant failed to reimburse its employees for necessary expenditures as a direct consequence of the discharge of their duties.

55. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing business on its employees in violation of the California Labor Code.

56. Defendant has a corporate practice and policy of requiring its employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse its employees for necessary business expenditures, specifically requiring employees to utilize their personnel vehicles in direct consequence of the discharge of their duties to Defendant.

57. Plaintiff acting as a Private Attorney General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code section 2698, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA.

58. Accordingly, Plaintiff entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON TERMINATION OF EMPLOYMENT

(Plaintiff As a Private Attorney General Against All Defendants)

59. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

60. Employees who ended their employment with Defendant during the Relevant Time Period, were entitled to be promptly paid all wages owed, including both minimum wage and lawful overtime compensation and other premiums, as required by Labor Code sections 201 and 203.

61. Defendant refused and/or failed to promptly compensate its employees for wages owed as a result of Defendant's failure to properly pay meal and rest break premiums, and minimum and overtime compensation owed for work performed for Defendant.

///

62. Plaintiff, as a Private Attorney General pursuant to the Private Attorney General Act (2004, and more specifically, Labor Code §2698 et seq, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, 1194, and 2802.

63. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA.

64. Additionally, Plaintiff as a Private Attorney General is entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff as a Private Attorney General pray for judgment as follows:

1. For civil penalties for each violation as provided by law, including, but not limited to, those civil penalties provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: November 16, 2023

MAHONEY LAW GROUP, APC

____
Kevin Mahoney, Esq.
John A. Young, Esq.
Attorneys for Plaintiff MARTIN COSIO DIAZ

EXHIBIT A

MAHONEY
LAW GROUP, APC

John A. Young, Esq.
562.590.5550 phone
562.590.8400 facsimile
jyoung@mahoney-law.net

September 11, 2023

Via Online Submission
LABOR AND WORKFORCE DEVELOPMENT AGENCY
dir.tfaforms.net/308

VIA CERTIFIED MAIL ***# 7019 2280 0002 0214 4323***
Return Receipt Requested
Mediland Corporation dba Premium Windows
ATTN: Carlos Landazuri
7027 Motz Street
Paramount, CA 90723

Re: Martin Cosio Diaz v. Mediland Corporation dba Premium Windows

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2698 ET SEQ.

To: Labor and Workforce Development Agency; Mediland Corporation dba Premium Windows ("Employer")

From: Martin Cosio Diaz, on behalf of himself and all Aggrieved Employees who were subject to the Employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Martin Cosio Diaz ("Mr. Diaz"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other Aggrieved Employees.

Theories of Labor Code Violations and Remedies

Mediland Corporation dba Premium Windows ("Employer") conducts business throughout California and was the Employer of Mr. Diaz. Employer owns and operates a window manufacturing, delivery, and installation business headquartered in Paramount, California. Mr. Diaz worked for Employer from 2006 until May 2023.

Mr. Diaz alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, and 2802 by:

a) Failing to pay Mr. Diaz and Aggrieved Employees for all hours worked;
b) failing to provide Mr. Diaz and Aggrieved Employees with compliant meal periods or premium compensation in lieu thereof;
c) failing to provide Mr. Diaz and Aggrieved Employees with accurate itemized wage statements;
d) failing to reimburse Mr. Diaz and Aggrieved Employees all business expenditures; and
e) failing to pay Mr. Diaz and Aggrieved Employees all wages due to them upon separation of employment.

Mr. Diaz and the similarly Aggrieved Employees are identifiable current, and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of this notice with the LWDA.

A. Employer failed to pay Mr. Diaz and Aggrieved Employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 510, subdivision (a), provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours 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."

Employer failed to compensate Mr. Diaz and Aggrieved Employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Mr. Diaz and Aggrieved Employees routinely worked more than forty (40) hours in any given workweek; however, Employer obligated to work off-the-clock. Further, Employer required Mr. Diaz and Aggrieved Employees to continue to work through meal breaks while off-the-clock.

Employer's failure to pay Mr. Diaz and Aggrieved Employees for all hours worked, including applicable minimum wage and overtime rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Diaz and Aggrieved Employees with compliant meal and periods or premium compensation in lieu thereof

Mr. Diaz alleges that he and Aggrieved Employees were routinely not provided with timely, 30-minute off-duty meal periods, as required by the Labor Code. Mr. Diaz and other Aggrieved Employees were typically not allowed to take their meal periods within the first five hours worked. Employer failed to maintain a policy or practice of providing meal and rest periods for Employees as they were not always allowed to take their meal and rest periods in a timely manner. Mr. Diaz and other Aggrieved Employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) If a meal period was provided, Mr. Diaz and Aggrieved Employees' meal periods were regularly interrupted. When employees failed to receive their meal break, they did not receive premium pay as compensation for the missed meal breaks.

Mr. Diaz further alleges that he and other Aggrieved Employees did not receive duty-free, uninterrupted rest periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Employer prevented Mr. Diaz and other Aggrieved Employees from taking rest breaks throughout their shifts. Mr. Diaz and other Aggrieved Employees were also directed to combine rest breaks.

When employees were prevented from taking rest and meal periods, they did not receive premium pay for the missed meal and rest periods. Employer's conduct, which is in violation of the Labor Code, is also actionable under PAGA.

C. Employer failed to provide Mr. Diaz and Aggrieved Employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failing to pay Mr. Diaz and Aggrieved Employees for all hours worked during meal breaks and premium compensation for missed and/or late meal periods, and by manipulating the timesheets of Mr. Diaz and Aggrieved Employees, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

D. Employer failed to pay Mr. Diaz and aggrieved employees all wages earned and owed upon separation of employment

Pursuant to Labor Code section 201, subdivision (a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

At the time that Mr. Diaz and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed at the applicable overtime rate as well as premiums for missed rest periods.

Labor Code section 203, subdivision (a), states that "[i]f 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 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Diaz and aggrieved employees are entitled to thirty days of waiting time penalties.

E. Employer Failed to Reimburse Mr. Diaz and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employer did not reimburse Mr. Diaz and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of a using their personal vehicles to complete work for Employer, which is in violation of Labor Code section 2802, the applicable wage order, and actionable under PAGA. Mr. Diaz and Aggrieved Employees were required by Employer to use their personal vehicle to while employed by Employer. Employer did not have a policy or practice to reimburse employees for the required use of their personal vehicles. Employer's conduct is not compliant with Labor Code section 2802 and is therefore actionable under PAGA.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Diaz becomes aware of additional compensation owed or losses incurred by Mr. Diaz or by any other aggrieved employee of the Employer, Mr. Diaz expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
John A. Young, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: jyoung@mahoney-law.net

Sincerely,

John A. Young, Esq.
MAHONEY LAW GROUP, APC