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April 14, 2026
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VIA ONLINE FILING

Labor and Workforce Development Agency

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Eduardo Huerta v. SYSCO San Francisco, Inc.

Dear Representative:

This office represents Eduardo Huerta (“**Mr. Huerta**”) with respect to his claims under the California Labor Code against SYSCO San Francisco, Inc. (“**Employer**”). This letter is being sent simultaneously to Employer by certified mail.

Mr. Huerta was employed from approximately July 2022 to March 2025, as an hourly, non-exempt employee. During his employment with Employer, Mr. Huerta was employed as a Delivery Truck Driver at Employer’s location at 5900 Steward Ave., Fremont, CA 94538. Employer is a food & restaurant supplies distribution company.

Mr. Huerta 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. Huerta is seeking penalties solely in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer (“**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 Mr. Huerta’s employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders (“**IWC Wage Order**”) including *inter alia*, IWC Wage Order No. 9. These claims 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

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Huerta and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Mr. Huerta and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employer also failed to provide Mr. Huerta and Aggrieved Employees with adequate training as



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to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employer regularly required Mr. Huerta 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 Mr. Huerta and Aggrieved Employees to respond to Employer and work-related requests and perform work while clocked out for purported meal breaks. Mr. Huerta and Aggrieved Employees were constantly interrupted during their meal break periods by constant text messages and calls during their purported meal break periods regarding work-related tasks and communications that needed immediate attention from the Employer. When a meal period was not provided, Employer automatically deducted 30 minutes from Mr. Huerta and Aggrieved Employees' daily time worked for meal periods not actually provided. Mr. Huerta and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Huerta and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

Employer also utilized time rounding practices that resulted in the systematic underpayment of wages to Mr. Huerta and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Mr. Huerta and Aggrieved Employees, which resulted in a failure to pay Mr. Huerta and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages.

Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Huerta and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration. Employers only pay overtime wages when Mr. Huerta and Aggrieved Employees work shifts in excess of 10 hours. Mr. Huerta and Aggrieved Employees were regularly required to work over four (4) hours after the end of their scheduled shift due to the overwhelming demand of work at hand, which was not paid at their overtime rate of pay.

As a result of the foregoing practices, Employer has failed to pay Mr. Huerta and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 9 and California Labor Code sections 204, 351, 510, 1194, 1197, 1197.1 and 1198.

Mr. Huerta and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 9; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

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

Employer failed to provide Mr. Huerta and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Huerta and Aggrieved Employees were required by Employer to work more than five (5)



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hours per day, but were not provided with timely uninterrupted 30-minute meal periods. Further, Mr. Huerta and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Huerta and Aggrieved Employees to work through their first and second meal periods (i.e., stay on-duty during their 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. Mr. Huerta and Aggrieved Employees were regularly provided meal periods well over the 5th hour of work due to the nature of the job that prohibited them from taking a timely meal break period. Moreover, Mr. Huerta and Aggrieved Employees were constantly pressured by the Employer to skip their meal periods in order to complete their tasks/deliveries on time. On the occasions that Mr. Huerta and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short. Mr. Huerta and Aggrieved Employees were regularly interrupted during their purported meal break periods due to constant work-related text messages and calls on their personal cellphones as they were required to monitor them at all times.

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

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

Accordingly, Employer violated IWC Wage Order No. 9 and California Labor Code sections 226.7, 512(a) and 1198.

Mr. Huerta 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 No. 9; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.



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

Employer failed to authorize and permit Mr. Huerta and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Mr. Huerta and Aggrieved Employees to work through rest periods. Mr. Huerta 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, Mr. Huerta 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. Mr. Huerta and Aggrieved Employees were regularly missing their purported rest break period after the fourth (4th) hour of work and were only allowed to take a purported rest break period after the sixth (6th) and after the eleventh (11th) hour of work. Moreover, Mr. Huerta and Aggrieved Employees were constantly pressured by the Employer to finish their rest break period early to continue working. Mr. Huerta and Aggrieved Employees were required to monitor their personal cellphones at all times and as a result, received constant text messages and phone calls from the Employer on their personal cellphones during their purported rest break periods. As a result, Mr. Huerta and Aggrieved Employees purported rest break periods were regularly cut short to continue driving and finish their delivery route. Moreover, Mr. Huerta and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Huerta and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's 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) Employer failed to adequately inform and train Mr. Huerta and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Huerta and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Huerta and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Huerta 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 telephone calls and text messages; and (7) Employer's policy and culture prevented Mr. Huerta 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.

Mr. Huerta 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 IWC Wage Order No. 9 and California Labor Code sections 226.7, and 1198.



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Mr. Huerta 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 No. 9; 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, Employer has failed to timely pay all wages earned because Mr. Huerta and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Huerta 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 PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Huerta and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

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

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Huerta and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Mr. Huerta and Aggrieved Employees were regularly taking their purported meal break period well over the fifth (5th) hour of work, however, the Employer automatically deducted thirty (30) minutes from their time records in order to reflect a timely uninterrupted meal break period. Moreover, Mr. Huerta and Aggrieved Employees Accordingly, Employer violated IWC Wage Order No. 9 and California Labor Code sections 1198.5 and 1174(d).

Mr. Huerta 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 No. 9; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. 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



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job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 9 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Huerta and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, personal cellphone expenses and personal protective equipment such as steel toe shoes.

Accordingly, Employer violated IWC Order No. 9 and California Labor Code sections 2800 and 2802.

Mr. Huerta 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 No. 9; and attorneys' fees and costs.

8. FAILURE TO PAY REPORTING TIME

Pursuant to California Labor Code section 1198, "the employment of any employee... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Order No. 9-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.

During the relevant time period, Employer failed to pay Mr. Huerta and other Aggrieved Employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Huerta and the other Aggrieved Employees reported to work and were furnished less than half the usual or scheduled day's work. Employer also failed to pay Mr. Huerta and other Aggrieved Employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Huerta and the other Aggrieved Employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

Mr. Huerta 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 No. 9; and attorneys' fees and costs.

9. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Huerta and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned.



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Specifically, as a result of Employer's practices of requiring Mr. Huerta and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate overtime rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Huerta and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Huerta and Aggrieved Employees for meal period premiums, and rest period premiums they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Huerta and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of the State of California and all Aggrieved Employees, Mr. Huerta may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Kristy R. Connolly, Esq.

Notice provided to Employer via Certified Mail (9414711105495814811965)

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