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VIA ELECTRONIC FILING

Labor and Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

Re: PAGA Claim Notice – Labor Code Violations by WinCo Foods, LLC and TEC Services, LLC

To the Deputy Labor Commissioner:

Pursuant to the requirements of Labor Code section 2699.3, aggrieved employee Rita Delgadillo ("Plaintiff") hereby notifies the Labor and Workforce Development Agency ("LWDA") of the labor violations, and the facts and circumstances giving rise to them, committed by her joint employers WinCo Foods, LLC ("WinCo") and TEC Services, LLC ("TEC Services") (jointly referred to hereinafter as "WinCo/TEC Services"). WinCo is a national supermarket chain with approximately 37 stores in California. TEC Services is a janitorial and sanitation services provider that goes through various subcontractors to provide janitorial services for WinCo supermarkets. TEC Services operated as the services division of The Matworks Company, LLC ("Matworks") until approximately 2021.

On information and belief, based on an investigation into these entities, and to the best of Plaintiff's knowledge, the unlawful employment practices alleged in this letter occurred and continue to occur statewide at every WinCo supermarket location in California that contracts with TEC Services for janitorial services. Plaintiff seeks to represent all other aggrieved employees providing janitorial services through TEC Services, including TEC Services subcontractors, at WinCo supermarket locations in California. On information and belief, there are at least 40 other aggrieved employees in just Southern California and more in other parts of the state.

Aside from notifying the LWDA of the labor violations by WinCo/TEC Services, this letter also serves to notify WinCo/TEC Services of the labor violations they have committed and continue to commit against Plaintiff and similarly situated janitors, and the facts and circumstances giving rise to those violations. Plaintiff intends to seek penalties against WinCo/TEC Services for each and every violation referenced herein to the fullest extent permitted by law.

Statement of Facts

WinCo is a supermarket chain headquartered in Boise, Idaho. It is a Delaware limited liability company registered to do business in California, with approximately 37 stores throughout the state. TEC Services is a janitorial and sanitation services provider headquartered in Columbia, Maryland, providing services to numerous California WinCo supermarket locations through subcontractors. TEC Services previously operated as the services division of Matworks, a flooring and matting company, until approximately 2021, when TEC Services was divested from Matworks. TEC Services has continued its operations separate from Matworks and continues to provide janitorial and sanitation services to WinCo.

Plaintiff first started working as a janitor for WinCo/TEC Services through the subcontractor Fernando Ojeda, dba Clean Machine Janitorial Services, from approximately April 2020 or 2021 to March 2024. Between approximately March 25, 2024 and September 25, 2025, Plaintiff worked for WinCo/TEC Services under the subcontractor A Dulce Cleaning Service LLC. Since approximately September 26, 2025, she has worked for WinCo/TEC Services under the subcontractor JLC Cleaning Services, L.L.C. During her time working for WinCo/TEC Services, Plaintiff has worked at Store # 65 in Apple Valley, CA and Store # 67 in Victorville, CA. Although Plaintiff has been hired and paid by the subcontractors, she has worked exclusively for WinCo/TEC Services to provide janitorial services for WinCo. Likewise, the other aggrieved employees are janitors working for WinCo/TEC Services through third-party subcontractors of WinCo/TEC Services. When new subcontractors have taken over a contract with WinCo/TEC Services, WinCo/TEC Services have told the subcontractors that they need to hire the existing workers to continue working at WinCo stores under the new subcontractor.

Although Plaintiff and other aggrieved employees are formally employed under WinCo/TEC Services subcontractors, they provide services exclusively to WinCo/TEC Services. WinCo/TEC Services are joint employers and client employers to Plaintiff and other aggrieved employees. Plaintiff and other aggrieved employees perform janitorial services for WinCo/TEC Services at WinCo's supermarket locations as part of WinCo/TEC Services' usual course of business. They routinely and consistently perform this janitorial work as part of WinCo's regular business operations to keep WinCo's stores clean for customers. They also perform their janitorial work as part of the regular business operations of TEC Services, which contracts with WinCo to provide janitorial services at its stores and facilities. WinCo/TEC Services control Plaintiff and other aggrieved employees' wages, hours, and working conditions. During each shift, Plaintiff and other aggrieved employees are required to complete all cleaning tasks listed on a checklist developed and maintained by TEC Services and bearing the names of both WinCo and TEC Services on the top. WinCo managers inspect the work of Plaintiff and other aggrieved employees at the end of their shifts. Workers are not paid unless their entire checklist is completed and signed off on by a WinCo manager.

WinCo/TEC Services maintain control over and direct the work of Plaintiff and other aggrieved employees through the WinCo/TEC Services checklists and the work inspections by WinCo managers. The janitorial work performed by Plaintiff and other aggrieved employees fit within the usual course of business for both TEC Services as a janitorial services provider and WinCo to keep its stores clean for customers. Plaintiff and other aggrieved employees have not independently established their own janitorial services business; instead, they merely work for WinCo/TEC Services. Despite all these facts supporting employee status for Plaintiff and other aggrieved employees, WinCo/TEC Services still unilaterally classify them as independent contractors, denying them the rights and protections afforded to employees under California law.

Plaintiff and the other aggrieved employees do not track their time using a time clock or time sheet. They are only paid for their scheduled hours. However, Plaintiff and other aggrieved employees often have to arrive early and stay late to complete all their scheduled tasks. At the Apple Valley store, Plaintiff regularly worked 30 minutes to 1.5 hours beyond her scheduled hours without pay on Mondays and Tuesdays each week. Nonetheless, Plaintiff and other aggrieved employees are not paid for any time worked beyond their scheduled hours, even when they have had to send text or WhatsApp messages to a group including TEC

Services managers and managers from the subcontractor at the beginning and end of each shift. As a result, workers are not paid for all their hours worked. For any additional time worked not captured in their scheduled work hours, Plaintiff and other aggrieved employees are not paid at all, at either their regular rate of pay or minimum wage. As a policy or practice, WinCo/TEC Services also does not pay Plaintiff and other aggrieved employees overtime when they work more than eight hours in a day. Neither WinCo/TEC Services nor its subcontractors have an overtime policy for these workers because it misclassifies them as independent contractors when they are in fact hourly, non-exempt employees. Likewise, since not all of Plaintiff and other aggrieved employees' hours worked are captured in their scheduled hours, WinCo/TEC Services also does not timely pay them all wages due for each pay period.

By not keeping track of Plaintiff and other aggrieved employees' actual hours worked and not paying them for all hours worked, WinCo/TEC Services has failed to maintain the payroll and time records required of them as employers. WinCo/TEC Services does not keep accurate time records showing when Plaintiff and other aggrieved employees begin and end each work period, and when they take any meal periods. They also do not maintain accurate payroll records showing each employee's total hours worked daily and each payroll period and their applicable rates of pay.

Likewise, WinCo/TEC Services does not furnish Plaintiff and other aggrieved employees with itemized wage statements showing their gross wages earned, total hours worked, any deductions, the dates of the period for which they were being paid, the name and address of the legal entity that was their employer, and all applicable hourly rates of pay. Workers are merely paid a net amount by direct deposit every two weeks. They do not receive any wage statements or pay stubs.

Plaintiff and other aggrieved employees also are not provided with thirty-minute unpaid, duty free meal breaks by the end of each fifth hour worked or ten-minute duty free paid rest breaks every four hours or major fraction thereof. WinCo/TEC Services and their various subcontractors do not have a policy in place to relieve these workers of their duties for thirty minutes before the end of the fifth hour or for ten minutes every four hours or major fraction thereof because they misclassify these workers as independent contractors. Nor are meal break premiums or rest break premiums provided to the workers for missed meal breaks and rest breaks. Plaintiff and other aggrieved employees are not informed that they are entitled to take any breaks and thus regularly work through their lunches. WinCo/TEC Services' policy and practice of only paying workers according to their scheduled hours further incentivize workers to work through breaks to prevent them from having to work unpaid time at the end of their shift. Moreover, workers must finish their duties in time for WinCo managers to review their work at the end of every shift. Workers who do not finish on time must stay additional uncompensated time waiting for the WinCo manager on site to be free to review their work.

Plaintiff and other aggrieved employees also do not receive any sick leave. As a policy or practice, the subcontractors working for WinCo/TEC Services uniformly do not pay Plaintiff and other aggrieved employees for any days where their checklist of tasks is not completed and signed off on by a WinCo manager. Sick employees are subject to discipline up to and including termination for failing to show up to work. Supervisors threaten to fire them when they attempt to call in sick. Plaintiff and other aggrieved employees can only avoid discipline by finding coverage for their shift when they are sick. If they do find another worker to cover for them, they need to pay the substitute worker out of their own pay for covering the shift.

Moreover, Plaintiff and other aggrieved employees also do not receive a stipend or get reimbursed for any necessary business expenses incurred as a direct consequence of the discharge of their duties. These necessary expenditures include the cost of cell phone expenses incurred for mandatory communications with managers during their shifts.

WinCo/TEC Services also maintains a policy and practice of not paying Plaintiff and other aggrieved employees who quit or were terminated all wages due at the end of their employment, including an additional hour of pay at their regular rate of pay for missed meal periods and rest periods and either their regular rate of pay, minimum wages, or overtime for any uncompensated time where they were suffered or permitted to work or subject to WinCo/TEC Services' control.

Plaintiff alleges that all of the aforementioned practices violate California law.

<u>Legal Violations and Theories of Recovery</u>

Joint Employment Liability

WinCo/TEC Services are joint employers to Plaintiff and other aggrieved employees. As defined in both Industrial Welfare Commission ("IWC") Wage Order No. 7 (applicable to WinCo in the mercantile industry) and Wage Order No. 5 (applicable to TEC Services in the public housekeeping industry)[1], employer means "any person . . . who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person." (Cal. Code Regs., tit. 8, § 11070, subd. (2)(F); Cal. Code Regs., tit. 8, § 11050, subd. (2)(F).) The California Supreme Court has defined "employ" under the IWC Wage Orders to "(a) to exercise control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage, thereby creating a common law employment relationship." (*Martinez v. Combs* (2010) 49 Cal.4th 35, 64, original emphasis.) "An entity . . . may be an employer even if it did not 'directly hire, fire or supervise' the employees." (*Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015, 1019, citation omitted.)

WinCo/TEC Services exercise control over the wages, hours, and working conditions of Plaintiffs and other aggrieved employees by requiring them to complete specific tasks outlined on a checklist created and maintained by TEC Services during each shift, requiring them to pass an inspection by a WinCo manager to ensure completion of all the tasks before leaving work, and conditioning payment of wages for their shifts on a WinCo manager signing off on their checklist. WinCo/TEC Services also suffer or permit Plaintiff and other aggrieved employees to work by allowing them to provide janitorial services for WinCo supermarkets, ensuring that the stores were clean for customers, while not being paid for all hours worked. "A proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work by failing to prevent it, while having the power to do so." (*Martinez*, *supra*, 49 Cal.4th at p.69.)

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[1] Division of Labor Standards Enforcement, Which IWC Order? Classifications (Mar. 2013) pp. 19, 21, available at https://www.dir.ca.gov/dlse/whichiwcorderclassifications.pdf [applying Wage Order No. 5 to janitorial service and Wage Order No. 7 to retail stores]. Even if these two industry orders were not applicable here, Wage Order No. 4 applicable to cleaners and porters would apply and includes the same definition for "employer." (*Id.* at p. 16; Cal. Code Regs., tit. 8, § 11040, subd. (2)(I).)

Furthermore, Labor Code section 2810.3 imposes joint liability on client employers, defined as a business entity with 25 or more workers "that obtains or is provided workers to perform labor within its usual course of business from a labor contractor." (Lab. Code, § 2810.3, subd. (a)(1)(A).) A labor contractor supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business on their work site or premises. (Lab. Code, § 2810.3, subd. (a)(3), (6).) "A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for . . . [t]he payment of wages." (Lab. Code, § 2810.3, subd. (b)(1).) Under this statute, "wages" includes "all sums payable to an employee or the state based upon any failure to pay wages, as provided by law[,]" including damages and penalties. (Lab. Code, § 2810.3, subd. (a)(4).)

Here, WinCo/TEC Services are "client employers" since they obtain workers through subcontractors to perform work within their usual course of business. The janitorial work by Plaintiff and other aggrieved employees is routinely and consistently performed to keep WinCo's stores clean for customers and thus is a part of WinCo's normal business operations without WinCo having to hire its own janitorial workers. This same work is also routinely performed as a regular part of TEC Services' business operations, which focuses on janitorial and sanitation services. Since TEC Services contracts with WinCo to provide janitorial services at WinCo stores, Plaintiff and other aggrieved employees work at the worksite of both WinCo and TEC Services by working at WinCo supermarket locations.

Thus, WinCo/TEC Services are jointly liable as both joint employers under Wage Order Nos. 7 and 5 and "client employers" under Labor Code section 2810.3 for each of the labor violations alleged below.

Willful Misclassification

In *Dynamex*, the California Supreme Court made clear that "a business cannot unilaterally determine a worker's status simply by assigning the worker the label 'independent contractor' . . . ." *(Dynamex Operations W. v. Superior Ct.* (2018) 4 Cal.5th 903, 962.) Under *Dynamex*'s "ABC test," workers are presumed to be employees unless the hiring entity can show that: (A) the worker is "free from the control and direction of the hirer"; (B) the work performed by the worker is "outside the usual course of the hiring entity's business"; *and* (C) the worker "is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity." (*Id.* at p. 916-17.) The employer bears the burden of showing that all three prongs of the ABC test are satisfied to avoid a finding that the workers are employees. (*Id.* at p. 957.)

WinCo/TEC Services cannot meet their burden under any prong of the ABC test. Under prong A, WinCo/TEC Services control and direct Plaintiff and other aggrieved employees by requiring them to complete all tasks outlined in a WinCo/TEC Services checklist, not allowing these workers to leave until a WinCo manager has reviewed their work and signed off on their checklist, and not providing these workers with payment for their work unless they receive the sign-off on the checklist by a WinCo manager. Under prong B, Plaintiff and other aggrieved employees perform work within the usual course of WinCo's business by cleaning and keeping WinCo's stores clean for customers. TEC Services is in the business of janitorial services, exactly the type of work that Plaintiff and other aggrieved employees perform. Finally, under Prong C, Plaintiff and other aggrieved employees have never taken any steps to independently establish their own janitorial services business. Thus, Plaintiff and other aggrieved employees are employees, and not independent contractors, as a matter of law and are entitled to all the rights and protections of employees under California law.

Furthermore, WinCo/TEC Services have willfully misclassified Plaintiff and other aggrieved employees in violation of Labor Code section 226.8. Labor Code section 226.8, subd. (a) makes it unlawful for an employer to "[w]illful[ly] misclassif[y] . . . an individual as an independent contractor." WinCo/TEC Services' misclassification of Plaintiff and other aggrieved employees is willful, as they unilaterally determined that these janitorial workers are independent contractors and continued to classify them as such even after the California Supreme Court's *Dynamex* ruling in 2018, which generated a sea change in California law regarding employee status. In spite of the *Dynamex* decision, WinCo/TEC Services have taken no steps to consider whether Plaintiff and other aggrieved employees are properly classified, and instead maintain their practice of unilaterally classifying all these janitorial workers hired through subcontractors as independent contractors. WinCo/TEC Services have taken no action to ensure that their employment practices with respect to these workers are in compliance with California law. It is objectively unreasonable and in bad faith for national companies of WinCo/TEC Services' size operating in California to continue misclassifying Plaintiff and other aggrieved employees years after the *Dynamex* decision was passed and codified into law through A.B. 5 (eff. Jan. 1, 2020).

Under Labor Code section 226.8, subds. (g)(2) and (b), Plaintiff and other aggrieved employees are entitled to recover as damages "not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation [of Labor Code section 226.8, subd (a)], in addition to any other penalties or fines permitted by law." Under Labor Code section 226.8, subds. (g)(2) (c), in cases like this one where WinCo/TEC Services have engaged in a pattern or practice of willful misclassification, the workers are entitled to recover as damages "not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law." For the willful misclassification, the workers are "entitled to either recover the damages as provided for in [Labor Code section 226.8] or to enforce a civil penalty, as set forth in subdivision (a) of Section 2699" under PAGA. (Lab. Code, § 226.8, subd. (g)(2); *see also Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 341 ["Nothing in our analysis precludes plaintiffs from pursuing enforcement of section 226.8 through their PAGA claim."].)

Failure to Pay Minimum Wages

California law requires the payment of at least minimum wages for all hours worked. (Cal. Code Regs., tit. 8, § 11070, subd. (4); Cal. Code Regs., tit. 8, § 11050, subd. (4); Lab. Code, §§ 1182.11, 1182.12, 1194, 1197.) "[W]orkers must receive the minimum wage for *each hour worked* during the payroll period." (*Rhea v. Gen. Atomics* (2014) 227 Cal.App.4th 1560, 1574, emphasis in original.) "[A]veraging hourly compensation is not permitted under California law." (*Sheppard v. N. Orange Cty. Reg'l Occupational Program* (2010) 191 Cal.App.4th 289, 297 n.5.)

WinCo/TEC Services have violated Wage Order Nos. 7 and 5 and Labor Code sections 1182.11, 1182.12, 1194, and 1197 by not paying Plaintiff and other aggrieved employees at least the state minimum wage for any hours worked not captured by their schedules set before each shift. Indeed, Plaintiff and other aggrieved employees are not paid any wages for time worked before and after their scheduled shifts, including time spent waiting for WinCo managers to review their work and sign off on their WinCo/TEC Services checklist. Additionally, Plaintiff and other aggrieved employees working under the subcontractor A Dulce Cleaning Service LLC were paid only $16 per hour, less than the state minimum wage of $16.50 per hour, in 2025.

Thus, for each hour where they receive less than the state minimum wage, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of the full amount of the minimum wage, including interest thereon, reasonable attorneys' fees, and costs of suit. (Lab. Code, § 1194.) They are also entitled to recover liquidated damages equal to the amount of wages unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.) In addition, under Labor Code section 1197.1, Plaintiff and other aggrieved employees are entitled to civil penalties of "one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid" for any "initial violation that is intentionally committed" and "two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid [for each subsequent violation for the same offense] regardless of whether the initial violation is intentionally committed." (Lab. Code, § 1197.1, subd. (a).) By violating the Wage Order Nos. 7 and 5 regulating hours worked, WinCo/TEC Services are additionally liable for civil penalties under Labor Code section 558, which provides "fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid" for each initial violation and "one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid" for each subsequent violation. (Lab. Code, § 558, subd. (a).) The civil penalties under Labor Code section 558 are "in addition to any other civil or criminal penalty provided by law." (Lab. Code, § 558, subd. (d).)

Failure to Pay Overtime

California law also requires the payment of overtime for all hours worked over eight (8) hours in a workday or over forty (40) hours in a workweek. (Cal. Code Regs., tit. 8, § 11070, subd. (3)(A); Cal. Code Regs., tit. 8, § 11050, subd. (3)(A); Lab. Code, §§ 510, 1194, 1198.)

WinCo/TEC Services does not pay Plaintiff and other aggrieved employees any overtime when they work more than eight (8) hours in a workday or over forty (40) hours in a workweek. When they are scheduled for eight (8) hours of work in a workday, they are not paid at all for any additional hours worked that day beyond the scheduled eight (8) hours. Accordingly, WinCo/TEC Services have violated Wage Order Nos. 7 and 5 and Labor Code section 510, 1194, and 1198. As with WinCo/TEC Services' minimum wage violations, Plaintiff and other aggrieved employees are entitled to recover "the unpaid balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Lab. Code, § 1194, subd. (a).) They are also entitled to recover civil penalties under Labor Code section 558 based on WinCo/TEC Services' violations of Wage Order Nos. 7 and 5 regulating hours worked.

Failure to Timely Pay for all Hours Worked

Both Wage Order Nos. 7 and 5 require payment for all "[h]ours worked," where employees are "subject to the control of an employer" or "is suffered or permitted to work, whether or not required to do so." (Cal. Code Regs., tit. 8, § 11070, subd. (2)(H); Cal. Code Regs., tit. 8, § 11050, subd. (2)(M).) WinCo/TEC Services have failed to pay Plaintiff and other aggrieved employees for all hours worked by not paying them for any time worked before and after their scheduled shifts, including time spent waiting for WinCo managers to review their work and sign off on their WinCo/TEC Services checklist. Accordingly, WinCo/TEC Services have violated Wage Order Nos. 7 and 5, and are thus subject to civil penalties under Labor Code section 558, amounting to "fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid" for each initial violation and "one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid" for each subsequent violation, as well as "an amount sufficient to recover underpaid wages." (Lab. Code, § 558, subd. (a).)

In addition, WinCo/TEC Services have also violated Labor Code section 204, which requires the timely payment of all wages due. Labor Code section 204 "guarantees employees full payment on a semimonthly basis, providing: 'All wages,' with certain exceptions not relevant here, '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.'" (*Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762, 776, citing Lab. Code, § 204, subd. (a).) Labor Code section 204 applies to all wages earned, while Labor Code section 210 "prescribe[s] penalties for the failure to pay full wages in a timely fashion." (*Id.* at p. 777; *Stone v. Alameda Health Sys.* (2024) 16 Cal.5th 1040, 1069.) Thus, based on WinCo/TEC Services' violations of Labor Code section 204's requirement of timely payment of all wages due, Plaintiff and other aggrieved employees are entitled to either civil penalties under Labor Code section 210, calculated as: "[f]or any initial violation, one hundred dollars ($100) for each failure to pay each employee" and "[f]or each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld," or "civil penalt[ies] as set forth in subdivision (a) of Section 2699. (Lab. Code, § 210.)

Pursuant to Labor Code sections 218, 218.5 and 218.6, Plaintiff and other aggrieved employees are entitled to recover the full amount of their unpaid wages, penalties, interest thereon, reasonable attorneys' fees and costs of suit.

Failure to Pay all Wages Due Upon Termination of Employment

In addition, employees who have been discharged and/or have resigned are entitled to payment of all wages earned and unpaid, including, without limitation, compensation for all hours worked for which they have not yet received compensation and for missed meal and rest periods. Labor Code section 201, subd. (a) requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code section 202, subd. (a) requires an employer to pay compensation due and owing within seventy-two (72) hours of an employee's termination of employment by resignation. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

Plaintiff and other aggrieved employees who have been separated from employment (including each time they have stopped working for one subcontractor and were later rehired by a different subcontractor) have not been paid full compensation for all their hours worked, including for missed meal and rest periods. Accordingly, WinCo/TEC Services have willfully failed to timely pay such compensation in violation of Labor Code sections 201, 202, and 203. (*See also Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 117 ["[P]remium pay [for missed meal and rest breaks] constitutes wages for purposes of Labor Code section 203."].) Thus, Plaintiff and other aggrieved employees are entitled to up to thirty (30) days of waiting time penalties under Labor Code section 203, with interest thereon.

Failure to Maintain Employment Records and Provide Accurate Wage Statements

Employers have many recordkeeping obligations including, without limitation, under Labor Code sections 226 and 1174, and section 7 of Wage Order Nos. 7 and 5. Client employers like WinCo/TEC Services have additional recordkeeping obligations under Labor Code section 2810.3, subd. (i) and section 13831 of the California Code of Regulations.

WinCo/TEC Services have failed to abide by the recordkeeping requirements in Wage Order Nos. 7 and 5, Labor Code section 2810.3, subd. (i), and section 13831 of the California Code of Regulations by not maintaining accurate time records showing when Plaintiff and other aggrieved employees begin and end their work periods, including meal periods worked, and total hours worked in each pay period with applicable rates of pay. (Cal. Code Regs., tit. 8, § 11070, subd. (7)(A); Cal. Code Regs., tit. 8, § 11050, subd. (7)(A); Lab. Code, § 2810.3, subd. (i); Cal. Code Regs., tit. 8, § 13831.) WinCo/TEC Services have also violated Labor Code section 1174 by not maintaining accurate payroll records showing the hours worked daily and wages paid to Plaintiff and other aggrieved employees. Notably, WinCo/TEC Services do not maintain a system to accurately capture any additional hours worked beyond Plaintiff and other aggrieved employees' scheduled hours for purposes of timekeeping and payroll.

Additionally, WinCo/TEC Services have violated section 7 of Wage Order Nos. 7 and 5 and Labor Code section 226 by failing to furnish Plaintiff and other aggrieved employees with any wage statements, as required by law. (Cal. Code Regs., tit. 8, § 11070, subd. (7)(B); Cal. Code Regs., tit. 8, § 11050, subd. (7)(B); Lab. Code, § 226.) WinCo/TEC Services' failure to provide timely, accurate itemized wage statements to Plaintiff and other aggrieved employees has been knowing and intentional.

Accordingly, based on WinCo/TEC Services' recordkeeping and wage statement violations, they are liable for damages, penalties, and attorneys' fees and costs under Labor Code section 226, subd. (e), as well as penalties under Labor Code sections 226.3 and 2699, subd. (f). The wage statement penalties under Labor Code section 226, subd. (e) are "the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000)." (Lab. Code, § 226, subd. (e)(1).) Labor Code section 226.3 further provides civil penalties "in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation 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 records required in subdivision (a) of Section 226." (Lab. Code, § 226.3.)

Failure to Provide Meal and Rest Periods

Labor Code section 226.7 requires employers to provide paid rest periods to all employees in accordance with the applicable Wage Order. Wage Order Nos. 7 and 5 provide as follows:

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3-1/2) hours. Authorized rest period time shall be counted[,] as hours worked[,] for which there shall be no deduction from wages.

(Cal. Code Regs., tit. 8, § 11050, subd. (12)(A); Cal. Code Regs., tit. 8, § 11070, subd. (12)(A) [substantially similar].) Notably, rest breaks are legal entitlements that are not waivable. (*See Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 145; *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 113 ["[T]he Legislature views the right to a rest period as so sacrosanct that it is unwaivable."]; *Franco v. Athens*

Disposal Co., Inc. (2009) 171 Cal.App.4th 1277, 1294 [concluding that "the meal and rest period laws cannot be waived"].)

Likewise, Labor Code section 512, subd. (a) requires employers to provide meal periods to all employees. Wage Order Nos. 7 and 5 provide that all employees working shifts of at least five (5) hours must be provided a meal period. (Cal. Code Regs., tit. 8, § 11050, subd. (11)(A); Cal. Code Regs., tit. 8, § 11070, subd. (11)(A).) If an employee works more than five (5) hours but less than six (6) hours, "the meal period may be waived," but only "by mutual consent of both the employer and employee." (Lab. Code, § 512, subd. (a); *see also* Cal. Code Regs., tit. 8, § 11050(11)(A); Cal. Code Regs., tit. 8, § 11070(11)(A).) An "on-duty" meal period is allowed "only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to." (Cal. Code Regs., tit. 8, § 11050(11)(A); Cal. Code Regs., tit. 8, § 11070(11)(C).) In such a situation, the "written agreement shall state that the employee may, in writing, revoke the agreement at any time." (*Ibid.*) "The voluntariness of an employee's choice [to work during a meal period] matters because 'an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.'" (*Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58, 67, citing *Brinker Rest. Corp. v. Superior Ct.* (2012) 53 Cal.4th 1004, 1040.) "Noncompliant meal periods raise a rebuttable presumption of meal period violations." (*Id.* at p. 58.)

Here, WinCo/TEC Services have failed to provide Plaintiff and other aggrieved employees with a 10-minute off-duty rest break every 4 hours or "major fraction thereof" in violation of Labor Code section 226.7 and Wage Order Nos. 7 and 5. Likewise, they have failed to provide Plaintiff and other aggrieved employees with thirty-minute duty free meal breaks when they work more than five (5) hours in a day, in violation of Labor Code section 512 and Wage Order Nos. 7 and 5. Plaintiff and other aggrieved employees have never waived their rights to meal periods by written agreements with the option to revoke.

Because WinCo/TEC Services have failed to authorize and permit Plaintiff and other aggrieved to take compliant rest periods, they are liable for one (1) hour of additional pay at the regular rate of compensation for each workday that the compliant rest periods were not taken. (Lab. Code, § 226.7, subd. (b); Cal. Code Regs., tit. 8, § 11070(12)(B); Cal. Code Regs., tit. 8, § 11050(12)(B).) Likewise, because WinCo/TEC Services have failed to provide Ms. Plaintiff and other aggrieved employees with compliant meal periods, they are liable for one hour of additional pay at the regular rate of compensation for each workday that the compliant meal periods were not taken. (Lab. Code, § 226.7(b); Cal. Code Regs., tit. 8, § 11070(11)(D); Cal. Code Regs., tit. 8, § 11050(11)(B).) WinCo/TEC Services are also liable for interest on these meal and rest period claims, as well as civil penalties under Labor Code section 2699. (*See Naranjo*, 13 Cal.5th at p. 121 [standard 7% prejudgment interest applicable to meal and break claims]; Lab. Code, § 2699, subd. (f).)

Failure to Provide Sick Leave

Labor Code section 246(b) requires, *inter alia*, that an employer provide for an employee to accrue paid sick leave "at the rate of not less than one hour per every 30 hours worked" and not less than 24 hours (or three days) of paid sick leave by the completion of the employee's 120th calendar day of employment. Plaintiff and other aggrieved employees are not provided with any sick leave. In fact, Plaintiff and other aggrieved employees face discipline up to and including termination if they fail to find someone to cover their shift when they are out sick.

Thus, Plaintiff and other aggrieved employees may recover penalties for the paid sick leave violations in a PAGA action under Labor Code section 2699. (*Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 742, 764 ["In sum, we hold that section 248.5, subdivision (e) does not preclude an aggrieved employee from bringing a PAGA action for violations of the Act."].) Plaintiff and other aggrieved employees may also recover "equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs" through an action under the Unfair Competition Law. (Lab. Code, § 248.5, subd. (e); *see Colopy v. Uber Techs., Inc.* (N.D. Cal. June 30, 2020) No. 19-cv-06462-EMC, 2020 U.S. Dist. LEXIS 114213, at *8 ["Plaintiffs have asserted a plausible predicate claim under the UCL"]; *Flores v. Dart Container Corp.* (E.D. Cal. May 27, 2020) No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7-8 [allowing UCL claim seeking restitution based on violation of sick leave laws].)

Failure to Reimburse Business Expenses

Labor Code section 2802, subd. (a) provides that "[a]n 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." In California, it is well-established that "reimbursement is always required" when an employee must use an otherwise personal item (such as a cell phone) for work. (*See, e.g., Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 [concluding that where an employee used a personal cell phone for work, "to be in compliance with section 2802, the employer must pay some reasonable percentage of the employee's cell phone bill"].)

Plaintiff and other aggrieved employees have incurred out-of-pocket expenses, including but not limited to cell phone charges, as a direct consequence of the discharge of their duties for WinCo/TEC Services. WinCo/TEC Services have never reimbursed Plaintiff and other aggrieved employees for any of these expenses, thus violating Labor Code section 2802. Accordingly, Plaintiff and aggrieved employees are entitled to damages, penalties, interest, and attorneys' fees and costs under Labor Code sections 2802 and 2699, subd. (f).

* * *

If permitted, Plaintiff, by and through her well-qualified counsel, intends to seek relief under PAGA for WinCo/TEC Services' actions for both herself and other aggrieved janitors and sanitation workers based on the aforementioned violations of the law. Plaintiff is represented by the attorneys at Weinberg, Roger & Rosenfeld ("the firm"). The firm is well qualified to pursue this matter and has served as counsel in numerous wage and hour class actions. The firm is responsible for leading wage and hour decisions regarding California's wage and hour law including, among other published decisions, the seminal *Morillion v. Royal Packing Co*. (2000) 22 Cal.4th 575; *Cicairos v. Summit Logistics, Inc*. (2005) 133 Cal.App.4th 949; *Bluford v. Safeway Inc*. (2013) 216 Cal.App.4th 864; and *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277.

If, within the next 65 days, the LWDA or the California Division of Labor Standards Enforcement does not investigate these claims and WinCo/TEC Services do not resolve these claims as outlined in this letter, we will pursue a civil action under Labor Code section 2699 against both companies as joint employers that are jointly and severally liable for the violations discussed above.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Winnie Vien

WGV:mda
opeiu 29 afl-cio(1)

<u>cc Via Certified U.S. Mail</u>:

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