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November 28, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Luis Vega v. Masterstouch Brand L.L.C.
Our File No.: 7390

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Masterstouch Brand L.L.C. (hereinafter referred to as “Masterstouch”), in the above referenced matter. This “written notice” is filed on behalf of Luis Vega (hereinafter “Mr. Vega”) and all current and former non-exempt employees employed by Masterstouch. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Masterstouch are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 551, 552, 1194, and 2802, as well as IWC Wage Order 7, codified as Title 8, California Code of Regulations, section 11070 *et seq.*, or any other applicable wage orders.

Facts and theories supporting the allegations: Mr. Vega was employed as a non-exempt employee for Masterstouch from approximately January, 2022, through the current date.

Throughout the term of Mr. Vega’s employment, Masterstouch required Mr. Vega and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Masterstouch failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal

and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 7, and/or any other applicable wage orders. This illegal action is due, in part, to Masterstouch's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Masterstouch would instruct Mr. Vega to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Masterstouch would often require Mr. Vega to work extended hours (beyond scheduled hours), without compensation. Further, Masterstouch would regularly contact Mr. Vega outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

- Additionally, among other issues, Masterstouch has notice of Mr. Vega, and others, working outside of his scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Vega was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. Further, Masterstouch failed to properly calculate and pay overtime at the actual overtime rate of pay, as Masterstouch ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

- Masterstouch failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, and/or any other applicable wage orders. For example, Masterstouch does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day.
- Masterstouch would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or customers at all times. Masterstouch has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7." *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added. Even more recently, a 2020 California Supreme Court

ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Masterstouch failed to pay Meal Period Premiums at the proper rate, as Masterstouch fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- Masterstouch required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Masterstouch would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.
- Masterstouch illegally retained control over its employees during Meal Periods. For example, Masterstouch required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Masterstouch failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 7, and/or any other applicable wage orders. For example, Masterstouch does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Masterstouch makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Masterstouch would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors at all times. Masterstouch has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Masterstouch would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Masterstouch required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Masterstouch

would interrupt, or cut short, its employees' Rest Periods and require them to return to work. Mr. Vega was required to respond to supervisors during their Rest Periods.

- Finally, Masterstouch illegally retained control over its employees during Rest Periods. For example, Masterstouch required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Masterstouch violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Vega and other employees were not compensated for all hours worked (due in part to Masterstouch's requirement that employees list only *scheduled* work-times, not actual work-times.)
- Masterstouch violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Masterstouch (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Masterstouch would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Masterstouch violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Masterstouch does not explain how its system describes "time worked" on the Wage Statement itself. As such, Mr. Vega cannot "readily ascertain" what these figures mean. This is because Masterstouch is apparently using a time-calculating system other than "minutes," but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* ".76") are meant to represent. Without an explanation for how these figures were arrived at, employees cannot "readily ascertain" their total hours worked. Therefore, Masterstouch failed to provide an accurate showing of the "total hours worked" by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Masterstouch failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for

expenses incurred by Mr. Vega and other non-exempt employees, including expenses for cell-phone costs and mileage.

Failure to Provide Compliant Rest Days

- Masterstouch violated Labor Code Sections 551 by failing to provide compliant rest days. Mr. Vega and other employees were frequently required to work seven days a week. As a result, Masterstouch also caused its employees to work more than six days in seven, in violation of Labor Code Section 552.

Willful Failure to Provide All Compensation to Ex-Employees

- Masterstouch failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Masterstouch failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, Masterstouch is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Karoline D. Kitlowski, Esq.

Via Certified U.S. Mail

CT CORPORATION SYSTEM
Agent of Service of Process for
Masterstouch BRAND L.L.C.
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Glendale, CA 91203