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AMENDED PRIVATE ATTORNEYS GENERAL ACT NOTICE

January 23, 2026

Via LWDA Website:

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: LWDA-CM-996466-23
Terry Nelson v. Penske Logistics LLC
AMENDED Written Notice Under Labor Code § 2699.3

Dear PAGA Administrator:

We represent Terry Nelson (“Claimant”), who is a former non-exempt employee of Penske Logistics LLC (“Penske” or “Defendant”).

This letter shall serve as our client’s amended written notice to the Labor and Workforce Development Agency of the Labor Code violations he claims Penske committed against him and all other current and former non-exempt employees of Penske who worked at Penske warehouse distribution facilities in California, and all current and former employees of Penske who worked as drivers delivering goods in California for Penske.

Our client provides this written notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq. Our client desires to amend his civil action to enforce his rights under the Labor Code and seek compensation accordingly. Pursuant to Labor Code § 2699.3 and by way of this letter, our client also intends to represent all current and former California non-exempt warehouse workers of Penske in California who have suffered at least one of the violations described herein during the relevant period and all current and former truck drivers employed by Defendant who were based in California or drove inside California during the relevant period and who

were classified as exempt employees. The relevant period is from November 29, 2023 through the present.

A copy of this letter, along with the \$75.00 filing fee is being uploaded on the LWDA's website for this purpose contemporaneously with the certified mailing of this letter to Defendant.

FACTUAL BACKGROUND

Penske operates distribution facilities throughout the state of California. Penske employs warehouse workers at its distribution facilities as well as truck drivers who transport products to and/or from Penske's warehouses and/or its customers. Upon information and belief, these employees are subject to the same employment policies, practices, and procedures.

Claimant worked as a non-exempt employee for Penske at its Manteca, California distribution facility from in or around November 2018 through on or around May 11, 2023. Penske compensated Claimant at an hourly rate of pay. Defendant also compensated Claimant on a regular basis with bonuses. Claimant worked five days a week during most weeks. Claimant regularly worked more than eight hours a day and more than 40 hours a week.

Defendant denied Claimant and other employees in California specific rights afforded to them under the California Labor Code, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order").

Defendant also failed to provide full uninterrupted meal breaks and failed to provide a first and second meal break when Claimant and similarly situated employees worked shifts of 5 or more hours and 10 or more hours, respectively. They did this by penalizing employees if they took their full meal breaks, forcing the employees to not take breaks at all. Additionally, meal breaks were regularly interrupted to unload trucks which arrived during Claimant's and similarly situated employees' meal breaks. Defendant also understaffed shifts which make productivity requirements unattainable unless employees skipped their meal breaks. Defendant required employees to remain on premises during their meal breaks. Defendant also required employees to clock out for their meal breaks and continue working. And for drivers, they were required to remain on duty at all hours,

be responsible for their trucks at all times, and answer calls during their breaks. Additionally, the press of business and the timing of the driver's schedules prevented them from taking meal breaks. As such, they could not take meal breaks. Defendant also implemented unlawful meal break waivers that were not revocable. Even if meal breaks, were taken, they were interrupted, not off-duty, and were late and/or short. When meal periods were not compliant, Defendant failed to pay meal break penalties and/or failed to pay the penalties at the regular rate of pay.

Defendant failed to authorize and permit Claimant and other aggrieved employees legally adequate rest breaks. They did this by failing to provide sufficient break time to allow Claimant and other aggrieved employees to travel from their work station to a break area (and return) and still have a full ten minute uninterrupted break relieved of all duty. Similarly, Defendant failed to provide time or sufficient time for breaks on the electronic quota system Claimant and other aggrieved employees were subject to. This had the result of discouraging taking breaks to earn bonuses and to avoid write ups. Defendant also understaffed shifts which make productivity requirements unattainable unless employees skipped their rest breaks. And for drivers, they were required to remain on duty at all hours, be responsible for their trucks, and answer calls during their breaks. Additionally, the timing of the driver's schedules and the press of business prevented them from taking rest breaks. Defendant further required employees to remain on premises during their rest breaks. As such, they could not take compliant rest breaks. Even if rest breaks, were taken they were interrupted, not off-duty, and were late or short. When rest periods were not compliant, Defendant failed to pay rest break penalties and/or failed to pay them at the regular rate of pay.

Furthermore, despite Claimant and other aggrieved employees regularly earning bonuses and other remuneration, Defendant did not properly include all those bonuses and other remuneration in the calculation of their regular rates of pay. Therefore, Defendant did not pay Claimant and other aggrieved employees overtime, double time pay, sick and vacation pay and meal and rest break premiums at the correct hourly rates.

Additionally, Defendant required Claimant and other aggrieved employees to work off-the-clock, including but not limited to, working through meal breaks or meal breaks,

being interrupted, working before their shifts, including the time spent before shifts conducting safety checks on their lifts to be ready on time, and working after they clocked out. Due to the press of business and understaffing, Claimant and other aggrieved employees' workloads could not reasonably be completed within their scheduled shifts, which resulted in the off-the-clock work. Defendant did not pay Claimant and other aggrieved employees for these hours worked.

Defendant required Claimant and other employees to incur several necessary business-related expenses and failed to reimburse its employees for these expenses. For example, Defendant also required Claimant and other aggrieved employees to purchase steel-toed boots, uniforms, personal protective equipment, and other equipment for work purposes and did not reimburse them for those business expenses. Defendant also required aggrieved employees to use their phones for work purposes and did not reimburse them. For instance, Defendant required employees to use their cell phones to complete paperwork, attend trainings, and communicate with other person regarding work matters. Defendant's employees also incurred various other business expenses for which they were not reimbursed.

Defendant failed to pay Claimant and similarly situated employees all wages owed timely during employment and upon termination of employment and failed to and continues to fail to provide accurate wage statements and maintain accurate records and wage statements as required by California law. For example, Defendant failed to list the total hours worked and meal and rest break penalties on Claimant and aggrieved employee's wage statements. Employees wage statements were also inaccurate as to the total hours worked, hourly rate, number of hours worked at each hourly rate, and meal and rest break premium payments. Additionally for drivers, they were provided wage statements which showed an hourly rate less than minimum wage. Their wage statements also failed to accurately describe all piece rate unites earned and the respective rates of remuneration for those units, in violation of Labor Code 226.2.

Defendant also violated the California quota laws by failing to provide employees with written descriptions of each quota and any potential adverse employment action that could result from failure to meet the quota. Defendant also violated the quota laws by

requiring employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities, and by taking adverse employment actions against employees, including termination, for failure to meet a quota that did not allow them to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

Defendant paid some driver employees on an incentive basis, which amounts to multiple piece rates, and a weekly guarantee. Defendant's piece rate compensation plans do not compensate for all hours or fractions of hours worked, including because they fail to pay minimum wage for each hour worked and failed to pay overtime. Further, drivers were not compensated for non-driving tasks, such as pick-ups, trainings, time spent waiting for pickups, fueling, on-duty rest breaks, planning to load, pre-trip, and post-trip inspections, receiving a dispatch, dealing with customers, waiting to load/unload, and completing paperwork, among other tasks. Defendant also failed to pay drivers minimum and overtime wages because drivers were required to remain on-duty during their meal. Defendant paid their drivers an hourly rate in addition to piece rates, but that hourly rate is explicitly less than minimum wage.

Furthermore, Defendant improperly classified their drivers as exempt under the Motor Carrier Act ("MCA") exception, Federal Motor Carrier Safety Act (FMCSA), and California Wage Order 9. Because drivers did not meet the test for these exemptions, Defendant were obligated to pay drivers overtime, but failed to do so, and were obligated to provide meal and rest breaks in accordance with California law, but also failed to do so. Accordingly, Defendant violated the law by failing to pay minimum wages for all hours worked, failing to pay overtime wages, and failing to pay for all non-driving time.

FACTUAL BASES & LEGAL THEORIES

SUPPORTING ALLEGED VIOLATIONS OF THE LABOR CODE

Claimant alleges that Defendant's policies, procedures and workplace culture caused various and wide-ranging labor code provision violations, including but not limited to Labor Code §§ 200, 201, 201.3, 202, 203, 204, 204.1, 204.2, 210, 218, 218.6, 223, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 228, 245-249, 256, 500, 510, 512, 558,

558.1, 1021.5, 1174, 1174.5, 1175, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2101-2103, 2698 et seq., 2800, 2802, and the applicable Wage Order(s).

- 1. Defendant failed to pay Claimant and similarly situated employees paid sick leave and COVID-19 supplemental paid sick leave at the correct legal rate; and failed to properly notice Claimant and similarly situated employees of the sick leave they had and have accrued. (Violation of Labor Code §§ 246 through 248.6).**

a. Defendant failed and fails to pay Sick Leave at a legally sufficient rate.

California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. ‘Paid Sick Days’ [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental paid sick leave to employees. Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by total hours. Labor Code § 248.6 mandates the same calculations for COVID-19 supplemental paid sick leave.

When Defendant provided paid sick leave, Defendant refused to include all wages earned (including bonuses) in the calculations, and instead paid sick leave at the employees’ simple hourly rates. Claimant and similarly situated employees are therefore owed compensation for these improperly paid sick time hours.

With respect to driver employees, not all piece rate compensation was included in calculations of “regular rates” for drivers, leading to illegally low rates being paid for sick leave hours.

In failing to pay the proper sick leave rate, Defendant also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

- 2. Defendant failed to pay Claimant and similarly situated employees overtime premium wages at the correct legal rate (Violation of Labor Code §§ 200, 201-204, 210, 226.2, 223, 510, 1194, 1194.2, 1197, 1197.1 1198, and the applicable Wage Order).**

The fundamental right of an employee in the state of California to be paid wages in a timely manner for their work is established by Labor Code § 204, while Labor Code § 1197 requires employers to pay their employees the fixed minimum wage as set by the commission. Pursuant to Labor Code § 1198, it is unlawful to employ persons for more than eight hours per day or forty hours per workweek without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Pursuant to Labor Code § 200(a), wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. An employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked under Labor Code § 1194. As required by Labor Code § 1197.1, an employer must pay a civil penalty if it causes an employee to be paid a wage lower than that of the fixed minimum. *See also* the applicable IWC Wage Order, item 20. Labor Code § 210 provides for an additional civil penalty, independent and apart from any other penalty.

An employee's "regular rate of pay" for purposes of Labor Code § 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v Dart* (2019) 4 Cal 5th 542. Defendant, however, does not comply with the law by including bonuses in the calculation of the regular rate of pay. Rather, Defendant paid Claimant and other aggrieved employees overtime pay based on their basic hourly rates. Claimant and similarly situated employees are owed unpaid overtime premiums.

Labor Code § 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

With respect to driver employees, not all piece rate compensation was included in calculations of “regular rates” for drivers, leading to illegally low rates being paid for overtime hours.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

3. Defendant failed to pay Claimant and similarly situated employees vacation pay at the correct and legal “regular rate of pay.” (Violation of Labor Code § 226.2, 223, 227.3).

Labor Code § 227.3 provides that “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

Claimant and certain other Aggrieved Employees have either resigned from Defendant’s employ or had their employment terminated by Defendant. At all relevant times, Defendant has had an established written policy, practice, or agreement to provide paid vacation to its employees employed in the State of California wherein employees receive additional compensation in the form of vacation time, which they can use to take time off from work with compensation. Upon resignation or termination, Defendant paid Claimant and the other aggrieved employees vested vacation time at an hourly rate of pay

that was lower than their final regular hourly rates of pay, because Defendant failed to include earned bonuses when calculating the regular rate of pay, in violation of Labor Code § 227.3.

Claimant and other aggrieved employees are entitled to civil penalties pursuant to Labor Code § 2699(f)(2) for Defendant's failure to pay such vested, but unused vacation time compensation at the correct rate upon resignation or termination, as set forth above, in violation of Labor Code § 227.3.

With respect to driver employees, not all piece rate compensation was included in calculations of "regular rates" for drivers, leading to illegally low rates being paid for vacation hours.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

4. Defendant failed to pay Claimant and similarly situated employees missed meal and rest break premiums at the correct legal "regular rate of pay." (Violation of Labor Code § 226.2, 226.7, 512, 1198, and the applicable Wage Order).

Labor Code § 512(a) states, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

Section (A) of the "Meal Period" provision of the applicable IWC Wage Order states, "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. An employer may not

employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered and ‘on duty’ meal period and counted as time worked.’” Section (D) states “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

Labor Code §1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 226.7 and the applicable Wage Order(s) requires employers to authorize and permit all employees to take rest breaks, 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 a the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Labor Code § 226.7 states: “(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term “regular rate of compensation” under § 226.7(c) is equivalent to the term “regular rate of pay” under Labor code § 510(a). Accordingly, the meal and rest break premiums owed must be paid at the same rate as would be required under Labor Code § 510(a). On the rare occasions

that Defendant actually paid meal or rest break premiums, those premiums were only paid at the basic hourly rate and did not account for any bonuses paid. Accordingly, Defendant violated Labor Code § 226.7(c).

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

With respect to driver employees, not all piece rate compensation was included in calculations of “regular rates” for drivers, leading to illegally low rates being paid for missed meal and rest break premium wages.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

5. Defendant failed to pay all Regular and Overtime Wages (Off-the-Clock Work). (Violation of Labor Code §§ 200, 201-204, 226.2, 223, 510, 1194 & 1198)

Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser wage, 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.” Liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 1197 states “The minimum wage for employees fixed by the

commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Labor Code section 1197.1 (a) states “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Labor Code section 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Section (B) of the “Minimum Wages” provision of the applicable IWC Wage Order states “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

As set forth above, Defendant required Claimant and other aggrieved employees to work off-the-clock before their shifts. Claimant and other aggrieved employees regularly worked more than eight hours a day and more than 40 hours a week, however, Defendant did not compensate Claimant and other aggrieved employees for the time spent working for Defendant before they clocked in or after they clocked out, or time spent working during meal periods.

Additionally, Defendant paid driver employees on an incentive basis, which amounts to multiple piece rates, and a weekly guarantee. Defendant's piece rates do not compensate for all hours or fractions of hours worked. Defendant paid these driver employees an hourly rate in addition to piece rates, but that hourly rate is explicitly less than minimum wage. Defendant's illegal piece rate compensation structure further failed to pay drivers for non-driving tasks, such as pick-ups, trainings, time spent waiting for pickups, fueling, on-duty rest breaks, planning to load, pre-trip, and post-trip inspections, receiving a dispatch, dealing with customers, waiting to load/unload, and completing paperwork, among other tasks. Defendant further failed to pay drivers overtime when they worked more than 8 hours per day or 40 hours per week. Accordingly, Defendant failed to pay drivers minimum wage for all hours worked.

Furthermore, Defendant classified its drivers as exempt from overtime under the MCA exception, FMCSA, and California Wage Order 9. However, drivers did not meet the exemption test for overtime under the FMCSA or under the California Wage Order. Thus, drivers were not properly paid for overtime hours worked.

Generally, under California law all hours and fractions of hours must be paid at a rate not less than minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314; *Gonzales v Downtown LA Motors*, (2013) 215 Cal. App. 4th 36; *Bluford v Safeway* (2013) 216 Cal.App.4th 864; *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 9; *Troester v Starbucks*, (2018) 5 Cal.5th 829; *Camp v. Home Depot U.S.A., Inc.*, (2022) 84 Cal. App. 5th 638.

Under case law and the Labor Code, if an employer pays employees an hourly rate at least minimum wage then they need not pay an additional amount for "unproductive time", or time not otherwise compensated by a piece rate. *Williams v J.B Hunt* (No. 24-933 (9th Cir. August 2025)); See LC 266.2 (a)7.

Additionally, under *Oman* a set pay for sufficiently described whole day's activity (and backed up by an alternative hourly rate at or above minimum wage) can be considered a single piece rate for the full day. *Oman v Delta Airlines*, (2020) 9 Cal.5th 762.

Penske cannot rely on *Oman* or *Williams* due to it paying an hourly rate less than

minimum wage. *Oman* is distinguishable to the conditions of Defendant's drivers for several reasons. First, upon knowledge and belief, the drivers do not bid on routes which have the driver's activities and pay mapped out in detail in advance with their pay computed in advance. The specificity in advance is the gravamen of how the *Oman* flight attendants' shifts could be seen as a single piece rate. Furthermore, in the case of Defendant's drivers there is no hourly rate (known in advance) that is at or above minimum wage. Here, drivers do not know that they will be paid at an hourly rate greater than minimum wage, on the contrary, Defendant paid hourly rates less than minimum wage. Defendant will likely object that with the weekly minimum drivers are always paid an average hourly rate well above minimum wage. But California law does not allow for weekly averaging to meet minimum wage.

Similarly, the logic of the *Williams* case relies on the fact that the employees in that matter knew in advance that they would receive an hourly rate above minimum wage, and then additional bonus or incentive pay above that amount. Here, the hourly rate paid by Defendant is not at or above minimum wage – it's below it. As such, Claimant and other aggrieved employees are owed unpaid hours. Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

6. Defendant refused and failed to provide legally compliant meal periods or compensation in lieu thereof (Violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order).

Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* the applicable IWC Wage Order, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal

period of at least thirty (30) minutes. Labor Code § 512; the applicable IWC Wage Order, item 11. If the employer fails to provide an employee with a legally compliant meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Labor Code § 226.7; the applicable IWC Wage Order, item 11.

Claimant contends that as a policy, practice, guideline and/or procedure, Defendant failed to provide meal breaks to its employees. Specifically, Defendant made it impossible for employees to take compliant meal breaks by penalizing them for taking their full breaks. Furthermore, when meal periods were provided, they were often after the end of the fifth hour of work or after the end of the tenth hour of work, were short, interrupted, and/or not duty free. As such, Claimant and similarly situated employees were not relieved of duty and not provided legally adequate meal breaks. Claimant and aggrieved employees were also required to complete their assignment, park their lifts, doff personal protective equipment, and walk several minutes to their break area before taking their meal break, and perform the reverse before their thirty (30) minute meal period was finished. This resulted in meal breaks that were less than thirty minutes, skipped meal breaks, late meal breaks, and/or breaks that were not duty-free. Claimant and aggrieved employees were also interrupted by work assignments and/or required to be on-duty during their breaks. Consequently, Claimant and aggrieved employees are entitled to receive one additional hour of pay at their regular rate of compensation for each day a compliant meal period was not provided.

Moreover, Defendant classified their drivers as exempt from California's meal break rules under the MCA, FMCSA and California Wage Order. However, for the reasons explained above, Defendant's drivers failed to meet the exemption test, resulting in non-compliant meal periods. Furthermore, drivers were required to be on-duty during their meal break because they were required to monitor their truck and cell phone at all times. Defendant's schedule for drivers prevented and discouraged drivers from taking meal breaks in order to meet the scheduled arrival times. As such, Defendant's drivers are similarly entitled to receive one additional hour of pay at their regular rate of compensation for each day a compliant meal period was not provided.

When Claimant and aggrieved employees experienced meal period violations, Defendant failed to pay all meal break premiums due to employees.

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

7. Defendant refused and failed to authorize and permit legally compliant rest periods or compensation in lieu thereof (Violation of Labor Code § 226.7 and the applicable IWC Wage Order).

The applicable IWC Wage Order, item 12 requires employers to authorize and permit off-duty rest periods during which an employee must be relieved of any and all work-related duties. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is not provided where an employer fails to relinquish control over how employees spend their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of pay at the employee’s regular rate of pay for each workday in which a lawful rest period was not provided. *See also* the applicable IWC Wage Order.

Defendant consistently failed to provide rest periods and, even when they were provided to employees, the rest periods were less than 10 minutes, interrupted, and/or late. For example, Defendant required Claimant and aggrieved employees complete their assignment, park their lifts, doff personal protective equipment, and walk several minutes to their break area before taking their rest break, and perform the reverse before their ten

(10) minute rest period was finished. This resulted in rest breaks that were less than ten minutes and late. As a result, Claimant and similarly situated employees of Defendant have and are being denied legally sufficient rest breaks.

Moreover, Defendant classified their drivers as exempt from California's rest break rules under the MCA, FMCSA and California Wage Order. However, for the reasons explained above, Defendant's drivers failed to meet the exemption test, resulting in non-compliant rest periods. Furthermore, drivers were required to be on-duty during their rest break because they were required to monitor their truck and cell phone at all times. Defendant's schedule for drivers prevented and discouraged drivers from taking rest breaks in order to meet the scheduled arrival times. As such, Defendant's drivers are similarly entitled to receive one additional hour of pay at their regular rate of compensation for each day a compliant rest period was not provided.

When Claimant and aggrieved employees experienced rest period violations, Defendant failed to pay all rest break premiums due to employees.

Labor Code section 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

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- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

8. Defendant failed to reimburse business expenses. (Violation of Labor Code § 2802)

Labor Code section 2802(a) provides in pertinent part, "[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, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Defendant required Claimant and other aggrieved employees to incur several necessary business-related expenses and failed to reimburse its employees for these expenses. For example, Defendant required employees to purchase steel-toed boots, uniforms, personal protective equipment, and other equipment for use in the workplace, but did not reimburse or did not fully reimburse its employees for this business expense.

Defendant also required Claimant and other aggrieved employees to have and use their personal cell phones for work, but failed to reimburse any amount for cell phone use. Employees also incurred other necessary expenses in the scope and course of their duties and Defendant did not fully reimburse its employees for these necessary expenses.

Claimant and other aggrieved employees are entitled to recover these expenses. Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

9. Defendant failed to timely pay wages. (Violation of Labor Code §§ 201-204, 210, 1198 and the applicable IWC Wage Order)

Labor Code § 204 subsection (a) states in relevant part “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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. Labor performed between the 1st and

15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Labor Code § 204 subsection (b)(1) states: “Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, or willful and intentional violation, plus 25 percent of the amount unlawfully withheld.

Due to Defendant failure to pay correct legal rates, failure to provide premium payments for meal and rest breaks, and failure to pay minimum and overtime wages as alleged above, Defendant do not pay all wages during employment and upon separation. In addition, Defendant failed to pay meal and rest break premiums, Defendant failed to pay all minimum, regular, overtime, and meal and rest period wages due and owing either on the regular paydays or the payday for the next payroll period and upon separation. Defendant willfully failed to pay all wages when required by §§ 201-204 of the Labor Code. Therefore, Defendant owes penalties to all affected employees including Claimant. Claimant will pursue all remedies for Defendant’s failure to pay timely wages on behalf of himself and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

10. Defendant failed to provide accurate wage statements and maintain accurate records. (Violation of Labor Code §§ 226(a), 226(e)(1), 226.2, 226.3, 1174, 1174.5, 2698 et seq., and the "Records" Section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and 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 the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial 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.”

In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Section (B) of the “Records” provision of the applicable IWC Wage Order states that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the

name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

Labor Code § 1174(d) provides that an employer must keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, employees employed at the respective establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to maintain the records pursuant to Labor Code section 1174(d).

Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage Order provides that employers shall keep accurate information with respect to each employee, including total wages paid each payroll period, total hours worked during the payroll period, and applicable rates of pay, as well as time records showing when each employee begins and ends each work period. The time records must also show meal periods, split shift intervals, and total daily hours worked.

Defendant failed to maintain records as set forth in the applicable Labor Code sections and the “Records” section of the applicable IWC Wage Order including but not limited to, accurately recording applicable rates of pay, failing to keep records of the total hours worked, including off-the-clock time, overtime, work performed during meal breaks, and premiums paid. As to Defendant’ driver employees, Defendant failed to keep records of non-productive hours, off-the-clock work, total hours worked, meal breaks, and premiums paid to employees.

Defendant also failed to provide accurate itemized wage statements as required by Labor Code §226 because Defendant failed to list all required information on the wage statements, including but not limited to total wages, net wages, meal and rest break premiums, applicable hourly rate and hours worked at each rate, and the total hours worked.

Due to Defendant not paying for all hours worked, not paying for overtime hours worked, not properly compensating drivers on a lawful piece rate compensation structure,

not paying at legally required rates, and not paying meal and rest period premiums, Defendant do not accurately record the total hours worked, the applicable wage rate and hours worked at each rate, amount of paid sick leave available, among other items. As a result, Defendant do not provide legally compliant wage statements accurately accounting for hours, wages, deductions, etc.. Nor do the wage statements properly state the name and address of the legal entity that is the employer.

With respect to driver employees, Defendant failed to provide accurate wage statements. Defendant provided wage statements which showed an hourly rate less than minimum wage. This is inaccurate by law. Either Defendant misstated the amount being paid, and the wage statements are therefore inaccurate, or correctly stated the amount which is an illegally low hourly rate (and is inaccurate by way of law). Additionally, Defendant provided wage statements which failed to accurately describe all piece rate unites earned and the respective rates of remuneration for those units, in violation of Labor Code 226.2.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

11. Defendant failed to pay all wages due on termination. (Violation of Labor Code §§ 201, 202, 203, 204, 1198, 2698 et seq., and the applicable IWC Wage Order)

Labor Code § 201 states “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states “If 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.”

Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 204(a) states in pertinent part “All wages... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Due to Defendant not paying correct legal rates as alleged above, Defendant do not pay all wages. In addition, Defendant failed to pay meal and rest break premiums. In addition, Defendant failed to pay Claimant all minimum, regular, overtime, and meal and rest period wages due and owing during and upon termination of employment. Defendant willfully failed to pay all wages when required by §§ 201 and 202 of the Labor Code. Therefore, Defendant owes waiting time penalties to all affected employees including Claimant. Claimant will pursue all remedies for Defendant’s failure to pay timely wages on behalf of himself and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

12. Defendant violated warehouse quota laws (Violation of Labor Code § 2100 et seq.)

Labor Code § 2101 provides that each employer that employs 100 or more employees at a single warehouse distribution center in California, or 1,000 employees at one or more warehouse distribution centers in California, shall provide upon hire or within 30 days of the effective date of this part, a written description of each quota to

which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

Labor Code § 2102 provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

Labor Code § 2103 provides:

(a) Any actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards shall be considered time on task and productive time for purposes of any quota or monitoring system.

(b) Notwithstanding subdivision (a), consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call.

Defendant failed to provide employees with a written description of applicable quotas and any potential adverse employment action that could result from failure to meet the quota. Defendant also required Claimant and other aggrieved employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities. Similarly, the quota system prevented Claimant and similarly situated employees from taking breaks because it failed to account for or treat time traveling to and from break areas as productive in the quota such that Claimant and similarly situated employee were penalized under the quota for taking breaks.

Defendant took adverse employment actions against Claimant and other aggrieved employees, including termination, for failure to meet a quota that did not allow them to take meal and rest periods and use the bathroom facilities, including reasonable

travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them as required by § 2101.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. If Claimant becomes aware of additional claims, additional compensation owed or other violations to him or any other current and former employee of Defendant, he reserves the right to revise these facts and/or add any new claims by amending this written notice.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Sincerely,



Ben Travis
Ben Travis Law, APC



Justin Hewgill
EMPLOYEE JUSTICE LEGAL GROUP

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CSC- LAWYERS INCORPORATING SERVICE

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Amended PAGA Notice
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