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June 22, 2026

Filed Online

Labor and Workforce Development Agency /
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

Via Certified U.S. Mail – Return Receipt Requested

Performance Food Group, Inc.
12500 West Creek Parkway
Richmond, Virginia 23238

Performance Food Service
5840 Monterey Road
Gilroy, California 95020

Re: Notice Pursuant to California Labor Code § 2699.3

To Performance Food Group, Inc., Performance Food Service and Representatives of the
LWDA:

My firm represents Ms. Patricia Hurtado (“Ms. Hurtado”), a current, non-exempt employee of Performance Food Service, a division of Performance Food Group, Inc. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, and all amendments relating thereto, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001¹, which Ms. Hurtado alleges that Performance Food Group, Inc. (referred to as “Employer”), and any and all related entities have violated certain provisions of the California Labor Code as set forth herein which includes the facts and theories to support the alleged violations.

¹Hereinafter, when reference is made to IWC Wage Order No. 7-2001, it shall include reference to corresponding sections of IWC Wage Order Nos. 1-2001, 9-2001 and any other Wage Orders that are or may be applicable.

Ms. Hurtado hereby provides this notice to Employer and pursuant to California Labor Code § 2699.3. In that respect, my office is investigating a potential representative action on behalf of all current and former, non-exempt hourly-paid employees, who worked at Employer's distribution, manufacturing and warehouse facilities within the State of California ("aggrieved employees") regarding Employer's unlawful policies and practices with respect to their employment, and more specifically, violations of California wage and hour laws, as described in detail below.

Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the California Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer and any and all related and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

This letter also serves as notice of Ms. Hurtado's demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Ms. Hurtado's employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

PRELIMINARY STATEMENT

Among other things, Ms. Hurtado alleges that Employer is liable for the following: failure to provide meal, rest and recovery periods to aggrieved employees, in violation of California Labor Code §§ 226.7, 510, 512, 558, 1194, 1197, California Code of Regulations, Title 8, Section 3395 and Wage Order No. 7-2001, §§ 11-12 (including requiring employees to carry walkie-talkies during meal periods and rest periods, auto-deducting meal periods, and not permitting aggrieved employees to leave the work premises when taking meal, rest and recovery periods); failure to pay one additional hour of compensation to aggrieved employees at their regular rates of pay for each

work day that a meal, rest or recovery period is not provided, in violation of California Labor Code § 226.7 and Wage Order No. 7-2001, §§ 11(B) and 12(B) (including the failure to pay premium payments at the regular rate of pay) and California Code of Regulations, Title 8, Section 3395; failure to pay aggrieved employees overtime wages, and failure to properly calculate overtime wages, in violation of California Labor Code §§ 510, 1194, 1198, and Wage Order No. 7-2001, § 3 (including off the clock work, failing to pay for travel time, not paying at the regular rate, failing to pay for training time, reporting time pay, split-shifts, rounding time worked when Employer maintains records of all time worked to the second, editing/manipulating time entries, pre-and post-shift work, including but not limited to, donning and doffing uniforms and safety equipment, failure to pay the regular rate of pay based upon nondiscretionary bonus, commission, incentive payments); failure to pay minimum and straight time wages to aggrieved employees in violation of California Labor Code §§ 510, 1194 and IWC Wage Order No. 7-2001, § 4; failure to timely pay aggrieved employees all wages due, in violation of California Labor Code §§200, 204 and 210; willful failure to pay discharged or quitting aggrieved employees all wages due, in violation of California Labor Code §§ 201, 202, and 203; unlawful withholding of wages, vacation pay and the failure to pay at separation, in violation of California Labor Code §§ 221, 227, and 227.3; failure to provide accurate itemized wage statements to aggrieved employees, in violation of California Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of aggrieved employees, in violation of California Labor Code §§ 1174, 1174.5, and Wage Order No. 7-2001, § 7; failure to indemnify aggrieved employees for employment expenditures, and/or losses, in violation of California Labor Code § 2802; failure to implement a workplace violation policy, in violation of Labor Code §§6401.7 and 6401.9; failure to comply and implement Heat & Temperature Illness Program, in violation of Labor Code §§6721, Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard; and the failure to comply with California's warehouse and quota laws, in violation of Labor Code §§2100, 2102, 2103, and 2104.

FACTS AND THEORIES

Ms. Hurtado was hired by Employer and worked at its facility which is located at 5480 Monterey Road, Gilroy, California 95020. Ms. Hurtado began her employment in May of 2024 and is currently employed. Ms. Hurtado was hired as an Order Selector and Pallet Wrapper and her duties and responsibilities include but are not limited to picking, packing, stacking and wrapping pallets, and operating a pallet jack to transport the wrapped pallets to the trailer truck doors in preparation for shipment, use a cherry picker to select products for shipment, and other duties and responsibilities as assigned by Employer. Ms. Hurtado's position is hourly, non-exempt earning \$23.50 per hour. Employer is a wholesale foodservice distributor. Employer buys food and food-related products and distributes its products wholesale to restaurants, healthcare facilities, schools, hospitality, and convenience channels operating through its foodservice, Vistar, and convenience segments. Its principal business purpose is purchasing and distributing goods at wholesale, not

manufacturing or transportation as standalone enterprises. Employer operates three (3) wholesale food distribution facilities in the State of California, including Gilroy, Stockton and the City of Industry, California and are involved with the shipment of foods and other products by way of interstate commerce.

Ms. Hurtado, on behalf of herself and all other aggrieved employees during the one (1) year preceding the date of this notice letter, provides notice to Employer of the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512, 558, 2103, and IWC Order No. 7-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Non-exempt employees are also entitled to two (2) meal periods of not less than thirty (30) minutes for a work period longer than ten (10) hours. An employer is required to pay one (1) hour of compensation for each missed or non-compliant meal periods to its non-exempt employees.

Employer regularly does not allow their non-exempt employees, including Ms. Hurtado, to take a full thirty (30) minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). Among other things, Employer also did not properly notify their non-exempt employees of their rights under California law to take timely, uninterrupted meal periods (including the right to second meal periods during shifts of longer than ten (10) hours), and thus, aggrieved employees like Ms. Hurtado were left in the dark as to when or for how long they could take their meal periods. Employer also implemented an unlawful meal period policy by compensating non-exempt, hourly employees for interrupted meal periods only for their actual work time, as opposed to paying them legally required premium payments.

Moreover, Employer required aggrieved employees to work through their meal periods and maintaining control over aggrieved employees while they attempted to take their thirty (30) minute meal periods (not allowing aggrieved employees to leave their work locations, requiring aggrieved employees to carry cell phones and walkie-talkies); and other methods to be discovered.

To the extent Employer had any type of policy regarding the provision of meal periods to their non-exempt employees, Employer's policies and procedures were to actively discourage such meal periods. Employer consistently denied Ms. Hurtado and the other aggrieved employees compliant meal periods forcing Ms. Hurtado take meal periods after working longer than five (5) hours, perform work during their meal periods, having their meal periods interrupted, returning

to work after taking less than a thirty (30) minute meal period or miss her meal periods entirely.

Finally, Ms. Hurtado and the other aggrieved employees were not credited with time on task even though they were required to be on call or on standby during meal periods in violation of Labor Code § 2103. Employer's excessive quotas, policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Hurtado and other aggrieved employees from taking timely, complete and duty-free meal periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Ms. Hurtado and other aggrieved employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Ms. Hurtado and other aggrieved employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Ms. Hurtado and other aggrieved employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Ms. Hurtado and other aggrieved employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person oral interruptions; and, (7) Employer's policies and culture prevented Ms. Hurtado and other aggrieved employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on meeting unlawful quota and production demands and/or completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods. Ms. Hurtado and the other aggrieved employees were adversely and unlawfully impacted by Employer's meal period policies which discouraged them from taking legal breaks to meet Employer's quota requirements.

As such, Employer's policies and practices prevented aggrieved employees from complying with California's meal period laws pursuant to California Labor Code § 2102 which states, "*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 § 2101.*"

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 7-2001 by willfully failing to compensate Ms. Hurtado and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of

compensation at their regular rates of pay for each workday that a compliant meal period was not provided.

II. Rest Period Violations

Employer failed to authorize and permit Ms. Hurtado and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 7-2001, § 12. California Employers are required to provide a ten (10) minute rest period for every four hours worked or “major fraction” thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided. Ms. Hurtado and other aggrieved employees were not provided with uninterrupted, duty-free rest periods, and second uninterrupted, duty-free rest periods when they worked more than six (6) hours in a day, or third uninterrupted, duty-free rest periods after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Hurtado and other aggrieved employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.

As with meal periods, Employer’s policies and practices caused Ms. Hurtado and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing and unrealistic project goals and deadlines. For example, Ms. Hurtado was constantly busy working and performing her job duties that he could not take complete and uninterrupted rest periods. In addition, Employer did not adequately notify aggrieved employees of their rights to take rest periods, and systematically denied them the opportunity to take rest periods. Employer also maintained complete control over the aggrieved employees when they attempted to take rest periods (not allowing aggrieved employees to leave work their work locations, requiring aggrieved employees to carry cell phones and walkie-talkies); and other methods yet to be discovered.

Additionally, Employer’s excessive quotas, policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Hurtado and other aggrieved employees from taking timely, complete, and duty-free rest periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer management at various levels, affecting all hourly, non-exempt warehouse employees, failed and refused to implement and enforce legally compliant rest period policies and practices and instead aggressively pushed aggrieved employees to meet excessive quotas; (3) Employer failed to adequately inform and train managers, leads, supervisors and foreman and aggrieved employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Ms. Hurtado and other aggrieved employees about their right to

premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing (except to utilize staffing agencies to replace employees who failed to meet quota) to allow Ms. Hurtado and other aggrieved employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer requires Ms. Hurtado and other aggrieved employees to remain on-call and respond to work-related requests at all times, including during rest periods, recovery periods, and meal periods, which included responding to in-person oral interruptions; and, (7) Employer's policies and culture prevented Ms. Hurtado and other aggrieved employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing quotas, production demands, and other job requirements over the employees' right to receive legal rest periods. Furthermore, aggrieved employees were adversely impacted by Employer's meal, recovery and rest period policies which discouraged them from taking legal breaks to meet Employer's quota requirements. Employer in fact enforced silent quotas which adversely impacted aggrieved employees' rights under Labor Code § 2102, and which prevented them from complying with California's rest, meal, and recovery period laws.

As such, Employer's policies and practices prevented employees from complying with California's Labor Code § 226.7 legal right to rest, recovery and meal period laws all in violation of California Labor Code § 2102 which states, "*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 § 2101.*"

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 7-2001, § 12 by failing to pay Ms. Hurtado and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Recovery Period Violations

Employer failed to provide recovery periods to the aggrieved employees as required under California Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Employer is required to provide recovery or "cooldown" periods to non-exempt employees in order to prevent heat illness. Employer in fact discouraged recovery periods and pressured aggrieved employees to utilize meal and rest period time as recovery periods and use of bathroom facility time. Further, Employer is required to pay one (1) additional hour of compensation at the non-exempt employee's regular rate of pay for each workday in which the recovery period is not provided.

To the extent that Employer provided for cooling down periods or for any reason related to wellbeing, health and safety, or heat illness prevention, aggrieved employees were discouraged from taking recovery periods. Employer also failed to disclose to Ms. Hurtado and aggrieved employees of their right to recovery periods. Further, if aggrieved employees complained or did not accede to Employer's unlawful policies, they were verbally reprimanded, written up negatively for performance, ranked as unproductive or ranked as low performers and targeted for termination, were terminated, and/or adversely impacted by Employer's quota requirements in violation of Labor Code § 2102.

Furthermore, Employer's facilities are routinely subject to extreme heat/humidity and cold thereby increasing the need for recovery periods. As an example, the temperature at Employer's facilities during the summertime routinely exceeds 82 degrees during the summertime months. The humidity also reaches unsafe levels especially on days when the temperature exceeds 82 degrees for employees who are exposed. Despite Employer's knowledge of the excessive heat, Employer does not provide heat illness prevention or comply with California law as Employer failed to take appropriate and necessary action to provide heat relief or cooling down areas and/or recovery periods. Employer has failed to take any remedial measures to abide by California's heat-illness and prevention measures including failing to provide recovery periods, to the extent Employer took any action, the steps taken by Employer was superficial and inadequate.

During certain parts of the year, Ms. Hurtado and the other aggrieved employees worked in excessive heat and were not provided with recovery periods. This work is frequently performed over the course of many hours in heat exceeding 82 degrees Fahrenheit. Despite these work conditions, Employer failed to implement any policy or practice of providing proper recovery periods to their non-exempt employees. Employer similarly failed to make any efforts to comply with heat illness prevention regulations by providing for recovery periods or by supplying sufficient amounts of drinking water. There have been many days when Employer did not provide aggrieved employees with any water, and aggrieved employees had no knowledge they were entitled to take recovery periods and thus they never took them.

Employer further violated California Labor Code § 226.7 by failing to pay aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a recovery period was not provided.

IV. Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1194 and IWC Wage Order No. 7-2001, § 3, Employer is required to compensate Ms. Hurtado and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of

eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Ms. Hurtado and other aggrieved employees are entitled to the protections of California Labor Code §§ 510, 1194 and IWC Wage Order No. 7-2001. Employer has failed to compensate Ms. Hurtado and other aggrieved employees for all overtime hours worked by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and IWC Wage Order No. 7-2001, § 3; requiring, permitting or suffering Ms. Hurtado and other aggrieved employees to work off the clock; requiring, permitting or suffering Ms. Hurtado and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; failing to pay for travel time; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay and meal, rest and recovery period premiums owed and due based upon nondiscretionary bonus, commission and incentive payments; failing to pay overtime wages due to split-shifts and reporting time pay; illegally and inaccurately recording time in which Ms. Hurtado and other aggrieved employees worked; failing to pay for training time; rounding time worked by despite the fact Employer maintained records of all time worked, manipulating time cards; rounding the time worked unfavorably to the aggrieved employees; failing to pay for pre-work and post-work; and other methods to be discovered.

Employer has refused to perform their obligations to compensate Ms. Hurtado and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and IWC Wage Order No. 7-2001, § 3.

V. Failure to Pay Minimum or Straight Time Wages

Pursuant to California Labor Code §§ 1194, 1197, 1197.1, and IWC Wage Order No. 7-2001, § 4, payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Employer have failed to pay Ms. Hurtado and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Ms. Hurtado and other aggrieved employees to work off the clock; requiring, permitting or suffering Ms. Hurtado and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; illegally and inaccurately recording and rounding time that Ms. Hurtado and other aggrieved employees worked; failing to pay for training time; rounding and/or manipulating time cards; failing to pay for pre-work and post-work; failing to pay for reporting time pay and split-shifts; and other methods to be discovered.

VI. Failure to Timely Pay All Wages Earned

Employer violated California Labor Code §§200, 204 and 210. California Labor Code §200 provides an employer must compensate and employee for wages earned based upon the employee's labor. Further, California Labor Code § 204 provides that 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. Next, California Labor Code §210 provides that an employer is liable for penalties in the amount of one hundred dollars (\$100) for each failure to pay each employee, and for each subsequent violations, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee in addition to twenty-five (25) percent of the amount unlawfully withheld.

Employer failed to pay Ms. Hurtado, and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Ms. Hurtado, and other aggrieved employees for work they performed off the clock; failing to pay them proper overtime and minimum wages; failure to pay premium payments for noncompliant meal periods and missed rest periods; requiring them to work through their meal and rest periods without proper compensation and/or remuneration; failing to pay the regular rate of pay; unlawful rounding of time, failing to reimburse them for employment-related expenses; and other methods to be discovered. Employer knew it was required to pay Ms. Hurtado, and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet Employer willfully and knowingly failed to do so.

VII. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California Employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, a California employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-

exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, has required aggrieved employees to work off the clock without compensation, has required them to work through their meal and rest periods without proper compensation and/or remuneration, failed to pay premium payments for missed/noncompliant meal, recovery and rest periods; and has illegally rounded the time worked by Ms. Hurtado and other aggrieved employees in a one-sided manner in favor of Employer, alternatively, paying Ms. Hurtado and the other aggrieved employees based upon rounded time despite the fact it maintains records of all hours worked, Employer willfully failed and continues to fail to pay wages due to Ms. Hurtado and other aggrieved employees in accordance with California Labor Code §§ 201 and 202. For instance, Employer failed to pay all vested vacation pay wages when Ms. Hurtado was separated from her employment.

VIII. Unlawful Withholding of Wages, Vacation Pay and Failure to Pay at Separation

Labor Code §221 provides it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Further, Labor Code §227 provides that it is unlawful if an employer has made withholdings from an employee's wages pursuant to state, local, or federal law, or has agreed with any employee to make payments to a health or welfare fund, pension fund, or *vacation plan*, or other similar plan for the benefit of the employees, or a negotiated industrial promotion fund, or has entered into a collective bargaining agreement providing for these payments, it shall be unlawful for that employer willfully or with intent to defraud to fail to remit the withholdings to the proper agency or to fail to make the payments required by the terms of that agreement.

Moreover, Labor Code §227.3 provides whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to an employee as wages at his or her 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 separation of employment. Here, Employer failed to pay all vested vacation wages at the time of separation to aggrieved employees. Employer wrongfully withheld some or all vacation pay earned and payable to aggrieved employees. As a result, Employer violated Labor Code §§221, 227 and 227.3.

IX. Failure to Maintain Required Records

Employer fails to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001, §7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; split-shifts; all deductions; meal

periods; regular rate of pay; time records showing when each employee begins and ends each work period; and provide accurate itemized statements that reflect all compensation and remuneration owed and due to them. Employer has knowledge that it is not providing its non-exempt employees with proper meal recovery and rest periods but omits from the wage statements such compensation and/or remuneration. Additionally, Employer requires aggrieved employees to work through meal, rest and recovery periods and work off the clock and fails to record this time or compensate them for this time. Finally, Employer failed to maintain records relating to a Workplace Violence Protection plan, Heat Protection Plan and records relating to quotas applied to Ms. Hurtado and the other aggrieved employees.

X. Failure to Furnish Accurate Itemized Wage Statements

Employer fails to provide Ms. Hurtado and other aggrieved employees with timely, accurate, and itemized wage statements (i.e., pay stubs) in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Ms. Hurtado and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period (including split-shifts and reporting time pay) and the corresponding number of hours worked at each hourly rate, premium pay for missed meal, rest and recovery periods, all in violation of California Labor Code § 226 and IWC Wage Order No. 7-2001, § 7.

Employer's wage statements violate California Labor Code § 226 because they omit required information. Employer has not been providing Ms. Hurtado and other aggrieved employees with proper meal and rest periods but intentionally fail to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each missed or non-compliant meal, rest and recovery periods. In addition, Employer does not properly pay Ms. Hurtado and the other aggrieved employees overtime by not compensating them for all time worked, or include hours worked while working during their meal and rest periods resulting in inaccurate wage statements. In particular, Ms. Hurtado has not been provided with a wage statement in violation of California Labor Code § 226.

XI. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code sections 2800 and 2802 require an employer to reimburse their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of her or her obedience to the directions of the Employer. The applicable IWC Wage Order requires Employer to provide aggrieved employees with the tools or equipment necessary for the performance of their job.

During the relevant time period, Ms. Hurtado and other aggrieved employees incurred necessary business-related expenses and costs that Employer did not fully reimburse. These costs include but are not limited to the use of Ms. Hurtado and other aggrieved employees' personal cell phones to send and receive messages and calls with supervisors to communicate their duties and the scope of work. Aggrieved employees were also required to purchase items such as uniforms, accessories, gloves, boots, safety vests, or work shoes, and other sundry tools for the benefit of Employer without reimbursement. Accordingly, Employer violated IWC Wage Order 7-2001, all related wage orders, and California Labor Code §§2800 and 2802.

Ms. Hurtado, for herself and other aggrieved employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of all applicable IWC Wage Order; and attorneys' fees and costs.

XII. Failure to Implement a Workplace Violence Prevention Policy

California Labor Code §§6401.7 and 6401.9 required Employer to develop and implement a workplace violence prevention plan in accordance with newly codified Labor Code section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Employer was required to establish, implement, and maintain a Workplace Violence Prevention Plan that includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain records relating to workplace violence which includes, records of workplace violence hazard identifications, evaluations, and correction must be created and maintained for a minimum of five years; training records must be created and maintained; incident logs; and records of workplace violence incident investigations under must be maintained.

Here, Employer willfully failed to implement a Workplace Violence Prevention Policy starting on or about July 1, 2024. Ms. Hurtado and the other aggrieved employees are entitled to recover penalties up to \$25,000 for serious violations, and up to \$158,727 for "willful" violations. See, Labor Code §§6401.7, 6401.9, 6428, and 6429.

XIII. Failure to Implement Heat & Temperature Illness Prevention Laws

On June 20, 2024, the Occupational Safety and Health Standards Board approved California Code of Regulations, Title 8, section 3396, "Heat Illness Prevention in Indoor Places of Employment". This standard applies to most workplaces where the indoor temperature reaches 82°F. It established required safety measures for indoor workplaces to prevent worker exposure to risk of heat illness. This standard went into effect on July 23, 2024.

Employer failed to maintain adequate temperatures which created excessive heat or humidity exposing Ms. Hurtado and the other aggrieved employees to temperature related hazards. Employer failed to maintain a comfortable working environment. For instance, Employer's distribution and warehouse facilities do not have air conditioning and during the summertime months it would get exceedingly hot often exceeding 82 degrees Fahrenheit. Ms. Hurtado and the other aggrieved employees would get hot and disoriented due to the heat and based upon Employer's failure to implement a Heat Wellness policy. Employer failed to comply with the mandates of the new OSHA regulations and California law.

The applicable provisions of the IWC Wage Orders require temperature to be maintained at comfortable levels. Section 15 of the Wage Orders states the following:

"15. Temperature

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60 (degrees), a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 60 degrees.

(C) A temperature of not less than 68(degrees) shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section."

Pursuant to Section 15(b), Employer has an affirmative duty to prevent and reduce excessive heat or humidity created by the work environment, location, department or any other area of work that creates excessive wear and where employees are exposed to heat illness thereby requiring safety measures including, but not limited to, recovery periods. Employer, however, has no written policy regarding preventative measures as required by California law or as required by Labor Code § 226.7 and the recently enacted OSHA standards requiring employer to take affirmative measures to prevent heat illness for indoor employees pursuant to California Code of Regulations, Title 8, section 3395 Heat Illness Prevention, Labor Code §§ 6308, 6317 and any other statutes conferring enforcement powers upon the Division.

Pursuant to California Labor Code §6721, Employer is mandated to implement indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of

the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard. Employer failed to implement Indoor Heat Prevention policies at Employer's distribution and warehouse facilities throughout the State of California. Section 3396 required Employer to establish, implement, and maintain an effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in writing and include procedures for water provision, access to cool-down areas, temperature measurement, emergency response, and acclimatization. Employer failed to establish, implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor places of employment for Ms. Hurtado and the other aggrieved employees.

Employer's failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations will result in the imposition of substantial civil penalties. In particular, California Labor Code §6428 provides that any employer which violates any occupational safety or health standard shall be assessed a civil penalty of up to \$25,000 for each serious violation. Employer's who operate without a temperature prevention program can be assessed heightened penalties of up to \$124,709. See, California Labor Code §6429.

XIV. Violation of Labor Code §§2100-2112 Failure To Provide Notice and Implementation of Illegal Quota System

California Labor Code §§2100-2112 were implemented by the California State Legislature based upon the understanding that warehouse distribution operations implement high volume production goals, and that employee productivity tracking technology is being used to ensure quicker delivery to customers and consumers, often at the expense of the aggrieved employee. The State of California has declared that current warehouse quotas do not allow for compliance with safety guidelines or recovery from strenuous activity during work, and instead "incentivize unsafe work" by causing employees to miss breaks, which places them at a high risk of injury or illness. Employer is increasing warehouse productivity quotas as a means to counterbalance the higher minimum wages in place throughout California.

California Labor Code §2100 applies to any non-exempt, hourly employee such as Ms. Hurtado and the other aggrieved employees who work at warehouse distribution centers. Employer hires employees, such as Ms. Hurtado and the other aggrieved employees, to work at its warehouse and distribution centers through the State of California. Employer employs, either directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or a staffing agency or similar entity, and exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state.

For purposes of this definition, all employees of Employer commonly controlled group, as that term is defined in Section 25105 of the Revenue and Taxation Code, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state. See, California Labor Code §2100(f). Employer's operations are defined by or fall under any of the North American Industry Classification System Codes, in particular Code 493110 (General Warehousing and Storage, and 423/424 (Merchant Wholesales – Durable and Non-Durable Goods.). See, California Labor Code §2100.i.1.(a-d).

Pursuant to California Labor Code §2100(h), "Quota" means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard. Employer's use a quota system which was applicable to Ms. Hurtado and the other aggrieved employees.

Moreover, each employer shall provide to each employee, upon hire, or within thirty (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. California Labor Code §2101. Here, Employer failed to provide any type of quota description to Ms. Hurtado and the other aggrieved employees of each quota (including detailed metrics regarding Employer's requirements) applicable to them in compliance with California Labor Code §2100.

Further, Labor Code §2102 provides 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, which includes recovery periods. 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.

Employer knew or should have known it imposed systematic quota and production demands on Ms. Hurtado and the other aggrieved employees which violated the rights of employees pursuant to Labor Code Sections 2100 et. seq. Employer had a duty to ensure their production demands/quotas did not prevent Ms. Hurtado and other aggrieved employees' from complying with laws pertaining to meal periods, rest periods, bathroom breaks, and/or expose

them to safety or OSHA hazards. Employer is a “covered employer,” and their warehouse employees are “covered employees.” Here, based upon Employer’s quota policies and disregard for health and safety rules, Ms. Hurtado was shocked when she turned on an electronic pallet wrapping equipment and Employer disregard Ms. Hurtado’s injury and work restrictions as Employer’s quota policy takes priority over employee safety and OSHA standards in the workplace.

Employer implemented quotas as defined in Labor Code § 2100(h) and subjects Ms. Hurtado and the other aggrieved employees to adverse employment action as defined in Labor Code § 2102 which states:

“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.”

Furthermore, Employer willfully, knowingly, and intentionally failed to establish quotas that did not harm Ms. Hurtado and aggrieved employees all to increase Employer’s profits without concern for employee safety. Employer, in fact, tracked meals, rest, and recovery periods that were not provided and did nothing to change their policies and practices. Employer also restricted and monitored the use of bathroom facilities and charged the time employees used the bathroom against their quota. In other words, employees who did not wait to use the restroom during meal or rest periods or before or after their shift, were penalized for not meeting quota either through reprimands, warnings, and termination.

Ms. Hurtado and other aggrieved employees were not permitted to take compliant breaks, including recovery periods when requested, due to Employer’s unlawful policy and practice to favor production goals over employee rights. Consequently, Ms. Hurtado and other aggrieved employees were not authorized or permitted to take breaks, including first, second, and third rest breaks and Employer’s policies prevented aggrieved employees from taking compliant breaks as required by California law.

Furthermore, Employer did not provide to each employee a written description of each quota the employee works under, maintained secret (undisclosed) quotas, and failed to provide written disclosures each and every time quotas changed (Labor Code §2103) either seasonally, daily, hourly, weekly, and/or monthly. This includes the number of tasks to be performed or materials

that must be produced or handled within a time period, and any potential adverse employment action that could result from failing to meet the quota. This information has not been given by Employer's to all new hires, existing employees, or aggrieved employees hired after January 1, 2022, to the present. Employer has been previously sued for many of the violations alleged herein, and rather than change its policies, it continues to violate the law intentionally and willfully. As a result of Employer's failure to comply with Labor Code §2100, et seq., Employer is subject to PAGA penalties pursuant to Labor Code §2109.

DEMAND

This notice shall further represent Ms. Hurtado's reasonable attempt to settle her dispute with Employer prior to litigation. Pursuant to Graham v. Daimler Chrysler Corp., 34 Cal. 4th 553 (2004), this notice serves to apprise Employer of Ms. Hurtado's aforementioned grievances and the proposed remedies as detailed below, while affording Employer a reasonable opportunity to meet Ms. Hurtado's demands.

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Ms. Hurtado and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that Employer shall agree to comply with all California wage and hour laws as described herein and ensure that its hourly aggrieved employees are paid proper overtime compensation and given required meal, recovery and rest periods. In addition, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of meal, rest and recovery periods each employee missed during their work shifts, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal, recovery or rest period, as required by California Labor Code § 226.7 and the applicable wage order.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to California Labor Code §§ 510, 1194, 1198, and Wage Order No. 7-2001, § 3.

4. Employer shall agree to pay each aggrieved employees all vested vacation pay wrongfully withheld pursuant to Labor Code §§221, 227 and 227.3
5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer pursuant to California Labor Code § 2802.
6. Employer shall provide copies of all documents used for obtaining and/or holding employment as requested by any aggrieved employee within thirty (30) days of this Notice;
7. Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.
8. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid wages.
9. Employer shall immediately implement workplace violence prevention policies and procedures, pursuant to California Labor Code §§6401.7 and 6401.9 within ten (10) days of receipt of this notice.
10. Employer shall immediately implement an indoor/outdoor heat wellness and prevention policy, pursuant to 3396 of Title 8 of the California Code of Regulations.
11. Employer shall with Labor Code §2104(a)(1) and (2), and provide all required quota information to Ms. Hurtado and the other aggrieved employees, and notify aggrieved employees of all applicable quotas, and comply with all applicable California OSHA health and safety requirements.
12. Employer shall agree to pay all penalties and civil penalties due arising from the violations of the California Labor Code and IWC wage order sections referenced above and pursuant to PAGA, California Labor Code § 2698 *et seq.*

Employer shall further agree to pay all statutory and civil penalties arising from the violations of the Labor Code and IWC wage order sections referenced herein, including but not limited to Labor Code §§ 2698 *et seq.* (PAGA), 210, 218.5, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, 2802, 2699, Wage Order No. 7-2001, § 20, and all other applicable IWC Wage Orders. Employer shall further agree to create and implement policies and practices that ensure compliance with the

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California laws referenced herein. Ms. Hurtado, on behalf of the State of California, reserves all rights to pursue injunctive and declaratory relief pursuant to Labor Code §§2699 (e)(1) and (k)(1) in any action.

Finally, if the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice, via United States Certified Mail to:

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Please do not hesitate to contact my firm with any questions.

Very Truly Yours,



SCOTT ERNEST WHEELER

SEW/cc