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February 27, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.tfaforms.net/308)

Subject: *Cesar Anguiano v. Jensen Meat Company, Inc., et al.*

Dear PAGA Administrator:

This office represents Cesar Anguiano in connection with his claims under the California Labor Code. Mr. Anguiano was an employee of JENSEN MEAT COMPANY, INC. and/or BEFORE THE BUTCHER, INC. For the purpose of this letter, Mr. Anguiano collectively refers to these entities as "JENSEN."

The employers may be contacted directly at the addresses below:

JENSEN MEAT COMPANY, INC.
2550 BRITANNIA BLVD STE 101
SAN DIEGO, CA 92154

BEFORE THE BUTCHER, INC.
2550 BRITANNIA BLVD., SUITE 101
SAN DIEGO, CA 92154

Mr. Anguiano intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Anguiano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by JENSEN in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

JENSEN employed Mr. Anguiano as a non-exempt Machine Operator from approximately March 2023 to November 2023. Mr. Anguiano worked at JENSEN's facility located in San Diego, California. During his employment, Mr. Anguiano typically worked eight (8) hours or more per day and five (5) days per week. Mr. Anguiano's job duties included, without limitation, operating industrial meat cutting machinery and maintaining the production line.

JENSEN has committed one or more of the following Labor Code violations against Mr. Anguiano, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):[1]

JENSEN's Company-Wide and Uniform Payroll and HR Practices

JENSEN MEAT COMPANY, INC. and BEFORE THE BUTCHER, INC. are California corporations operating as processors of ground beef and plant-based protein products for the food service distribution, restaurant, retail, and school markets. Upon information and belief, JENSEN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for JENSEN in California, including Mr. Anguiano and other aggrieved employees. At all relevant times, JENSEN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Anguiano and other aggrieved employees, regardless of their location or position.

Upon information and belief, JENSEN maintains a centralized Payroll department at its corporate headquarters in San Diego, California, which processes payroll for all non-exempt, hourly paid employees working for JENSEN in California, including Mr. Anguiano and other aggrieved employees. Further, JENSEN issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Anguiano and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, JENSEN utilized the same methods and formulas when calculating wages due to Mr. Anguiano and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

JENSEN willfully failed to pay all overtime wages owed to Mr. Anguiano and other aggrieved employees. During the relevant time period, Mr. Anguiano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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[1] These facts, theories, and claims are based on Mr. Anguiano's experience and counsel's review of those records currently available relating to Mr. Anguiano's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Anguiano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, JENSEN failed to provide Mr. Anguiano and other aggrieved employees with a sufficient number of timekeeping machines to clock in for their shifts, thus forcing Mr. Anguiano and other aggrieved employees to wait in line off-the-clock and under JENSEN's control, time for which they were not paid. For example, Mr. Anguiano and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line for up to 10 minutes to clock in, time for which they were not paid. As a result, Mr. Anguiano and other aggrieved employees were subject to JENSEN's control before their shifts but were not compensated for this time.

Second, during the relevant period, JENSEN had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, including pressure to meet productivity expectations and quotas, resulting in a failure to provide Mr. Anguiano and other aggrieved employees with adequate meal period coverage. For example, on information and belief, JENSEN's management implemented specific production goals which resulted in processing machinery to operate at higher-than-normal speeds so those productions goals could be met. Because JENSEN understaffed its locations, there was insufficient coverage available to relieve employees needing meal period coverage. This practice, coupled with a company-wide policy and/or practice of failing to adhere to a schedule for meal periods, further caused Mr. Anguiano and other aggrieved employees to not be relieved of their duties for meal periods. For example, JENSEN's management sometimes interrupted Mr. Anguiano's unpaid meal periods to discuss malfunctions with machinery. Consequently, Mr. Anguiano and other aggrieved employees performed work during meal periods for which they were not paid.

Third, on information and belief, because JENSEN frowned upon employees accruing meal period penalties, JENSEN's management pressured Mr. Anguiano and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by JENSEN. Further, JENSEN's company-wide timekeeping system prevented Mr. Anguiano and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes elapsed. Thus, JENSEN did not record all hours worked during meal periods, and Mr. Anguiano and other aggrieved employees performed work during meal periods for which they were not paid.

JENSEN knew or should have known that as a result of these company-wide practices and/or policies, Mr. Anguiano and other aggrieved employees were performing their assigned duties off-the-clock before their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Anguiano and other aggrieved employees sometimes worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Anguiano and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, JENSEN did not pay Mr. Anguiano and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, JENSEN paid Mr. Anguiano and other aggrieved employees incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, JENSEN failed to incorporate all compensation, including incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Anguiano and other aggrieved employees worked overtime and received these other forms of pay, JENSEN failed to pay all overtime wages by paying a lower overtime rate than required.

For example, JENSEN paid Mr. Anguiano and other aggrieved employees incentive pay and/or shift differential pay, which were listed on Mr. Anguiano's and other aggrieved employees' wage statements as "SHIFT PREM" and "EFFICIENCY." During the pay periods that Mr. Anguiano and other aggrieved employees were paid overtime wages, JENSEN did not incorporate these payments into Mr. Anguiano's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, JENSEN paid Mr. Anguiano and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. JENSEN's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Anguiano and other aggrieved employees on a company-wide basis.

JENSEN's failure to pay Mr. Anguiano and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, JENSEN had a company-wide policy and/or practice of failing to compensate Mr. Anguiano and other aggrieved employees for their time spent waiting in line to clock in on a timekeeping machine before their scheduled shifts, because JENSEN failed to track this time they remained under the control of JENSEN.

As also stated, due to JENSEN's policies and/or practices of understaffing its facilities while assigning heavy workloads, including enforcing productivity expectations, and failing to adhere to a schedule for meal periods, Mr. Anguiano and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. JENSEN did not pay Mr. Anguiano and other aggrieved employees for the time they continued to perform tasks during meal periods.

In addition, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, JENSEN's management pressured Mr. Anguiano and other aggrieved employees to record compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, JENSEN's timekeeping system locked out Mr. Anguiano and other aggrieved employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, JENSEN systematically failed to pay Mr. Anguiano and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, JENSEN did not pay minimum wages for all hours worked by Mr. Anguiano and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, JENSEN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, JENSEN regularly failed to pay at least minimum wages to Mr. Anguiano and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

First, as stated, JENSEN had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressure to meet productivity expectations and quotas, which has resulted in a lack of meal period coverage and prevented Mr. Anguiano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, JENSEN had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Anguiano and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Anguiano and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Anguiano regularly took his meal periods late, after the fifth hour of work, due to the lack of coverage.

Second, as stated, because JENSEN frowned upon employees accruing meal period penalties, JENSEN's management pressured employees to record meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by JENSEN. Also, as stated, JENSEN's company-wide timekeeping system prevented Mr. Anguiano and other aggrieved employees from when their meal periods were shortened or interrupted, because the system locked out Mr. Anguiano and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Anguiano was unable to record when his meal periods were interrupted or shortened by JENSEN's management wanting to discuss work-related matters, such as issues with malfunctioning machinery.

Third, JENSEN did not provide Mr. Anguiano and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Anguiano worked shifts in excess of 10 hours in one day and never took a second meal period. Mr. Anguiano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, JENSEN knew or should have known that, as a result of these policies, Mr. Anguiano and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. JENSEN further knew or should have known that JENSEN did not pay Mr. Anguiano and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, JENSEN engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Anguiano and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that JENSEN did pay Mr. Anguiano and other aggrieved employees premium pay for missed, late, and interrupted meal periods, JENSEN did not pay Mr. Anguiano and other aggrieved employees at the correct rate of pay for premiums because JENSEN systematically failed to include all forms of compensation, such as incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, JENSEN failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 273 (2016).

During the relevant time period, JENSEN regularly failed to authorize and permit Mr. Anguiano and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, JENSEN's company-wide practices, including understaffing, assigning heavy workloads, and implementing productivity expectations and quotas, prevented Mr. Anguiano and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, JENSEN failed to schedule rest periods, which, coupled with JENSEN's failure to provide adequate rest period coverage, further led to Mr. Anguiano and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, JENSEN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Anguiano and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Anguiano and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, JENSEN effectively maintained control over Mr. Anguiano and/or other aggrieved employees during rest periods.

As a result of JENSEN's practices and policies, Mr. Anguiano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Anguiano had to regularly forgo his second and third rest periods because there was no one available to attend to his machine if he was to take a rest period, due to the lack of coverage.

JENSEN has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Anguiano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that JENSEN did pay Mr. Anguiano and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, JENSEN did not pay Mr. Anguiano and other aggrieved employees at the correct rate of pay for premium wages because JENSEN failed to include all forms of compensation, such as incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, JENSEN failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. JENSEN has not provided Mr. Anguiano and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover 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 to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, JENSEN has knowingly and intentionally provided Mr. Anguiano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, JENSEN issued uniform wage statements to Mr. Anguiano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, JENSEN violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because JENSEN did not accurately record the time Mr. Anguiano and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), JENSEN did not list the correct amount of gross wages and net wages earned by Mr. Anguiano and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, JENSEN failed to accurately list the total number of the hours worked by Mr. Anguiano and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because JENSEN did not calculate Mr. Anguiano's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, JENSEN did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). JENSEN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock. In addition, JENSEN failed to provide Mr. Anguiano and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), JENSEN willfully failed to maintain accurate payroll records for Mr. Anguiano and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, JENSEN engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Anguiano and other aggrieved employees, in violation of section 1198. Also, in light of JENSEN's failure to provide Mr. Anguiano and other aggrieved employees with second 30-minute meal periods to which they were entitled, JENSEN kept no records of meal start and end times for second meal periods.

Because JENSEN failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Anguiano and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Anguiano and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, JENSEN failed to pay Mr. Anguiano and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

JENSEN willfully failed to pay Mr. Anguiano and other aggrieved employees who are no longer employed by JENSEN the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving JENSEN's employ.

Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, JENSEN did not pay Mr. Anguiano and other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, JENSEN paid Mr. Anguiano and other aggrieved employees incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, JENSEN failed to incorporate all remunerations, including incentive pay, shift differential pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Mr. Anguiano and other aggrieved employees took sick leave and received these other forms of pay, JENSEN failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, JENSEN paid Mr. Anguiano and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

JENSEN's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Anguiano and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay</u>

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11010(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, JENSEN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A), because JENSEN failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, JENSEN had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. Although other aggrieved employees would report to work based on the schedule that JENSEN provided to them, JENSEN would send them home before they had worked at least half of their scheduled shifts without paying them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, on a company wide basis, JENSEN failed to provide Mr. Anguiano and other aggrieved employees with thermal wear, which they had to wear while at work and were necessary for the completion of their work-related duties. For example, JENSEN is a commercial food processor that must adhere to certain food safety temperature standards, requiring JENSEN's facility to remain at low temperatures, which in turn necessitates that employees work in refrigerated environments for extended periods of time. Due to the low temperatures in JENSEN's work areas, Mr. Anguiano and other aggrieved employees were required to wear protective gear, i.e., thermal jackets, to protect them from the cold temperatures. However, JENSEN did not provide these jackets to employees working in the refrigeration and freezer areas. For instance, Mr. Anguiano spent around $200 on a thermal jacket during his employment with JENSEN, but he was not reimbursed for these costs.

JENSEN could have provided Mr. Anguiano and other aggrieved employees with the actual equipment for use on the job, such as protective thermal wear, or JENSEN could have reimbursed employees for the cost of their thermal wear. Instead, JENSEN passed these operating costs off onto Mr. Anguiano and other aggrieved employees. At all relevant times, Mr. Anguiano did not earn at least two (2) times the minimum wage.

Thus, JENSEN had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Anguiano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny 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 . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." JENSEN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Anguiano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Anguiano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Anguiano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against JENSEN for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Anguiano seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Ninel

Ninel Kocharyan

Copy: JENSEN MEAT COMPANY, INC. (via U.S. Certified Mail); BEFORE THE BUTCHER, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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2550 BRITANNIA BLVD STE 101
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2550 BRITANNIA BLVD., SUITE
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