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Filed via Labor Workforce Development Agency's PAGA Claim Notice Online Form

Copy Sent via Certified U.S. Mail To:

BKC VENTURES, INC. dba Prestige Printing
and Graphics
12925 Alcosta Blvd, Suite 6
San Ramon, CA 94583
Attn: Thomas Vogelheim

Re: *Kristian Aguilar v. BKC VENTURES, INC. dba Prestige Printing and Graphics, et al.
Notice of Intent to File Suit for California Labor Code §2698, et seq ("PAGA")
Penalties*

To Whom It May Concern:

This office represents Kristian Aguilar ("Mr. Aguilar") and a proposed group of current and former non-exempt employees who work/worked for BKC Ventures, Inc. dba Prestige Printing and Graphics ("Prestige") and Christopher J. Maloney (collectively, "Defendants"), in regard to violations of the California Labor Code ("Labor Code"). This letter shall serve as notification under Labor Code §2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the PAGA Notice was electronically paid and a copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Aguilar wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of aggrieved employees ("Aggrieved Employees"):

All non-exempt employees who are or were employed by BKC Ventures, Inc. dba Prestige Printing and Graphics, a California corporation, and/or Christopher J. Maloney, an individual, within the State of California from one year prior to the date of this letter and continuing into the present.

This PAGA Notice concerns Mr. Aguilar's allegations regarding his former employer, Prestige, as well as Christopher J. Maloney (collectively, "Defendants"). Defendants have a policy or practice of failing to pay minimum wages (Labor Code §§ 1194, 1194.2, 1197); failing to pay overtime (Labor Code §510); failing to provide meal and rest periods (Labor Code §226.7); failing to furnish accurate wage statements (Labor Code §226); failing to pay all wages due upon

separation (Labor Code §§201, 202, 203); and failing to reimburse necessary business expenditures (Labor Code §2802).

Pursuant to Labor Code §§1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit to a California employee to work without paying all wages due, including minimum wages. Pursuant to Labor Code §510, employers are required to pay at least one and one-half times the regular rate for time worked over eight (8) hours in a day, over 40 hours in a week, and the first eight (8) hours worked on the seventh consecutive day of work, and no less than twice the regular rate of pay for an employee for work in excess of 12 hours in one day. Pursuant to the applicable Wage Order, at all times material hereto, “hours worked” included “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.” Aggrieved Employees were suffered, permitted and required to perform work “off-the-clock” for which they received no pay, no minimum wage and/or no overtime, including for work during purported meal periods and rest periods. Defendants additionally failed to calculate all overtime hours worked and failed to include all compensation when calculating the regular rate of pay used in overtime calculations and when paying overtime. By its common policy as outlined above, Defendants willfully violated the provisions of Labor Code and the applicable wage order.

Labor Code §1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission, a civil penalty, restitution of wages, and liquidated damages as follows:

“(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

As set forth above, Defendants failed to compensate Mr. Aguilar and all Aggrieved Employees for all minimum wages and/or overtime wages or at the proper rates. Accordingly, through PAGA and to the extent permitted by law, Mr. Aguilar and all Aggrieved Employees are entitled to recover liquidated damages for violations of Labor Code §1197.1. Based upon these same factual allegations, Mr. Aguilar and the other Aggrieved Employees are entitled to penalties under Labor Code §1199.

Labor Code §558 imposes a penalty upon an employer

“who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount

sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

Mr. Aguilar and the other Aggrieved Employees are entitled to recover penalties and unpaid overtime wages under Labor Code §558. (*See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112.).

Pursuant to Labor Code §512, an employer may not employ someone for a shift of more than five (5) hours without providing them with a meal period of not less than thirty (30) minutes. Defendants failed to provide Mr. Aguilar and Aggrieved Employees with timely meal periods as required under the Labor Code (i.e., commencing prior to the start of the fifth hour worked and for not less than 30 minutes). Specifically, Defendants had a policy/practice wherein Mr. Aguilar and other Aggrieved Employees would: 1) not receive their requisite meal period at all, as well as second meal periods as required when employees worked shifts longer than ten (10) hours in a workday; 2) and/or if a meal period was taken it was often late (i.e., commencing after the start of the fifth hour of work); 3) and/or the meal periods were of unlawfully short duration (i.e., less than 30 minutes in length). Further, on occasion, employees’ meal periods would be interrupted. On those occasions when employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate the employees with the required meal period premium for each workday in which they experienced a meal period violation, as mandated by Labor Code §226.7. Consequently, Defendants have violated Labor Code §§226.7 and 512, and would be liable for civil penalties pursuant to Labor Code §§558 and 2698, et seq. As a result of Defendants’ unlawful meal period policies and practices, Mr. Aguilar seeks to recover on behalf of himself and all Aggrieved Employees meal period premiums and penalties under Labor Code §558. (*See Thurman, supra*, 203 Cal.App.4th 1112.)

Pursuant to the Labor Code and the applicable IWC Wage Order, non-exempt employees are entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants failed to provide Mr. Aguilar and other Aggrieved Employees with authorized and permitted rest periods at legally-compliant times with respect to the employee’s particular work period and/or, in some instances, failed to provide a legally mandated rest period (or rest periods) altogether. See Labor Code §§226.7 and 516; applicable Wage Order. Pursuant to the applicable Wage Order, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.” Specifically, Mr. Aguilar and other Aggrieved Employees were often not permitted to take their legally-mandated first, second, and/or third rest periods at all because of heavy workload, or were forced to take their rest periods after the middle of each work period. As such, Defendants instituted a rest period policy denying Mr. Aguilar and other Aggrieved Employees rest periods altogether, and/or denying appropriate rest periods either in the middle of the work period for that day and/or on either side of the meal break, as required. Moreover, Defendants failed to compensate the employees with the required rest period premium for each workday in which they experienced a rest period violation, as mandated by Labor Code §226.7. As a result, Mr. Aguilar and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. See Labor Code §226.7 (“[i]f an

employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.”) as well as the applicable Wage Order. Defendants violated Labor Code §§226.7, 512, 516, 558 and 2698, et seq. by its failure to comply with the law.

As a result of Defendants’ failure to pay wages, and failure to provide meal and rest periods or compensation in lieu thereof as described above, Defendants also intentionally failed and continue to fail to furnish employees with accurate itemized wage statements and are subject to waiting time penalties.

Pursuant to Labor Code §226 employers are required to maintain complete and accurate payroll records showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and physical address of the legal entity employing them, all applicable hourly rates in effect during each pay period, and the corresponding number of hours worked by an employee at each hourly rate. Defendants violated Labor Code §226(a) by failing to provide compliant wage statements, including by failing to incorporate all hours worked, meal and rest period premiums, and other information required under the Labor Code and applicable Wage Orders. Wage statement inaccuracy is a serious claim. *See Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949; *Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal.App.4th 1286. This is confirmed by the amendment of Labor Code §226, which affirmatively establishes that the receipt of an inaccurate wage statement, *by itself*, constitutes an injury in fact. Labor Code §226(e). Labor Code §226(e) also clearly states that an employee must be able to “promptly and easily determine from the wage statement alone” the information required by Labor Code §226(a). “The purpose of the requirement [of Labor Code § 226(a)] is that employees need not engage in the discovery and mathematical computations to analyze the very information that California law requires.” *Lynne Wang v. Chinese Daily News, Inc.* (2006) F.Supp.2d 1042, 1051; *See also Cicairos, supra*, at 955 (explaining that Labor Code § 226(a) is violated if employees are required to perform “arithmetic computations” to determine their hourly rates). A PAGA claim for civil penalties based on wage statement violations is a simple claim with only one element: proof that the wage statement is missing, or incorrectly states, any of the information required by §226(a). *See Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773. Because a PAGA wage statement claim seeks the civil penalties provided by PAGA under Labor Code §2699(f), and not the statutory penalties found in Labor Code §226(e), a PAGA wage statement claim only requires proof of a violation of subdivision (a) of §226, without any proof of the “injury” and “intent” elements of subdivision (e). *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp.2d 1222, 1232-1233; *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F. Supp.3d 1116, 1135-1136. As a result of Defendants’ unlawful policies and practices in violation of Labor Code §226, Mr. Aguilar seeks to recover on behalf of himself and all Aggrieved Employees penalties pursuant to Labor Code §226.3 which states, in pertinent part:

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the

employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

Pursuant to Labor Code §§201-202, the applicable Wage Order, and other applicable laws and regulations, employers are obligated to timely pay all wages owed to an employee who is discharged or resigns their employment. Labor Code §203 imposes a waiting time penalty on employers who willfully withhold the final paychecks from employees who are discharged or resign. Defendants’ violations the Labor Code and applicable Wage Orders by failing to pay Aggrieved Employees all wages due at the time of separation.

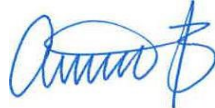
Further, Pursuant to Labor Code §2802, an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendants violated Labor Code §2802 by failing to reimburse Aggrieved Employees for all necessary expenditures, including for use of their personal cell phones in the discharge of their duties for Defendants.

As a result of Defendants’ violations of the Labor Code, and the resulting aggrieved employee-wide injury thereunder, Mr. Aguilar seeks to recover PAGA penalties for each pay period in which Defendants failed to pay all wages owed; failed to provide meal and rest periods; failed to provide accurate, itemized wage statements; and/or failed to reimburse necessary expenditures to the Aggrieved Employees. Mr. Aguilar also seeks to recover waiting time penalties on behalf of all Aggrieved Employees who were separated from their employment with Defendants. Specifically, Mr. Aguilar seeks penalties pursuant to Labor Code §2698, et seq., as well as Labor Code §§201-203, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1199, 2802, and other Sections of the Labor Code and applicable Wage Order.

Pursuant to Labor Code section 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Aguilar may immediately thereafter pursue his interests and the interests of similarly situated employees with a civil complaint against Defendants for their violations of the Labor Code.

Thank you for your consideration of the foregoing.

Very truly yours,



Amir D. Benakote, Esq.
Partner
Golden State Employment Lawyers

cc: BKC Ventures, Inc. dba Prestige Printing and Graphics (via U.S. Certified Mail)