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April 16, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jonathan Gutierrez / *S&L Oil, Inc. et al.*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jonathan Gutierrez (hereafter “Gutierrez” or “Complainant”) provides notice that S & L OIL, Inc., GRANT ROAD GAS & AUTO CARE, LLC, GREAT AMERICA GAS & AUTO CARE, LLC, VIPAN K. GUPTA, LALITA D. GUPTA, RAVI GUPTA, and related entities (collectively “the S&L Employers” or “the Employers”) violated his rights and those of all other individuals the S&L Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to cashiers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Gutierrez hereby provides this notice to the Labor & Workforce Development Agency and the Employers and their agents and representatives.

At all relevant times, the Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gutierrez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately October 26, 2022, the Employers began to employ Gutierrez in San Diego and Encinitas in the position of hourly, non-exempt cashier. The Employers continuously employed him in that capacity until on or about November 12, 2023 when his employment ended.

At all relevant times, the Employers issued wages to Gutierrez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Employers classified Gutierrez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers required Gutierrez and all of the other Aggrieved Employees to record their hours on handwritten timesheets. With rare exceptions, the Employers did not allow Gutierrez and all of the other Aggrieved Employees to report more than 7.5 hours in a workday on their handwritten timesheets, though they worked more than this amount. The Employers did not permit Gutierrez and all of the other Aggrieved Employees to report the time they spent completing their closing tasks, including the counting of the registers and preparing the store closing reports, or the time they spent traveling to other locations during the same workday on their timesheets. As discussed below, the Employers also required Gutierrez and the other Aggrieved Employees to record at least 30 minutes every workday on their timesheets for a meal period even if they could not take 30-minute, off-duty meal periods. If Gutierrez and the other Aggrieved Employees did not records a meal period or if they recorded more than 7.5 hours, the Employers including VIPAN K. GUPTA required them to make new time cards that followed the Employers' instructions.

Further, if the employees worked overtime hours that was approved by the Employers in advance, such as when they worked more than five days in a workweek or when they worked a second shift on the same workday at a second store other than the one they were generally assigned to, the Employers paid such overtime and doubletime hours with cash payments at their regular rates of pay instead of their overtime and doubletime rates of pay and failed to report such payments on Gutierrez and all of the other

Aggrieved Employees' itemized wages statements or to the tax authorities. Further, the Employers required Gutierrez and the other Aggrieved Employees to record at least 30 minutes every workday on their timesheets for a meal period even if they could not take 30-minute, off-duty meal periods (as discussed below) and deducted 30 minutes from the wages they earned in a workday.

The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek at the correct overtime rates of pay. The Employers further failed to compensate Gutierrez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek at the correct doubletime rates of pay.

At all relevant times, the Employers failed to provide Gutierrez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employer often scheduled Gutierrez and the other Aggrieved Employees to work alone at their stores. The Employer prohibited Gutierrez and the Aggrieved Employees from leaving their work premises during meal and/or rest breaks, required them to monitor their cellphones and respond to their managers' communications and to attend to the customers at all times. During graveyard shifts, the Employer required Gutierrez and all of the other Aggrieved Employees to lock the store doors and stay inside at all times. The Employers also failed to pay premium wages for days on which they failed to provide Gutierrez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Employers failed to authorize and permit Gutierrez and all of the other Aggrieved Employees to take any ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Employers also failed to pay premium wages for days on which they failed to authorize and permit Gutierrez and all of the other Aggrieved Employees to take rest breaks as required by law.

The Employers failed to pay all earned but unused vacation pay to Gutierrez and all of the other Aggrieved Employees at their final rates of pay. Under the policies and practices of the Employers, Gutierrez and all of the other Aggrieved Employees earned the following forms of vacation pay during employment: paid time off (PTO). Under

such policies, these accrued but unused forms of vacation pay were subject to forfeiture at the conclusion of the employment relationship.

At all relevant times, the Employers required Gutierrez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Gutierrez and all of the other Aggrieved Employees to supply mobile phones (to communicate with their managers, check their schedules, and send closing reports to their managers), uniforms, and transportation between work sites to perform their job duties. However, the Employers did not provide these items and did not reimburse Gutierrez and the other Aggrieved Employees for these items.

The Employers unlawfully deducted wages belonging to Gutierrez and all of the other Aggrieved Employees. As discussed above, the Employer deducted 30 minutes from Gutierrez and the Aggrieved Employees' daily wages. Also, if the store's register was short, the Employers deducted wages from the Aggrieved Employees' wages earned to cover for the shortage without any investigation.

At all relevant times, the Employers failed to issue to Gutierrez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, gross wages earned, net wages earned, all hours work at each rate of pay, and related compensation.

The Employers also failed to timely pay Gutierrez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Gutierrez and the Aggrieved Employees also had to wait days and at least until the next regular pay day following their termination before they could receive their final paychecks.

The Employers failed to provide Gutierrez and all of the other Aggrieved Employees with an adequate number of suitable seats and prevented them from seating during their work hours.

The Employers failed to maintain accurate employee records of Gutierrez and all of the other Aggrieved Employees.

For the reasons stated herein, Gutierrez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Employers failed to pay Gutierrez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Employers failed to pay all earned but unused vacation pay to Gutierrez and all of the other Aggrieved Employees at their final rates of pay;
- (c) The Employers failed to provide Gutierrez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The Employers failed to authorize and permit Gutierrez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to provide them with one or more meal periods as required by law;
- (f) The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees at one hour's pay for each day in which the Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The Employers failed to indemnify Gutierrez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (h) The Employers unlawfully deducted wages belonging to Gutierrez and all of the other Aggrieved Employees;
- (i) The Employers knowingly and intentionally failed to issue to Gutierrez and all of the other Aggrieved Employees accurate and complete wage statements;
- (j) The Employers willfully failed to timely pay Gutierrez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Employers and when their employment ended;
- (k) The Employers failed to provide Gutierrez and all of the other Aggrieved Employees with an adequate number of suitable seats and prevented them from seating during work hours; and
- (l) The Employers failed to maintain accurate employment records pertaining to Gutierrez and all of the other Aggrieved Employees.

Accordingly, Gutierrez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Employers, Gutierrez, and all of the Aggrieved Employees were covered by the Wage Order because the Employers operated, and Gutierrez, and all of the Aggrieved Employees worked for, one or more establishments operated as gas stations, food marts, and service centers. Accordingly, Gutierrez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

As described above, at all relevant times during the applicable limitations period, the Employers failed to compensate Gutierrez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly,

Gutierrez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Forfeiture of Vacation Pay
(Lab. Code § 227.3)

Section 227.3 of the Labor Code states that, unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having fully utilized his vested vacation time, all vested vacation must be paid to the employee at his final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. In addition, the statute prohibits an employment contract or employer policy from providing for forfeiture of such vested vacation time upon an employee's termination of employment, regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

The California Supreme Court has examined the terms under which an employee acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court concluded that a “proportionate right to a paid vacation ‘vests’ as the labor is rendered.” Thus, an employee is entitled to a pro rata share of vacation pay upon termination of employment even though he has not completed all of the service requirements specified in the employer’s policy or plan.

An employer should never, by reason of the employee’s termination, attempt to divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested interest pursuant to the terms of the employer’s policy or agreement.

A vacation policy that provides for the forfeiture of vacation pay that is not used by a specified date, such as an employee’s anniversary date, is impermissible under California law. Courts have held that such “use-it-or-lose-it policies” result in forfeitures of vested vacation pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit employees to carry over vacation time from one year to the next and do not allow employees to receive vacation pay in lieu of taking vacation time off.

The DLSE’s enforcement policy permits employers to exclude employees from a vacation policy during a specified period of time at the beginning of employment. This could apply to a probationary or introductory period or even the first year of employment. If the policy is properly drafted, employees will not be entitled to prorated vacation benefits if they separate from the employer for any reason during the probationary period or “initial employment.” (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be recognized only if it is not found to be a “subterfuge.” The Division will deem a subterfuge to exist if vacation benefits are implicitly earned or accrued during the waiting period. For example, if a policy provides that employees do not earn any vacation during their first year of employment, but earn four weeks’ vacation during the second year and are reduced to two weeks’ vacation the third year, the Division will contend that the policy involves a subterfuge. This is based on the Division’s position that the policy, when viewed as a whole, makes it clear that two of the four weeks’ vacation attributed to the second year are actually earned in the first years. In a case where such a subterfuge is found, employees who separate during the so-called “waiting period” (i.e., the first year of employment in the example) will be entitled to prorated vacation pay.

The Division takes the position that vacation pay for a terminating employee must be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J. Reyff (Oct. 28, 1986).)

The Employers maintained vacation pay policies and practices with accrual components that violate Labor Code § 227.3 based on the California Supreme Court's decision in *Suastez v. Plastic Dress-Up Co.*, supra. The Employers' vacation policy fails to provide for proportionate vacation pay accruals as employees render labor and causes employees to forfeit their vested rights to vacation pay. Under the policies and practices of the Employers, Gutierrez and all of the other Aggrieved Employees earned the following forms of vacation pay during employment: paid time off (PTO). Under such policies, these accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the employment relationship. Consequently, the Aggrieved Employees are entitled to recover vacation pay.

In *Suastez*, the defendant-employer "refused to pay vacation benefits to anyone whose employment was terminated before . . . [his or her employment] anniversary date" and refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding for the plaintiff-employee, the Court held that "a proportionate right to a paid vacation 'vests' as the labor is rendered" and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

It is especially worth noting that, in rejecting the contention that the plaintiff-employee had no vested right to vacation pay until his anniversary date, the Court specifically stated: "The right to some share of vacation pay vests, like pension rights, on acceptance of employment. Nonperformance of a condition subsequent, such as [defendant-employer's] requirement that employees remain until their anniversary, can, at most, result in a forfeiture of the right to a vacation; *it cannot prevent that right from vesting.*" (*Id.* at 780–81, (italics added).)

Like the vacation pay policy the Court rejected in *Suastez*, the Employers' vacation pay policies also fail to provide for proportionate accruals. Accordingly, Gutierrez now seeks civil penalties for these Labor Code violations that the Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for

each aggrieved employee for each initial violation of Labor Code § 227.3, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

As described above, at all relevant times, the Employers failed to provide Gutierrez and all of the other Aggrieved Employees with all timely meal periods. The Employers denied Gutierrez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers also failed to provide Gutierrez and all of the other Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. Furthermore, the Employers failed to pay premium wages for days on which they failed to provide Gutierrez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gutierrez now seeks civil penalties for these Labor Code violations that the Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) 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 or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

The Employers failed to authorize and permit Gutierrez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Employers failed to pay Gutierrez and all of the other Aggrieved Employees premium wages on workdays the Employers failed to provide Gutierrez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gutierrez now seeks civil penalties for these Labor Code violations that the Employers have committed against him and all of the other Aggrieved Employees as follows:

- 1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When 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.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Employers required Gutierrez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Employers required Gutierrez and all of the other Aggrieved Employees to supply mobile phones, uniforms, and transportation between work sites to perform their job duties. However, the Employers did not provide these items and did not reimburse Gutierrez and the other Aggrieved Employees for these items. Accordingly, Gutierrez seeks civil penalties for these Labor Code violations that the Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “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.” As discussed above, the Employers deducted wages from the wages earned by Gutierrez and all of the other Aggrieved Employees for in violation of Labor Code § 221. Accordingly, Gutierrez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Employers failed to state in the wage statements they issued to Gutierrez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, gross wages earned, net wages earned, all hours work at each rate of pay, and related compensation. Accordingly, Gutierrez seeks civil penalties for the Labor Code

violations that the Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, vacation pay, and related compensation, at the intervals stated above. As a result, the Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gutierrez now seeks civil penalties for the Labor Code violations that the Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her

employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Employers failed to pay Gutierrez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gutierrez, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, vacation pay, and related compensation. Additionally, the Employers failed to issue to Gutierrez and all of the other Aggrieved Employees whose employment ended their final paychecks until days after the termination. Gutierrez and the Aggrieved Employees also had to wait days and at least until the next regular pay day following their termination before they could receive their final paychecks. By failing to pay Gutierrez and all of the other Aggrieved Employees as set forth above at the end of employment, the Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gutierrez seeks civil penalties from the Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200

per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The nature of the work the Employers expected Gutierrez and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Gutierrez and all of the other Aggrieved Employees with an adequate number of suitable seats. Additionally, the Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Gutierrez and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Gutierrez, on behalf of himself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect

records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Employers failed to compensate Gutierrez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages

earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, gross wages earned, net wages earned, all hours work at each rate of pay, and related compensation. As a result, the Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gutierrez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gutierrez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, VIPAN K. GUPTA, LALITA D. GUPTA, and RAVI GUPTA were employers of Gutierrez and all of the other Aggrieved Employees, and/or

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“owner,” “managing agent,” and/or “officer” of the Employers and the other employers identified above. VIPAN K. GUPTA, LALITA D. GUPTA, and RAVI GUPTA directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Gutierrez seeks the same civil penalties against VIPAN K. GUPTA, LALITA D. GUPTA, RAVI GUPTA on the same grounds for which he seeks civil penalties against the Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Jonathan Gutierrez will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Mr. Jonathan Gutierrez

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