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VIA ONLINE SUBMISSION

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

Subject: *Juan Solorzano v. Produce Express, Inc.*

Dear PAGA Administrator:

This office represents Juan Solorzano in connection with his claims under the California Labor Code. Mr. Solorzano was an employee of PRODUCE EXPRESS, INC. ("PEI").

The employer may be contacted directly at the address below:

PRODUCE EXPRESS, INC.
4450 FLORIN-PERKINS ROAD
SACRAMENTO, CA 95826

Mr. Solorzano 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. Solorzano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PEI as a non-exempt, hourly paid employee in California 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.

PEI employed Mr. Solorzano as an hourly paid, non-exempt employee from approximately November 1999 to December 2023. Mr. Solorzano worked for PEI as a Warehouse Worker, assigned to work at its facility in Sacramento, California. During his employment, Mr. Solorzano typically worked ten (10) hours or more per day and six (6) days or more per week. At the time his employment ended, Mr. Solorzano was compensated approximately \$27.00 per hour. Mr. Solorzano's job duties included, without limitation, loading and unloading vehicles, conducting inventory, drafting inventory reports, and operating forklifts and pallet jacks.

PEI committed one or more of the following Labor Code violations against Mr. Solorzano, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PEI’s Company-Wide and Uniform Payroll and HR Practices

PRODUCE EXPRESS, INC. is a California corporation. PEI is a wholesale distributor of fresh fruits and vegetables in the greater Sacramento Valley. Upon information and belief, PEI maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Sacramento, California, for all non-exempt, hourly paid employees working for PEI in California, including Mr. Solorzano and other aggrieved employees. At all relevant times, PEI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Solorzano and other aggrieved employees, regardless of their location or position.

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

PEI willfully failed to pay all overtime wages owed to Mr. Solorzano and other aggrieved employees. During the relevant time period, Mr. Solorzano 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.

¹ These facts, theories, and claims are based on Mr. Solorzano’s experience and counsel’s review of those records currently available relating to Mr. Solorzano’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. Solorzano 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, PEI had, and continues to have, a company-wide policy and/or practice of requiring Mr. Solorzano and other aggrieved employees to perform tasks while off-the-clock. For example, approximately three (3) times per week, Mr. Solorzano was required to work after clocking out from his shifts, completing duties such as moving pallets of packaged fruits and vegetables. Moreover, PEI's managers contacted Mr. Solorzano and other aggrieved employees on their personal mobile devices about work-related matters when they were not scheduled to work, but did not compensate them for this time. For example, PEI's managers called Mr. Solorzano on his cellular phone outside of his scheduled shifts to discuss work details such as produce inventory and storage. Thus, PEI failed to track all of the time that employees spent performing work-related tasks outside of their shifts, Mr. Solorzano and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, PEI had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet productivity requirements. PEI's policies and/or practices resulted in a failure to provide other aggrieved employees with adequate meal period coverage, and thus, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PEI also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, PEI had, and continues to have, a company-wide policy and/or practice requiring that other aggrieved employees carry and respond to company-issued walkie talkies at all times, including during meal periods. PEI did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

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

Furthermore, PEI did not pay Mr. Solorzano and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PEI paid Mr. Solorzano and other aggrieved employees incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PEI failed to incorporate all compensation, including incentive pay, fringe 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. Solorzano and other aggrieved employees worked overtime and received these other forms of pay, PEI failed to pay all overtime wages by paying a lower overtime rate than required.

For example, PEI paid Mr. Solorzano and other aggrieved employees incentive pay, fringe pay, and/or nondiscretionary bonuses, which were listed on Mr. Solorzano's and other aggrieved employees' wage statements as "BONUS2" and "MEAL." During the pay periods that Mr. Solorzano and other aggrieved employees were paid overtime wages, PEI did not incorporate these payments into Mr. Solorzano'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, PEI paid Mr. Solorzano and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PEI'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. Solorzano and other aggrieved employees on a company-wide basis.

PEI's failure to pay Mr. Solorzano 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. Solorzano 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. 7-2001 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, § 11070(2)(G) (defining "Hours Worked").

First, as stated above, PEI had, and continues to have, a company-wide policy of requiring Mr. Solorzano and other aggrieved employees to perform tasks while off-the-clock, including performing work duties after their scheduled shifts and communicating with management. PEI failed to track this time Mr. Solorzano and other aggrieved employees spent working off-the-clock, and Mr. Solorzano and other aggrieved employees received no compensation for this time.

Second, as stated above, due to PEI's policies and/or practices of understaffing its facilities while assigning heavy workloads, including productivity requirements, and failing to schedule meal periods, 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. Moreover, as also stated, PEI had a company-wide policy and/or practice of requiring that other aggrieved employees carry company-issued walkie-talkies to respond to requests at all times, including during meal periods.

Thus, PEI did not pay at least minimum wages for all hours worked by Mr. Solorzano and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PEI 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, PEI regularly failed to pay at least minimum wages to Mr. Solorzano 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. Solorzano 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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, as stated, PEI had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet productivity expectations. For example, on information and belief, PEI's management implemented specific production goals which resulted in loading pallets on to 40 delivery vehicles per shift so those production goals could be met. PEI's policies and/or practices resulted in a lack of meal period coverage and prevented Mr. Solorzano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, PEI had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Solorzano and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Solorzano 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, twice per week, Mr. Solorzano had his meal periods interrupted to complete work assignments such as moving pallets of produce, loading produce on to delivery vehicles, and responding to questions regarding inventory. Additionally, three (3) times per week, Mr. Solorzano missed his meal periods entirely or took his meal periods late, after the fifth hour of work, due to loading delivery vehicles and the lack of meal period coverage.

Second, as also stated, PEI had a company-wide policy and/or practice requiring that Mr. Solorzano and other aggrieved employees carry and respond to company-issued walkie talkies at all times, including during meal periods. For example, Mr. Solorzano would have his meal periods interrupted and/or shortened when management called his company-issued walkie-talkie to discuss the status of assignments.

Third, PEI did not provide Mr. Solorzano and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Solorzano worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Solorzano 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. To the extent PEI required Mr. Solorzano and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Solorzano and other aggrieved employees and do not necessitate an “on-duty” meal period under California law.

PEI knew or should have known that as a result of its company-wide policies and/or practices, Mr. Solorzano and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PEI further knew or should have known that it did not pay Mr. Solorzano and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, PEI 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. Solorzano and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that PEI did pay Mr. Solorzano and other aggrieved employees for missed, late, and interrupted meal periods, PEI did not pay Mr. Solorzano and other aggrieved employees at the correct rate of pay for premiums because PEI systematically failed to include all forms of compensation, such as incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PEI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Solorzano 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, PEI regularly failed to authorize and permit Mr. Solorzano 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, PEI’s company-wide practices, including understaffing, assigning heavy workloads, and implementing productivity expectations, prevented Mr. Solorzano and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PEI failed to schedule rest periods, which, coupled with PEI’s failure to provide adequate rest period coverage, further led to Mr. Solorzano and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, PEI maintained a company-wide on-premises rest period policy, which effectively required that Mr. Solorzano and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Solorzano and 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, PEI effectively maintained control over Mr. Solorzano and other aggrieved employees during rest periods.

As a result of PEI’s practices and policies, Mr. Solorzano 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 10-minute rest periods to which they were entitled. For example, Mr. Solorzano missed his rest periods or had his rest periods interrupted several times a week by management to discuss produce inventory or moving pallets.

PEI also has 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. Solorzano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PEI did pay Mr. Solorzano and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PEI did not pay Mr. Solorzano and other aggrieved employees at the correct rate of pay for premiums because PEI failed to include all forms of compensation, such as incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PEI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Solorzano 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. PEI has not provided Mr. Solorzano 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, PEI has knowingly and intentionally provided Mr. Solorzano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PEI issued uniform wage statements to Mr. Solorzano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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; the address of the legal entity that is the employer; 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, PEI violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(7), 226(a)(8), and 226(a)(9).

First, PEI failed to list the last four digits of Mr. Solorzano's and other aggrieved employees' social security number or an employee identification number other than a social security number on their wage statements, in violation of section 226(a)(7). Instead, Mr. Solorzano's wage statements either listed his full social security number or no social security number or employee identification number at all.

Second, because PEI did not record the time Mr. Solorzano and other aggrieved employees spent working off-the-clock, PEI did not list the correct amount of gross wages and net wages earned by Mr. Solorzano and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PEI failed to accurately list the total number of hours worked by Mr. Solorzano 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).

Third, because PEI did not calculate Mr. Solorzano'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, PEI 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). PEI 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).

Fourth, and separately from these violations, PEI issued uniform wage statements to Mr. Solorzano and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Solorzano's and other aggrieved employees' wage statements incorrectly list the employer's address as "P.O BOX 278480, SACRAMENTO, CA 95827," but, according to the California Secretary of State's website, the correct address is "4450 Florin-Perkins Road, Sacramento, CA 95826."

The wage statement deficiencies also include, among other things, 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.

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). During the relevant time period, and in violation of Labor Code section 1174(d), PEI willfully failed to maintain accurate payroll records for Mr. Solorzano 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, PEI 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. Solorzano and other aggrieved employees, in violation of section 1198. Furthermore, in light of PEI’s failure to provide Mr. Solorzano and other aggrieved employees with second 30-minute meal periods to which they were entitled, PEI kept no records of meal start and end times for second meal periods.

Because PEI failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Solorzano 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. Solorzano 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. Solorzano 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, PEI failed to pay Mr. Solorzano and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Solorzano 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.

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

Mr. Solorzano 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 and Provide Written Notice of 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(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, 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, PEI did not pay Mr. Solorzano and other aggrieved employees the correct sick leave rates of pay. PEI failed to correctly use either method of calculation under Labor Code section 246(l) to determine Mr. Solorzano's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage, PEI paid Mr. Solorzano and other aggrieved employees incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PEI failed to incorporate all remunerations, including incentive pay, fringe pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Solorzano and other aggrieved employees took sick leave and received these other forms of pay, PEI failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, PEI paid Mr. Solorzano and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, PEI failed, on a company-wide basis, to provide Mr. Solorzano and other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them.

PEI'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. Solorzano and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l). PEI's systematic failure to provide written notice of sick leave benefits to Mr. Solorzano and other aggrieved employees is in violation of Labor Code section 246(i).

Mr. Solorzano 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).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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. 7-2001, 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." IWC Wage Order No. 7-2001 further provides that: "[w]hen 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."

First, during the relevant time period, PEI required Mr. Solorzano and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to

carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Solorzano was required to use his personal cellular phone to communicate with his managers to discuss inventory, shipments, and other work-related issues. Although PEI required Mr. Solorzano and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, PEI failed to reimburse them for their costs incurred.

Second, during the relevant time period, PEI had a company-wide policy of requiring Mr. Solorzano and other aggrieved employees to wear uniforms bearing the company name and logo. Due to the nature of his work, Mr. Solorzano's uniform items would become stained with grease, sweat, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Solorzano had to wash his uniform items separately from his regular clothing, spending approximately \$10 per week at the laundromat, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, PEI failed to maintain uniforms they required Mr. Solorzano and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PEI could have provided Mr. Solorzano and other aggrieved employees with the actual equipment for use on the job, such as mobile devices, and access to laundering services. Or, PEI could have reimbursed employees for their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, PEI passed these operating costs off onto Mr. Solorzano and other aggrieved employees. At all relevant times, Mr. Solorzano did not earn at least two (2) times the minimum wage.

Thus, PEI 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. Solorzano 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." PEI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Solorzano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Solorzano 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. Solorzano, 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 PEI

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. Solorzano seeks all applicable civil 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: PRODUCE EXPRESS, INC. (via U.S. Certified Mail)

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