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and all other aggrieved employees, and the general public

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

TYLER LAZARE, an individual, on behalf of himself, all other aggrieved employees, and the general public,

Plaintiff,

v.

UNIFIRST CORPORATION, a Massachusetts corporation; and DOES 1 through 20, inclusive,

Defendants.

CASE NO. 25CV106909

COMPLAINT FOR:

1. **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ**

Plaintiff TYLER LAZARE, an individual, hereby files this Complaint against Defendant UNIFIRST CORPORATION, a Massachusetts corporation (hereinafter "UniFirst"); and Does 1 to 20 (hereinafter collectively, "Defendants"). Plaintiff, in his representative capacity, is informed and believes and on the basis of that information and belief alleges as follows:

INTRODUCTION

1. This representative action challenges Defendants' employment practices with respect to their non-exempt hourly workers employed in the State of California as Route Service Representatives ("RSRs") from November 10, 2023 to the present ("Relevant Time Period"), based on Defendants' policy and practice of denying earned wages, including minimum and overtime pay, failing to provide legally compliant meal and rest breaks, and failing to provide accurate and itemized wage statements. In particular, Defendants require non-exempt employees to be present and perform work in excess of eight hours per day and/or forty hours per work week, but fail to pay them overtime wages accordingly, and further fail to pay such non-exempt employees for all straight time hours they worked. Throughout the Relevant Time Period Defendants failed to provide non-exempt employees with timely legally required meal and rest periods. Finally, Defendants fail to timely compensate employees for all wages earned and fail to properly and accurately calculate overtime and report wages earned, hours worked, and wage rates.

2. At all times relevant hereto, and with certain defined exceptions, Defendants' compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or designated rates for all hours worked.

3. At all times relevant hereto, and with certain defined exceptions, Defendants' compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime hours worked.

4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with timely off-duty meal periods and meal period compensation in violation of Labor Code sections 226.7 and 512, and IWC Wage Order No. 4 section 11.

5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with timely paid rest periods and rest period compensation in violation of Labor

Code sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for off-the-clock work, overtime compensation and late meal and rest period compensation.

9. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the Private Attorneys General Act ("PAGA"), along with injunctive relief under the same, against Defendants for their unlawful employment practices.

PARTIES

Plaintiff Tyler Lazare

10. Plaintiff Tyler Lazare is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Mr. Lazare worked for Defendants as a non-exempt employee, in the role of Route Service Representative at UniFirst located at 10244 Norris Avenue in Pacoima, California from in or around August 2022 until his separation by Defendants on April 20, 2024.

Defendant UniFirst Corporation

11. Plaintiff is informed and believes and based thereon alleges that Defendant UniFirst Corporation is a Massachusetts corporation and now and/or at all times mentioned in this Complaint was, registered with the California Secretary of State and is licensed to do business and actually doing business in the State of California.

Defendants Does 1 through 20, Inclusive

12. DOES 1 through 20 inclusive are now and/or at all times mentioned in this Complaint

were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 20, inclusive and for that reason, DOES 1 through 20 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 20 are believed to be business entities who were also co-employers of the Plaintiffs and the other aggrieved employees.

All Defendants

13. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

14. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

15. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers of the Plaintiff and the other aggrieved employees.

16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one

of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

JURISDICTION AND VENUE

17. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operate in this County, does business in the county of Alameda, and because PAGA enforcement actions are not limited to the county in which Aggrieved Employees performed work. *Crestwood Behavioral Health, Inc. v. Superior Court,* 60 Cal. App. 5th 1069, 1075 (2021) (in a PAGA action, a plaintiff is not limited to the county in which he or she performed work).

FACTUAL ALLEGATIONS

Background

18. UniFirst Corporation is a uniform rental company based in Wilmington, Massachusetts. UniFirst manufactures, sells, and rents uniforms and protective clothing to various corporate retailers and businesses across the county, including California. In California, UniFirst employs Route Service Representatives that make daily visits delivering and picking up customer products on an assigned route.

19. Mr. Lazare is a former employee of UniFirst. He commenced his employment with UniFirst on August 2022 and was unlawfully terminated in or around April 24, 2024. Mr. Lazare's main function involved the delivery of office products and uniforms to various corporate clients, customers, and retailers of UniFirst. This would include, for example, the delivery of uniforms, towels, microfibers, and linens. RSRs including Plaintiff are required to clock in and out of work using the time clock that is located at their respective branch. In Mr. Lazare's case, he would clock in to work on the timeclock that was at the UniFirst Pacoima location and clock out to end his shift back at the Pacoima office. Mr. Lazare – like other aggrieved RSRs – was also required to clock out for meal periods while on his assigned route. Using the Kronos app on his personal cell phone, Mr. Lazare would clock out for a supposed meal break. Mr. Lazare typically would clock in to his shift around 4:00 a.m. and would clock out of shift in the afternoon. In the last year of his employment, Mr. Lazare generally had 18-22 stops on his assigned daily route but on Thursdays, he serviced approximately 42-

48 stops.

20. RSRs, including Mr. Lazare, were paid a guaranteed flat rate of $1,000 as their base pay which equates to a weekly schedule of 55 hours. If RSRs including Plaintiff work over 55 hours, they are paid overtime. In addition, RSRs including Plaintiff also earn commission. The commission is based on the total number of items delivered and the fee charged by UniFirst to the customer. For example, if a UniFirst customer ordered 498 pieces at $15/piece and/or was on a 23-week schedule for $275/week, the commission earned to the RSRs would be a percentage of that invoice. Throughout the Relevant Time Period, UniFirst issued and maintained uniform, standardized scheduling, timekeeping, payroll, and classification practices and procedures for all RSRs in California regardless of their location or assigned route.

Defendants' Failure to Pay Minimum Wages and Designated Rates

21. IWC Wage Order, number 4 defines "hours worked" to mean "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."

22. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars ($8.00) per hour.

23. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that on and after on and after January 1, 2022, the minimum wage for all industries shall be not less than fourteen dollars ($14) per hour, that on and after January 1, 2023, the minimum wage for all industries shall be not less than fifteen dollars and fifty cents ($15.50) per hour, and that on and after January 1, 2024, the minimum wage for all industries shall be not less than sixteen dollars ($16) per hour,

24. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit."

25. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum

wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

26. Labor Code section 1197 provides: "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."

27. Defendants' non-exempt employees, including RSRs, are paid on an hourly basis for their time spent working. In addition, RSRs including Plaintiff also earn commission. Hours worked include, but are not limited to, all hours that an employee is permitted or suffered to work including, but not limited to, off-the-clock work that an employer either knew or should have known that an employee was performing.

28. As a matter of policy and/or practice, Defendants routinely failed to compensate RSRs minimum wages to which they were entitled for work performed and, as such, did not compensate Mr. Lazare and other similarly situated Aggrieved Employees for all hours worked at the minimum wage rate pursuant to California Labor Code §§ 1194, 1197 and 1197.1.

29. California law requires that an employer compensate an employee for all hours worked. See Industrial Welfare Commission Wage Order 4-2001, § 2(G) ("'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.") Labor Code § 204; *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584-586 (2000); *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018) (recent California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.) Defendants' practice of not paying Aggrieved Employees' for mandatory pre-shift time spent under Defendants' control runs in direct violation of the California Labor Code as specified herein.

Defendants' Failure to Pay Overtime Compensation

30. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation 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.

31. Labor Code Section 510(a) 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." Labor Code Section 510(a) further states: "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." Labor Code Section 510(a) further states: "[A]ny 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."

32. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

33. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

34. As a matter of policy and/or practice, UniFirst violated California Labor Code § 510, because it failed to compensate Mr. Lazare and other similarly situated Aggrieved RSRs overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Lazare and other similarly situated Aggrieved Employees' actual work hours entitled them to overtime compensation (daily and/or weekly). Defendants only compensate RSRs including Plaintiff when they work in excess of 55 hours. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and thus failed to pay overtime wages for the actual amount of overtime hours worked.

35. Additionally, Defendants improperly calculated the amount of overtime wages owing as they did not consider the actual hours worked and earned by Plaintiff, and thus failed to pay Plaintiff

all overtime wages due.

36. Moreover, incentive and/or bonus payments were not included in calculating Mr. Lazare's and other RSRs' regular rate of pay for purposes of determining their correct overtime rate of pay.

Defendants' Failure to Provide Timely Meal Breaks

37. Plaintiff did not waive his meal periods, by mutual consent with Defendants or otherwise. Plaintiff did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period. Nevertheless, Defendants implemented a uniform policy and procedure in which Plaintiff was not provided timely required duty-free meal periods.

38. Plaintiff is informed and believes and based thereon alleges that Defendants failed to effectively communicate California meal period requirements to their non-exempt employees, including Plaintiff and other Aggrieved Employees.

39. Plaintiff is further informed and believes and based thereon alleges that as a matter of policy and/or practice, Defendants routinely failed to provide their non-exempt employees, including Plaintiff and other Aggrieved Employees, with timely meal periods.

40. Additionally, RSRs, including Plaintiff, are also not trained nor given any instruction about California-mandated, code-compliant meal and rest breaks. Even though Plaintiff did not take meal breaks, he was required to clock-out for the meal breaks. Aggrieved Employees, like Plaintiff, do not take statutorily compliant and mandated meal and rest breaks.

41. Accordingly, throughout the Relevant Time Period, Defendants regularly:

a. Failed to provide Plaintiff and the other Aggrieved Employees with a timely first meal period of not less than thirty (30) minutes during which they were relieved of all duty before working more than five (5) hours;

b. Failed to provide Plaintiff and the other Aggrieved Employees with a timely second meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than ten (10) hours per day; and

c. Failed to pay Plaintiff and the other Aggrieved Employees one hour of pay at their regular rate of compensation for each workday that a timely meal period was not provided.

42. Defendants did not duly compensate Plaintiff and other similarly situated Aggrieved Employees one additional hour of pay at the regular rate of compensation for each workday when one or more statutory meal periods was not provided or was interrupted. This is because the meal period premiums paid to Plaintiff – and other aggrieved RSRs – were paid out at his hourly rate of $18.18 ($1,000 flat rate divided by 55 hours) and did not take into account all renumerations, including the earned commissions, for purposes of calculating the regular rate of pay for overtime. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878 ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompass not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

43. Furthermore, managers manipulate, edit, and falsify the time records of RSRs to give the false impression that a meal break was taken when, in fact, no such mandated break was ever provided. The time records reveal multiple instances of Mr. Lazare's manager, UniFirst's Area Manager, editing her time records to insert idealized meal periods when nothing could be further from the truth.

44. Moreover, the remaining time entries are unreliable and false as they purport to show Mr. Lazare clocked out for a meal break but in reality, that clock out for the supposed break is only done so that Mr. Lazare can travel from one stop to the next in order to complete his scheduled stops on an assigned route. Thus, his purported break was never for the complete thirty-minutes - if one at all – and gives the illusion that a meal break was recorded.

Defendants' Failure to Provide Timely Rest Breaks

45. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

46. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order, number 4, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

47. Plaintiff is informed and believes and based thereon alleges that Defendants failed to effectively communicate California rest period requirements to their non-exempt employees, including Plaintiff and other Aggrieved Employees. It was not company policy and/or not part of the company culture for employees such as Mr. Lazare and other similarly situated RSRs to take their daily rest breaks. Given the heavy workload and expectation for Plaintiff and other similarly situated aggrieved employees to timely complete their tasks, the culture at UniFirst did not lend itself to the employees receiving statutory rest periods at which time they were relieved of all work duties. It was the normal practice and custom of UniFirst not to authorize, permit, and/or enforce statutory rest periods. As such, the work environment and culture at UniFirst was not conducive to receiving statutory rest breaks under California law. Plaintiff is therefore further informed and believes and based thereon alleges that throughout the Relevant Time Period Defendants failed to schedule timely rest periods.

48. Throughout the Relevant Time Period, Plaintiff and the other Aggrieved Employees were routinely denied timely rest breaks they were entitled to under California law.

49. Specifically, throughout the Relevant Time Period, Defendants regularly:

a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the other aggrieved employees were relieved of all duty for each four (4) hours of work;

b. Failed to compensate Plaintiff and the other aggrieved employees for break time when breaks were taken; and

c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a timely rest period was not permitted.

Defendants' Failure to Pay All Wages Due at Termination of Employment

50. At all times relevant hereto, Labor Code § 201 required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time

penalties in the form of continued compensation for up to thirty (30) workdays.

51. Defendants willfully and knowingly failed to pay Plaintiff and the other aggrieved employees, upon termination of employment, all accrued compensation including payment of minimum wage compensation, missed meal and rest periods compensation and for time spent performing work off the clock at Defendants' direction.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

52. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4, section 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and meal breaks taken. Defendants issuance of wage statements are also facially non-compliant by virtue of UniFirst's practice of failing to pay the missed rest break and/or meal period penalty at the appropriate regular rate of pay.

53. Wage statements provided to Plaintiff and the other aggrieved employees by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the Labor Code section 226, and IWC Wage Order number 4, section 7.

54. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked, and breaks taken.

Exhaustion of Administrative Remedies

55. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated May 7, 2024, Plaintiff, on behalf of himself and the other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached as Exhibit "1" is a true and correct copy of the referenced letter.

56. More than sixty-five (65) calendar days have passed since Plaintiffs provided the LWDA with written notice. To date, Plaintiffs have not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged

herein.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND INJUNCTIVE RELIEF UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)

57. Plaintiff incorporates by reference the allegations set forth above.

58. As set forth above, Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated May 7, 2024 Plaintiff, on behalf of himself and the other aggrieved employees, gave written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the written notice letter is attached hereto as **Exhibit 1**. More than sixty-five (65) calendar days have passed since Plaintiffs provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

59. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys' general action, Plaintiff represents himself, and other aggrieved employees of Defendants that were in California, against whom Defendants have allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described herein.

60. Plaintiff now seek to recover civil penalties, including the value of unpaid wages, attorneys' fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Sections 558 and 2698, *et seq*.

61. Plaintiff further seeks to enjoin Defendants from engaging in the unlawful conduct described herein, pursuant to Labor Code Section 2699(e).

62. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

63. Plaintiff is informed and believes that throughout the Relevant Time Period,

Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved employees with respect to wages, hours, and working conditions.

64. At all times herein, Plaintiff is informed and believes that that the acts described in this Complaint and undertaken by Defendants were malicious, fraudulent, or oppressive as set forth in Labor Code Section 2699(f)(2)(B)(ii).

Failure to Pay Minimum Wages and Designated Rates

65. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

66. Where any statute or contract requires an employer to maintain the designated wage scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

67. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff and the other aggrieved employees to remain under Defendants' control without paying therefore, which resulted in them earning less than the legal minimum wage in the State of California for all hours worked.

68. Defendants' failure to pay Plaintiff and other aggrieved employees minimum wages violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f), and (g).

Failure to Pay Overtime Compensation

69. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation 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.

70. Labor Code Section 510(a) 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." Labor Code Section 510(a) further states: "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." Labor Code Section 510(a) further states: "[A]ny 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."

71. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

72. Plaintiff and the other aggrieved employees were classified as non-exempt by Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

73. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees were frequently required to performed work before their scheduled shifts. Despite this, Defendants required Plaintiff and the other aggrieved employees to clock-in at their scheduled shift time, thus purporting to show an eight-hour day with a legally compliant meal break, thus causing Plaintiff and the other aggrieved employees to not receive pay for all hours worked.

74. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime hours worked.

Failure to Provide Timely Meal and Rest Breaks

75. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more

than ten (10) hours.

76. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an additional hour of premium wages on each workday that the employee is not provided with a required meal period.

77. Plaintiff is informed and believes and thereon alleges that, at relevant times during the applicable limitations period, Defendants failed to provide Plaintiff with a timely uninterrupted meal period of at least thirty (30) minutes on each day that he worked five (5) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that did not permit him to take all legally required meal periods.

78. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other aggrieved employees with timely uninterrupted meal periods of at least thirty (30) minutes for each five (5) hour work period, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take all legally required meal periods.

79. Plaintiff is informed, believes, and thereon alleges that at relevant times during the applicable limitations period, Defendants failed to provide Plaintiff with two timely uninterrupted meal periods of at least thirty (30) minutes on each day that he worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do not permit him to take all legally required meal periods.

80. Plaintiff is informed, believes, and thereon alleges that at relevant times during the applicable limitations period, Defendants failed to provide the other aggrieved employees with two timely uninterrupted meal periods of at least thirty (30) minutes on each day that they worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take all legally required meal periods.

81. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of

each work period insofar as is practicable.

82. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an additional hour of premium wages on each workday that the employee is not provided with the required rest period.

83. At relevant times during the applicable limitations period, Defendants failed to provide Plaintiff with timely net rest periods of at least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit Plaintiff to take all legally required rest breaks.

84. Plaintiff is informed, believes, and thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other aggrieved employees with timely net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit them to take all legally required rest breaks.

Failure to Provide and Maintain Compliant Wage Statements

85. Labor Code Section 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) 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; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to keep the records required by Section 1174.

86. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly

rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly rate by the employee.

87. Defendants failed to provide Plaintiff with accurate itemized statements in accordance with California Labor Code Section 226(a) by providing Plaintiff with wage statements with inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of the unlawful labor and payroll practices described herein.

88. Plaintiff is informed and believes and thereon alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing aggrieved employees with accurate itemized wage statements by providing them with wage statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from wages earned as a result of the unlawful labor and payroll practices described herein.

89. Plaintiff is informed and believes and thereon alleges that Defendants' failure to provide him and the other aggrieved employees with accurate written wage statements is knowing and intentional.

90. Plaintiff is informed and believes and thereon alleges that Defendants had the ability to provide him and the aggrieved employees with accurate wage statements, but intentionally provided wage statements that they knew are not accurate.

91. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

92. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

Section 558 Penalties

93. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

94. The PAGA states:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees…

95. One provision of law enforceable through PAGA is Labor Code § 558, which states the following:

> (a) Any 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 in addition to any amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages…

Penalties and Injunctive Relief Authorized by PAGA

96. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510-512, 558, 1174, 1174.5, 1182.1, 1182.3, 1182.12, 1194-1197.1, 1198, 1199, and 2698, *et seq.*, during the applicable limitations period in the following amounts:

a. For violations of California Labor Code sections 201, 202, 203, 226.7, 1198, and 2802 two hundred dollars ($200.00) for each aggrieved employee per pay period for each violation due to malice, fraud, and oppression on the part of Defendants (penalty amounts established by California Labor Code Section 2699(f)(2));

b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars and fifty ($250.00) for each aggrieved employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (penalty amounts established by California Labor Code § 1197.1);

c. For violations of California Labor Code Sections 216, 221, 223 one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent or willful violation (penalty amounts established by California Labor Code § 225.5);

d. For violations of California Labor Code Section 1174, five hundred dollars ($500.00) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);

e. For violations of California Labor Code Section 226, two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code Section 226.3);

f. For violations of California Labor Code Section 204, one hundred dollars ($100.00) per employee for initial violation and two hundred dollars ($200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);

g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558);

h. For violations of California Labor Code Section 558, fifty dollars ($50.00) for initial violation, fifty dollars ($50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558).

97. Pursuant to California Labor Code Section 2699(e), Plaintiff, on behalf of himself and the other Aggrieved Employees, further seeks to enjoin Defendants from engaging in the unlawful conduct described herein that has resulted in violations of the Labor Code.

98. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and the other Aggrieved Employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of himself and on behalf of the aggrieved employees, prays for judgment against Defendants as follows:

a. Civil penalties;

b. Other penalties and fines permitted by law;

c. Injunctive relief;

d. Costs of suit;

e. Reasonable attorneys' fees;

f. Pre-judgment and post-judgment interest as provided by law; and

g. Such other and further relief as the Court deems just and proper.

DATED: January 14, 2025

BOYAMIAN LAW, INC.

By: ______________________________

Michael H. Boyamian
Attorneys for Plaintiff TYLER LAZARE
Other Aggrieved Employees, and the
General Public

EXHIBIT 1

May 7, 2024

<u>SENT VIA</u>

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Tyler Lazare adv. UniFirst Corporation*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

Dear Labor and Workforce Development Agency and Employer:

My office represents Tyler Lazare ("Claimant") with respect to claims on behalf of himself and other similarly situated current and former non-exempt Route Service Representatives ("RSRs") of UniFirst Corporation ("UniFirst") who worked in California ("Aggrieved Employees") from May 7, 2023 and continuing to the present ("Relevant Time Period"). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a) and to provide the facts and theories which we believe support our contention that UniFirst has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to provide code compliant rest breaks, failure to provide and accurately record meal periods, and unpaid wages.

<u>Facts and Theories About the Case</u>

UniFirst Corporation is a uniform rental company based in Wilmington, Massachusetts. UniFirst manufactures, sells, and rents uniforms and protective clothing to various corporate retailers and businesses across the country, including in California. In California, UniFirst employs Route Service Representatives that make daily visits delivering and picking up customer products on an assigned route. RSRs are paid weekly, a guaranteed flat rate and commissions.

Mr. Lazare is a former employee of UniFirst. He commenced his employment with UniFirst on August 2022 and was unlawfully terminated in or around April 24, 2024. Mr. Lazare's main function involved the delivery of office products and uniforms to various corporate clients, customers, and retailers of UniFirst. This would include, for example, the delivery of uniforms, towels, microfibers, and linens. RSRs including Claimant are required to clock in and out of work using the time clock that is located at their respective branch. In Mr. Lazare's case, he would clock in to work on the timeclock that was at the UniFirst Pacoima location and clock out to end his shift back at the Pacoima office. Mr. Lazare – like other aggrieved RSRs – was also required to clock out for meal periods while on his assigned route. Using the Kronos app on his personal cell phone, Mr. Lazare would clock out for a supposed meal break. Mr. Lazare typically would clock in to his shift around 4:00 a.m. and would clock out of shift in the afternoon. In the last year of his employment, Mr. Lazare generally had 18-22 stops on his assigned daily route but on Thursdays, he serviced approximately 42-48 stops.

RSRs, including Mr. Lazare, were paid a guaranteed flat rate of $1,000 as their base pay which equates to a weekly schedule of 55 hours. If RSRs including Claimant work over 55 hours, they are paid overtime. In addition, RSRs including Claimant also earn commission. The commission is based on the total number of items delivered and the fee charged by UniFirst to the customer. For example, if a UniFirst customer ordered 498 pieces at $15/piece and/or was on a 23-week schedule for $275/week, the commission earned to the RSRs would be a percentage of that invoice.

A. Failure to Pay For All Hours Worked, Including Overtime

Our investigation has uncovered that UniFirst fails to pay overtime for all hours worked in excess of 8 hours in a day or over 40 hours in a week. UniFirst only compensates RSRs including Claimant when they work in excess of 55 hours. Our investigation leads us to believe that UniFirst misclassifies its RSRs as exempt from overtime and meal and rest periods pursuant to the "outside salesperson exemption." Section 2(M) of the applicable wage order, IWC Wage Order 4-2001, reads:

> "'Outside Salesperson' means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities."

While it is certainly true that RSRs are generally above the age of 18 and spend more than half the working time away from a UniFirst office and on an assigned route, our investigation reveals that RSRs are generally engaged in non-sales activities and not actually "selling." While both California and federal law both have the outside salesperson exemption, to determine whether an employee is subject to the exemption the federal standard focuses on a "primary function" evaluation while in California, the state regulation takes a purely quantitative approach. *Ramirez v. Yosemite Water Co.,* 20 Cal. 4th 795, 797 (1999) ("*Ramirez*"). By choosing not to track the language of the federal exemption and instead adopting its own distinct definition of 'outside salespersons,' the IWC evidently intended to depart from federal law and to provide, at least in some cases, greater protection for employees. *Id*.

In *Ramirez,* the California Supreme Court considered whether delivering and restocking water bottles were sales activities and concluded—despite the employer's argument that a failure to deliver would lead to a loss in sales—that they were not. *See* 20 Cal. 4th at 802. The court explained:

> [T]he evidence is uncontroverted that Ramirez performed both sales and delivery functions for Yosemite. Delivery of preordered water bottles or the restocking of "empties" is not a sales activity in the conventional meaning of the word—one who *only* performed these delivery tasks could not be considered a salesperson. It is true, as Yosemite points out, that failure to properly deliver the product would lead to loss of the customer, but that does not make such delivery a sales activity, any more than an attorney's preparation of a legal brief in order to satisfy and thereby retain a client is a sales activity. (emphasis in the original).

Here, delivering linens and uniforms to UniFirst's customers is analogous to the delivery of water bottles in *Ramirez*. Like the delivery of a water bottle, a delivery of textiles and garment could not happen unless and until a sale was completed and entered into UniFirst's billing system, and the cargo was assigned by UniFirst to the client's account. Like water bottle deliveries, deliveries of uniforms occurred after – and in many cases, days, weeks, months or even years after – a sale was entered into the Company's billing system. Moreover, failure to timely service an account would lead to the loss of the customer, much like failing to deliver the water bottle would.

Just as restocking empties occurred after a sale was made and the product (water) was consumed by the customer, stops and drop offs on an assigned route occurred after the sale was well made and services were activated. RSRs, including Claimant, even serviced UniFirst's customers who were not theirs. Accordingly, we believe that to the extent the Company is relying on the outside salesperson exemption to not pay daily and weekly overtime to RSRs including Claimant when work occurs in excess of 8 hours in a day or 40 hours in a given week, UniFirst will not be able to meet their burden in meeting the requirements of this exemption. This is so because RSRs, including Claimant, spend the majority of their time engaging in non-sales work as described above.

Claimant therefore seeks to recover civil penalties pursuant to the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. *See also Morillion v. Royal Packing Co.* (2000) 22 Cal-4th 575; *Troester v. Starbucks Corp.* (2018) 421 P.3d 1114 (California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for *minutes* off-the-clock without compensation.) (emphasis added). In

California, the employer is required to keep records of all hours worked. Labor Code § 1174(d). California law also requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, et seq. In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee's regular rate of pay.

Absent the exemption, UniFirst did not compensate Mr. Lazare and other similarly situated Aggrieved Employees with the minimum wages to which they were entitled for work performed and, as such, did not compensate Mr. Lazare and other similarly situated Aggrieved Employees for all hours worked at the minimum wage rate pursuant to California Labor Code §§ 1194, 1197 and 1197.1. UniFirst likewise violated California Labor Code § 510, because it failed to compensate Mr. Lazare and other similarly situated Aggrieved RSRs overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Lazare and other similarly situated Aggrieved Employees' actual work hours entitled them to overtime compensation (daily and/or weekly). However, they were not paid accurately and/or fully for their overtime hours worked. Moreover, incentive and/or bonus payments were not included in calculating Mr. Lazare's and others' regular rate of pay for purposes of determining their correct overtime rate of pay.

B. Failure to Provide Statutory Meal & Rest Breaks

Our investigation has revealed that Aggrieved Employees, including Mr. Lazare, are also not provided with statutorily compliant meal periods and rest breaks. Mr. Lazare and other aggrieved non-exempt RSRs are not provided any training about statutory rest breaks under California law, are not scheduled to take compliant rest breaks, and in fact, rest breaks are not made available to them for every four hours worked or major fraction thereof. California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10-minutes in duration for every four (4) hours of work. Wage Order No. 4, §12(A). Violation of the rest break provisions requires the employer pay the employee one (1) hour of pay for each workday a rest period was not provided. *Id.* at §12(B).

California law requires that an employer provides an employee who works more than five (5) hours a meal break that is no less than 30-minutes in duration. *Id.* at §11(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. *Id.*

at §11(D). Additionally, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

UniFirst violated California Labor Code § 226.7 and the applicable Industrial Welfare Commission Wage Order because it failed to provide Mr. Lazare and other similarly situated aggrieved employees with ten-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. UniFirst did not relieve Mr. Lazare and other similarly situated aggrieved employees of all their duties during said rest periods, instead directing them to continue working. UniFirst did not pay Mr. Lazare and other similarly situated aggrieved employees one additional hour of pay at the regular rate of compensation for each workday when one or more statutory rest periods was not provided. It was not company policy and/or not part of the company culture for employees such as Mr. Lazare and other similarly situated aggrieved employees to take their daily rest breaks. Given the heavy workload and expectation for Mr. Lazare and other similarly situated aggrieved employees to timely complete their tasks, the culture at UniFirst did not lend itself to the employees receiving statutory rest periods at which time they were relieved of all work duties. It was the normal practice and custom of UniFirst not to authorize, permit, and/or enforce statutory rest periods. As such, the work environment and culture at UniFirst was not conducive to receiving statutory rest breaks under California law.

UniFirst also violated California Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare Commission Wage Order because it failed to provide Mr. Lazare and other similarly situated aggrieved employees the requisite thirty-minute, uninterrupted meal periods for every five (5) hours of work. As described above, UniFirst either failed to provide a meal period timely or entirely, or it did not completely relieve Mr. Lazare and other similarly situated aggrieved employees of all duty during said meal periods. In addition, meal periods were not consistently taken before the fifth hour worked, in further contravention of California law. UniFirst did not duly compensate Mr. Lazare and other similarly situated aggrieved employees one additional hour of pay at the regular rate of compensation for each workday when one or more statutory meal periods was not provided or was interrupted. This is because the meal period premiums paid to Claimant – and other aggrieved RSRs – were paid out at his hourly rate of $18.18 ($1,000 flat rate divided by 55 hours) and did not take into account all renumerations, including the earned commissions, for purposes of calculating the regular rate of pay for overtime. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878 ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompass not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

And even if UniFirst paid meal or rest period premiums for missed, untimely, or interrupted meal or rest periods, it would be inconsequential and immaterial for PAGA purposes. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "Section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation – the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

Furthermore, managers manipulate, edit, and falsify the time records of RSRs to give the false impression that a meal break was taken when, in fact, no such mandated break was ever provided. The time records reveal multiple instances of Mr. Lazare's manager, UniFirst's Area Manager, editing her time records to insert idealized meal periods when nothing could be further from the truth.

Moreover, the remaining time entries are unreliable and false as they purport to show Mr. Lazare clocked out for a meal break but in reality, that clock out for the supposed break is only done so that Mr. Lazare can travel from one stop to the next in order to complete his scheduled stops on an assigned route. Thus, his purported break was never for the complete thirty-minutes - if one at all – and gives the illusion that a meal break was recorded. UniFirst therefore knowingly or intentionally misreports the meal breaks of Aggrieved Employees, including Mr. Lazare, in violation of Labor Code §§ 1174(d) and 226.7.

C. Other Claims

The other alleged violations, including inaccurate wage statements, and the failure to pay all wages by the appropriate pay period, are largely derivative of the failure to provide to Mr. Lazare and other Aggrieved employees statutory mandated and compliant rest breaks and meal periods.

With respect to the inaccurate wage statements claim under Labor Code Section 226, the unpaid rest break and/or meal period penalty are not reflected on wage statements issued to the employees, in violation of Labor Code Section 226. California Labor Code Section 226(a) governs the information that must appear on wage statements. Specifically, Labor Code Section 226(a) requires that wage statements accurately itemize "(1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned... (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.

UniFirst's wage statements are facially non-compliant by virtue of UniFirst's practice of failing to pay the missed rest break and/or meal period penalty. Accordingly, the wage statements do not accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

Based on the foregoing facts, Mr. Lazare is asserting PAGA claims on behalf of himself and on behalf of all other Aggrieved Route Service Representatives employed by UniFirst in California from May 7, 2023, to the present. Mr. Lazare seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and/or rest periods as required by Labor Code section 512. Specifically, UniFirst does not provide Mr. Lazare and other Aggrieved Employees with statutory compliant rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.

2. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as UniFirst does not include all hours worked and wages earned on the wage statements of Mr. Lazare and other Aggrieved Employees. Additionally, Aggrieved Employees, including Mr. Lazare, never clocked out or back in for meal periods and are never given the opportunity to, and in fact never actually reviewed the hours submitted for them by UniFirst each week, in violation of Labor Code § 1174(d).

3. Violations of Labor Code sections 201-204 and 210, based on UniFirst's failure to pay Mr. Lazare and similarly situated Aggrieved Employees on the regular pay day all owed wages.

5. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, UniFirst does not pay minimum and overtime wages to Plaintiff and other nonexempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1 1182.3, 1194, 1197.1 and 1198.

Accordingly, we believe UniFirst has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510-512, 558, 1174, 1174.5, 1182.1, 1182.3, 1182.12, 1194-1197.1, 1198, 1199, and 2698, et seq., as well as the relevant IWC orders and regulations, and that Mr. Lazare and other similarly situated current and former RSRs are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If UniFirst wishes to resolve these claims prior to litigation by stopping its unlawful practices and making full restitution to Mr. Lazare and other Aggrieved Employees, please contact the undersigned forthwith to discuss this matter further. Thank you in advance for your attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.

Michael H. Boyamian

Cc: UniFirst Corporation (*Sent via Certified Mail*)
Attention: 1505 Corporation (Agent for Service of Process)
The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Drive
Sacramento, California 95833