

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com

2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com

3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl., PMB 42554
West Hollywood, CA 90069
5 Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 LOUIS M. BENOWITZ (SBN 262300)
louis@benowitzlaw.com
8 BENOWITZ LAW CORPORATION
8605 Santa Monica Bl., PMB 97638
9 West Hollywood, CA 90069
10 Telephone: (747) 233-2600 Work
Facsimile: (818) 839-9610

11 Attorneys for Plaintiff(s),
12 JUAN GONZALEZ GARCIA, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**
15 **(UNLIMITED JURISDICTION)**

16 JUAN GONZALEZ GARCIA, on behalf of
17 himself and all others similarly situated, and the
18 general public, and as "Aggrieved Employees"
19 on behalf of other "Aggrieved Employees" and
the State of California under the Labor Code
Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 MYERS CONTAINER, LLC, a Delaware
23 limited liability company; CONTAINER
24 MANAGEMENT SERVICES, LLC, a Delaware
25 limited liability company; and DOES 1–50,
inclusive,

26 *Defendant(s).*

Case No.: CIVSB2416437

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Pay Minimum Wages Earned for All Hours Worked (Lab. Code §§ 221, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab Code §§ 2698, et seq.)



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

JURY TRIAL DEMANDED

Plaintiff Juan Gonzalez Garcia (hereafter “Plaintiff” or “Gonzalez Garcia”), on behalf of himself and all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” and the State of California under the Labor Code Private Attorneys General Act of 2004, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants MYERS CONTAINER, LLC, CONTAINER MANAGEMENT SERVICES, LLC, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated workers for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendants’ failures to:

- (A) Pay minimum wages earned for all hours worked;
- (B) Authorize and permit all rest breaks;
- (C) Pay premium wages for unprovided rest breaks;
- (D) Indemnify for necessary work-related expenditures;
- (E) Only deduct wages lawfully;
- (F) Issue only accurate and complete itemized wage statements; and
- (G) Timely pay wages upon termination of employment;

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class action.

II. THE PARTIES

3. Plaintiff is a resident of California. At all relevant times, Plaintiff was an



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 “employees” within the meaning of Title 8 California Code of Regulations Section 11010, and an
2 “aggrieved employee” within the meaning of California Labor Code § 2699(c).

3 3. Defendant MYERS CONTAINER, LLC is a limited liability company organized
4 and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s
5 information and belief.

6 4. Defendant CONTAINER MANAGEMENT SERVICES, LLC is a limited liability
7 company organized and existing under the laws of Delaware and also a citizen of California based
8 on Plaintiff’s information and belief.

9 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
10 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
11 is informed and believes and thereon alleges that said Defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
14 when ascertained.

15 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
17 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
18 within the course and scope of such agency, employment, direction and control, and with the
19 approval and ratification of each of the other Defendants.

20 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
23 Members or otherwise complying with their rights in accordance with applicable California labor
24 laws as alleged herein.

25 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
26 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
27 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
28 described class in accordance with applicable laws as alleged herein.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 **III. CLASS ALLEGATIONS**

2 9. This action has been brought and may be maintained as a class action pursuant to
3 California Code of Civil Procedure section 382 because there is a well-defined community of
4 interest among the persons who comprise the readily ascertainable class defined below and
5 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
6 a class action.

7 10. **Class Definition:** The Class is defined as follows: All persons Defendants have
8 employed or otherwise contracted with in California as non-exempt, hourly employees, including,
9 but not limited to, machine operators, individuals performing work comparable to the
10 aforementioned, and individuals in similar positions, at any time during the period beginning four
11 years prior to the filing of this action and ending on the date that final judgment is entered in this
12 action ("Class" or "Class Members").

13 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
14 right to amend or modify the class definition with greater specificity, by further division into
15 subclasses and/or by limitation to particular issues.

16 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
17 each individual Class Member is impractical. While Plaintiff does not currently know the exact
18 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
19 minimum required for numerosity under California laws.

20 13. **Commonality and Predominance:** Common questions of law and fact exist as to
21 all Class Members and predominate over any questions which affect only individual Class
22 Members. These questions include, but are not limited to:

- 23 A. Whether Defendants failed to pay minimum wages for all hours worked;
24 B. Whether Defendants unlawfully deducted wages from Class Members;
25 C. Whether Defendants failed to authorize and permit the Class Members to
26 take all rest periods in compliance with California law;
27 D. Whether Defendants failed to indemnify the Class Members for the
28 reasonable expenses they incurred during the course of performing their duties;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 E. Whether Defendants knowingly and intentionally failed to provide the
2 class with accurate and complete itemized wage statements;

3 F. Whether Defendants willfully failed to provide the class with timely final
4 wages;

5 G. Whether Defendants engaged in unfair competition within the meaning of
6 Business and Professions Code sections 17200, et seq., with respect to the Class; and

7 H. Whether Class Members are entitled to restitution of money or property
8 that Defendants may have acquired from them through alleged Labor Code violations.

9 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
10 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
11 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
12 Code, the Wage Order, and the Business and Professions Code.

13 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
14 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
15 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
16 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
17 Members.

18 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
19 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
20 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
21 Plaintiff and absent Class Members.

22 17. **Superiority:** A class action is vastly superior to other available means for fair and
23 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
24 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
25 and efficiently prosecute their common claims in a single forum without the unnecessary
26 duplication of effort and expense that numerous individual actions would entail. In addition, the
27 monetary amounts due to many individual Class Members are likely to be relatively small and
28 would thus make it difficult, if not impossible, for individual Class Members to both seek and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
2 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
3 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

4 **IV. STATEMENT OF FACTS**

5 18. The Wage Order applies to “all persons employed in the manufacturing industry
6 whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage
7 Order defines "Manufacturing Industry" to mean, “any industry, business, or establishment
8 operated for the purpose of preparing, producing, making, altering, repairing, finishing,
9 processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or
10 commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the:
11 Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest;
12 Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry.”
13 Wage Order, § 2(H). At all relevant times during the applicable limitations period, Defendants,
14 Plaintiff, and all of the Class Members were covered by the Wage Order because Defendants
15 operated, and Plaintiff, and all of the Class Members worked for, one or more establishments that
16 manufacture containers. Accordingly, Plaintiff and all of the other Class Members are entitled to
17 the protections the Wage Order provides.

18 19. On approximately October 31, 2022, Defendants began to employ Plaintiff in
19 Rialto, California in the position of hourly, non-exempt machine operator. Defendants
20 continuously employed him in that capacity until on or about June 5, 2023 when his employment
21 ended.

22 20. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class
23 Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times,
24 Defendants classified Plaintiff and all of the other Class Members as non-exempt employees
25 entitled to the protections of the Labor Code and the Wage Order.

26 21. At all relevant times, Defendants failed to compensate Plaintiff and all of the other
27 Class Members for all hours worked. Defendants required Plaintiff and all of the other Class
28 Members to stand in lines to clock in for the start of their shifts. However, Defendants failed to



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 compensate Plaintiff and all of the other Class Members for this wait time which was
2 approximately three (3) to five (5) minutes for each workday. Defendants also required Plaintiff
3 and all of the other Class Members to don their protective gear at their work sites before they
4 clocked in at the start of their shifts without compensation.

5 22. Defendants also required Plaintiff and the Class Members to monitor their
6 cellphones on the days they were not scheduled to report to work to receive their next day work
7 schedules. However, Defendants did not pay Plaintiff and the Class Members at least minimum
8 wages for the time they spent monitoring their cellphones and responding to communications
9 from their supervisors.

10 23. Defendants also prevented Plaintiff and the Class Members from taking duty-free
11 meal periods but deducted at least 30 minutes from their wages. Defendants required Plaintiff and
12 the Class Members to monitor their personal mobile phones and radios at all times during meal
13 periods and respond to communications from managers and coworkers. Defendants, however,
14 deducted at least 30 minutes from their daily wages even if they could not take duty-free meal
15 periods.

16 24. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
17 the other Class Members to take timely, ten-minute, off-duty, paid rest breaks every four hours
18 worked or major portion thereof. Defendants required Plaintiff and the Class Members to stay on
19 premises during rest breaks, monitor their personal mobile phones and radios at all times during
20 rest breaks, and respond to communications from managers and coworkers. Defendants further
21 failed to authorize and permit Plaintiff and all of the other Class Members a third rest break when
22 they worked more than 10 hours in a workday. Defendants also failed to pay premium wages for
23 days on which they failed to authorize and permit Plaintiff and all of the other Class Members to
24 take rest breaks as required by law.

25 25. At all relevant times, Defendants required Plaintiff and all of the other Class
26 Members to incur certain business expenses in the course of performing their duties. Defendants
27 required Plaintiff and all of the other Class Members to supply mobile phones to perform their
28 job duties. Defendants also required Plaintiff and all of the other Class Members to purchase steel



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 toe boots and provide dry cleaning for their uniforms. However, Defendants did not provide these
2 items and did not reimburse Plaintiff and the other Class Members for these items.

3 26. At all relevant times, Defendants unlawfully deducted wages belonging to Plaintiff
4 and all of the other Class Members. As discussed above, the Myers Employees deducted at least
5 30 minutes from Plaintiff and the other Class Members' daily wages even when they could take
6 duty-free meal periods.

7 27. At all relevant times, Defendants failed to provide acceptable temperatures for the
8 work areas they expected Plaintiff and all of the other Aggrieved Employees to perform their job
9 duties in.

10 28. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
11 Class Members complete and accurate wage statements that state all hours worked at the correct
12 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
13 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
14 discussed above. The wage statements fail to state all minimum wages earned, all rest break
15 premium wages earned, gross wages earned, net wages earned, and other required information.

16 29. Defendants also failed to timely pay Plaintiff and all of the other Class Members
17 all earned wages as described above during and at the conclusion of employment.

18 30. Defendants also failed to maintain accurate employee records of Gonzalez Garcia
19 and all of the other Aggrieved Employees.

20 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
21 unlawful practices and policies, Plaintiff and the Class Members were:

- 22 A. Not authorized and permitted to take all rest break periods;
23 B. Not paid one hour's pay for each workday in which Defendants failed to
24 authorize and permit them to take one or more timely rest periods;
25 C. Not paid all minimum wages earned for all hours worked;
26 D. Unlawfully deducted wages belonging to Plaintiff and the Class Members;
27 E. Not indemnified for all necessary business expenditures incurred during
28 the discharge of their duties;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 F. Not provided with accurate and complete wage statements;
2 G. Not provided with acceptable temperatures for the work areas Defendants
3 expected Plaintiff and Class Members to perform their job duties in; and
4 H. Not timely paid all earned and unpaid wages at the time their employment
5 ended. Defendants also failed to maintain accurate employment records of Plaintiff and the Class
6 Members.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL MINIMUM WAGES**

9 **Lab. Code §§ 221, 1194, 1197, and 1198**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

11 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 33. At all relevant times, Plaintiff and the Class Members have been non-exempt
13 employees entitled to the protections of both the Labor Code and the Wage Order.

14 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
15 **THE CORRECT RATES OF PAY**

16 34. Section 2 of the Wage Order defines “hours worked” as “the time during which an
17 employee is subject to the control of an employer, and includes all the time the employee is
18 suffered or permitted to work, whether or not required to do so.”

19 35. Section 4 of the Wage Order requires an employer to pay non-exempt employees
20 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
21 an employer has actual or constructive knowledge that employees are working.

22 36. Labor Code section 1194 invalidates any agreement between an employer and an
23 employee to work for less than the minimum wage required under the applicable Wage Order.

24 37. Labor Code section 1197 makes it unlawful for an employer to pay an employee
25 less than the minimum wage required under the applicable Wage Order for all hours worked
26 during a payroll period.

27 38. Labor Code section 1198 makes it unlawful for an employer to employ an
28 employee under conditions that violate the Wage Order.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 39. In conjunction, these provisions of the Labor Code require employers to pay non-
2 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
3 worked, including unrecorded hours when the employer knew or reasonably should have known
4 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
5 Cal.4th 575, 585.)

6 40. As discussed above, at all relevant times during the applicable limitations period,
7 Defendants failed to compensate Plaintiff and the Class Members minimum wages for all hours
8 worked.

9 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
10 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
11 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
12 rates of pay as required by California law.

13 42. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
14 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
15 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
16 subject to proof.

17 43. Additionally, with respect to this cause of action, on behalf of himself and the
18 class, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest
19 thereon, as permitted by law, all in amounts subject to proof.

20 **B. UNLAWFUL WAGE DEDUCTIONS**

21 44. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
22 receive from an employee any part of wages theretofore paid by said employer to said employee."
23 The Defendants deducted wages from the wages earned by Plaintiff and all of the other Class
24 Members in violation of Labor Code § 221.

25 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
27 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
28 law.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

3 **Lab. Code § 226.7**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

5 46. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

6 47. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

9 48. In relevant part, California Labor Code § 1198 states:

10
11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and
13 the standard conditions of labor for employees. The employment
14 of any employee for longer hours than those fixed by the order or
15 under conditions of labor prohibited by the order is unlawful.

16
17 49. In relevant part, Section 12 of the Wage Order states:

18 Rest Periods:

19
20 (A) Every employer shall authorize and permit all employees to take
21 rest periods, which insofar as practicable shall be in the middle of
22 each work period. The authorized rest period time shall be based
23 on the total hours worked daily at the rate of ten (10) minutes net
24 rest time per four (4) hours or major fraction thereof. However, a
25 rest period need not be authorized for employees whose total daily
26 work time is less than three and one-half (3 ½) hours. Authorized
27 rest period time shall be counted as hours worked for which there
28 shall be no deduction from wages.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1
2 (B) If an employer fails to provide an employee a rest period in
3 accordance with the applicable provisions of this order, the
4 employer shall pay the employee one (1) hour of pay at the
5 employee's regular rate of compensation for each workday
6 that the rest period is not provided.
7

8 50. In relevant part, California Labor Code § 226.7 states:
9

10 (b) An employer shall not require an employee to work during
11 a meal or rest period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the
13 Industrial Welfare Commission, the Occupational Safety
14 and Health Standards Board, or the Division of
15 Occupational Safety and Health.
16

17 (c) If an employer fails to provide an employee a meal period
18 or rest period in accordance with a state law, including, but
19 not limited to, an applicable statute or applicable
20 regulation, standard, or order of the Industrial Welfare
21 Commission, the Occupational Safety and Health
22 Standards Board, or the Division of Occupational Safety
23 and Health, the employer shall pay the employee one
24 additional hour of pay at the employee's regular rate of
25 compensation for each work day that the meal or rest
26 period is not provided.
27

28 51. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
2 of work, or major fraction thereof.

3 52. As discussed above, at Defendants intentionally failed to authorize and permit
4 Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in
5 accordance with the Wage Order.

6 53. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
8 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
9 Plaintiff and the other Class Members to take timely rest periods.

10 54. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
11 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
12 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
13 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
14 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
15 to authorize and permit them to take 10-minute rest periods every four hours worked or major
16 fraction thereof.

17 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
20 take all rest breaks required by California law.

21 56. Defendants failed to provide Plaintiff with all required rest breaks in accordance
22 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
23 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing the Class Members with all rest breaks required by
25 California law.

26 57. Defendants failed to pay Plaintiff the additional wages required by California
27 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
28 thereon alleges that, at relevant times within the applicable limitations period, Defendants have



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
2 Class Members with additional wages for all rest breaks not provided to them as required by
3 California Labor Code § 226.7.

4 58. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
5 suffered damages in amounts subject to proof to the extent they were not paid additional wages
6 owed for all rest breaks not provided to them.

7 59. By reason of the above, Plaintiff and the Class Members are entitled to premium
8 wages for workdays in which one or more rest breaks were not provided to them pursuant to
9 California Labor Code § 226.7.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO INDEMNIFY**

12 **Lab. Code §§ 1198 and 2802**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

20 63. At all relevant times, Defendants required Plaintiff and the Class Members to incur
21 certain business expenses in the course of performing their duties.

22 64. As described above, Defendants required Plaintiff and all of the other Class
23 Members to incur certain business expenses in the course of performing their duties. However,
24 Defendants did not provide these items and did not reimburse Plaintiff and the Class Members
25 for these item

26 65. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
28 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 during the course of performing their duties.

2 66. By reason of the above, Plaintiff and the members of the class are entitled to
3 reimbursement for all necessary expenditures and losses and interest due and owing to them
4 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
5 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of himself and
6 the class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

7 67. Additionally, with respect to this cause of action, on behalf of himself and the
8 class, Plaintiff prays for an award of reasonable attorney fees and costs, including interest thereon,
9 as permitted by law, all in amounts subject to proof.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

12 **Lab. Code §§ 226 and 226.2**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 69. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
16 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
17 statement showing:

18 A. Gross wages earned;

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

22 C. The number of piece rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis;

24 D. All deductions, provided that all deductions made on written orders of the
25 Employee may be aggregated and shown as one item;

26 E. Net wages earned;

27 F. The inclusive dates of the period for which the employee is paid;

28 G. The name of the employee and his or her social security number, except



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 that by January 1, 2008, only the last four digits of his or her social security number or an
2 employee identification number other than a social security number may be shown on the itemized
3 statement;

4 H. The name and address of the legal entity that is the employer; and

5 I. All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 70. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
8 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
9 the employer fails to provide accurate and complete information as required by California Labor
10 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
11 alone one or more of the following:

12 A. The amount of the gross wages or net wages paid to the employee during
13 the pay period or any of the other information required to be provided on the itemized wage
14 statement pursuant to California Labor Code § 226(a);

15 B. Which deductions the employer made from gross wages to determine the
16 net wages paid to the employee during the pay period;

17 C. The name and address of the employer and, if the employer is a farm labor
18 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
19 and address of the legal entity that secured the services of the employer during the pay period;

20 D. The name of the employee and only the last four digits of his or her
21 social security number or an employee identification number other than a social security number;
22 and

23 E. The number of piece-rate units earned and the piece rate.

24 71. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
25 means a reasonable person would be able to readily ascertain the information without reference
26 to other documents or information.

27 72. As alleged herein, at all relevant times during the applicable limitations period,
28 Defendants violated California Labor Code section 226 because they did not properly and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Class Members all their hours worked and all minimum wages
5 earned (as described above).

6 73. Defendants' failure to provide Plaintiff and the other Class Members with accurate
7 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
8 the other Class Members with accurate wage statements but intentionally provided wage
9 statements that Defendants knew were not accurate.

10 74. As a result of being provided with inaccurate wage statements by Defendants,
11 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
12 wage statements were violated and they were misled about the amount of wages they had actually
13 earned and were owed. In addition, the absence of accurate information on their wage statements
14 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
15 and mathematical computations to determine the amounts of wages owed, has caused difficulty
16 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
17 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
18 and the other Class Members were not able to ascertain from the wage statements whether
19 Defendants complied with their obligations under California Labor Code section 226(a).

20 **FIFTH CAUSE OF ACTION**

21 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

22 **(Lab. Code §§ 201, 202, and 203)**

23 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

24 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 76. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
27 of California Labor Code §§ 201, 202, 203, and the Wage Order.

28 77. Labor Code § 201 provides that all earned and unpaid wages of an employee who



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 is discharged are due and payable immediately at the time of discharge.

2 78. Labor Code § 202 provides that all earned and unpaid wages of an employee who
3 quits after providing at least 72-hours notice before quitting are due and payable at the time of
4 quitting and that all earned and unpaid wages of an employee who quits without providing at least
5 72-hours notice before quitting are due and payable within 72 hours.

6 79. The Defendants failed to pay Plaintiff and all of the other Class Members whose
7 employment ended all of the earned but unpaid wages described above by the conclusion of their
8 employment with Plaintiff, including minimum wages, and other compensation.

9 80. By failing to pay such earned wages to Plaintiff and the Class Members,
10 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
11 § 201 or § 202.

12 81. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
13 and the Class Members all of their earned and unpaid wages (described above) have been willful
14 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
15 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
16 they have had the ability to comply with those legal requirements.

17 82. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
18 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
19 penalties for each Class Member.

20 **SIXTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

22 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

23 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

24
25 83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 84. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class Members have been employees of Defendants and entitled to the benefits and protections
28 of the Business and Professions Code §§ 17200, *et seq.*



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

92. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

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

Every person employing labor in this state shall

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

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

94. Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

95. Section 7 of Wage Order states,

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

96. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, and all rest break premium wages earned. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 92. Section 15(C) of Wage Order states, “A temperature of not less than 68° shall be
2 maintained in the toilet rooms, resting rooms, and change rooms during hours of use.” At all
3 relevant times, Defendants failed to provide acceptable temperatures for the work areas they
4 expected Plaintiff and all of the other Aggrieved Employees to perform their job duties in.

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

7 98. During the applicable time period, Defendants violated California Labor Code §§
8 201, 202, 203, 204, 221, 226, 226.7, 1174, 1194, 1197, 1198, and 2802.

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

12 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
13 Employees are entitled to recover civil penalties for each of the Defendants’ violations of
14 California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 1174, 1194, 1197, 1198, and 2802
15 during the applicable limitations period in the following amounts:

16 A. For violations of California Labor Code § 204, one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
18 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
19 (penalty amounts established by California Labor Code § 210).

20 B. For violations of California Labor Code § 226(a), twenty-five dollars (\$25)
21 for each aggrieved employee per pay period for violation of paragraphs (1) to (7), inclusive, or
22 paragraph (9) of subdivision (a) of Section 226 if the employee could promptly and easily
23 determine from the wage statement alone the accurate information specified by subdivision (a) of
24 Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section
25 226, the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for
26 each aggrieved employee per pay period if the employee would not be confused or misled about
27 the correct identity of their employer or, if their employer is a farm labor contractor, the legal
28 entity that secured the services of that employer (penalty amounts established by California Labor
Code § § 2699(f)(2)).

 C. For violations of California Labor Code § 1197, one hundred dollars
(\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

D. For violations of California Labor Code § 1174, \$500 for Each Aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5).

E. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 225.5).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period (penalty amounts established by California Labor Code § 2699(f)(2)). Defendants' conduct giving rise to the violations of the Labor Code and Wage Order stated above were malicious, fraudulent, and/or oppressive.

137. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By a letter dated May 3, 2024, Plaintiff filed a written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail 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 notice to the LWDA is attached as Exhibit A. Plaintiff included with his LWDA notice a fee in the amount of \$75.00 each. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipate that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

138. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

139. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

- 1 A. An order that the action be certified as a class action with respect to
2 Plaintiff's claims for violations of California law;
- 3 B. An order that Plaintiff be appointed class representative;
- 4 C. An order that counsel for Plaintiff be appointed class counsel;
- 5 D. Unpaid wages, including minimum and missed rest period wages;
- 6 E. Liquidated damages;
- 7 F. Statutory penalties, including waiting time penalties;
- 8 G. Civil penalties;
- 9 H. Restitution;
- 10 I. Declaratory relief;
- 11 J. Actual damages;
- 12 K. Pre-judgment interest;
- 13 L. Costs of suit;
- 14 M. Reasonable attorneys' fees; and
- 15 N. Such other relief as the Court deems just and proper.

16 **VI. DEMAND FOR JURY TRIAL**

17 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
18 on all issues so triable.

19 Respectfully submitted,

20 THE SPIVAK LAW FIRM

21

22

23 Dated: July 8, 2024

24 
25 By: _____
26 DAVID G. SPIVAK, Attorneys for
27 Plaintiff, and all others similarly
28 situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
1801 Century Park East 25th Fl Los Angeles CA 90067 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 3, 2024

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

Re: Juan Gonzalez Garcia / Myers Employers

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Juan Gonzalez Garcia (hereafter “Gonzalez Garcia” or “Complainant”) provides notice that Myers Container, LLC, a Delaware limited liability company, Container Management Services, LLC, a Delaware limited liability company, and related entities (collectively “the Myers Employers” or “the Employers”) violated his rights and those of all other individuals the Myers Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to, machine operators, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 1174, 1194, 1197, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Gonzalez Garcia hereby provides this notice to the Labor & Workforce Development Agency and the Myers Employers and their agents and representatives.

At all relevant times, the Myers Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gonzalez Garcia and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately October 31, 2022, the Myers Employers began to employ Gonzalez Garcia in Rialto, California in the position of hourly, non-exempt machine operator. The Myers Employers continuously employed him in that capacity until on or about June 5, 2023 when his employment ended.

At all relevant times, the Myers Employers issued wages to Gonzalez Garcia and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Myers Employers classified Gonzalez Garcia and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees for all hours worked. The Myers Employers required Gonzalez Garcia and all of the other Aggrieved Employees to stand in lines to clock in for the start of their shifts. However, the Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees for this wait time which was approximately three (3) to five (5) minutes for each workday. The Myers Employers also required Gonzalez Garcia and all of the other Aggrieved Employees to don their protective gear at their work sites before they clocked in at the start of their shifts without compensation.

The Myers Employers also required Gonzalez Garcia and the Aggrieved Employees to monitor their cellphones on the days they were not scheduled to report to work to receive their next day work schedules. However, the Myers Employers did not pay Gonzalez Garcia and the Aggrieved Employees at least minimum wages for the time they spent monitoring their cellphones and responding to communications from their supervisors.

The Myers Employers also prevented Gonzalez Garcia and the Aggrieved Employees from taking duty-free meal periods but deducted at least 30 minutes from their wages. The Myers Employers required Gonzalez Garcia and the Aggrieved Employees to monitor their personal mobile phones and radios at all times during meal periods and respond to communications from managers and coworkers. The Myers Employers,

however, deducted at least 30 minutes from their daily wages even if they could not take duty-free meal periods.

At all relevant times, the Myers Employers failed to authorize and permit Gonzalez Garcia and all of the other Aggrieved Employees to take timely, ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Myers Employers required Gonzalez Garcia and the Aggrieved Employees to stay on premises during rest breaks, monitor their personal mobile phones and radios at all times during rest breaks, and respond to communications from managers and coworkers. The Myers Employers further failed to authorize and permit Gonzalez Garcia and all of the other Aggrieved Employees a third rest break when they worked more than 10 hours in a workday. The Myers Employers also failed to pay premium wages for days on which they failed to authorize and permit Gonzalez Garcia and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Myers Employers required Gonzalez Garcia and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Myers Employers required Gonzalez Garcia and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. The Myers Employers also required Gonzalez Garcia and all of the other Aggrieved Employees to purchase steel toe boots and provide dry cleaning for their uniforms. However, the Myers Employers did not provide these items and did not reimburse Gonzalez Garcia and the other Aggrieved Employees for these items.

The Myers Employers unlawfully deducted wages belonging to Gonzalez Garcia and all of the other Aggrieved Employees. As discussed above, the Myers Employers deducted at least 30 minutes from Gonzalez Garcia and the other Aggrieved Employees' daily wages even when they could take duty-free meal periods.

The Myers Employers failed to provide acceptable temperatures for the work areas it expected Gonzalez Garcia and all of the other Aggrieved Employees to perform their job duties in.

At all relevant times, the Myers Employers failed to issue to Gonzalez Garcia and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Myers Employers knowingly and intentionally failed to state on the wage statements they issued to

Gonzalez Garcia and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all rest break premium wages earned, gross wages earned, net wages earned, and other required information.

The Myers Employers also failed to timely pay Gonzalez Garcia and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

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

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

- (a) The Myers Employers failed to pay Gonzalez Garcia and all of the other Aggrieved Employees at least minimum wages earned for all hours worked;
- (b) The Myers Employers failed to authorize and permit Gonzalez Garcia and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees at one hour's pay for each day in which the Myers Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (d) The Myers Employers failed to indemnify Gonzalez Garcia and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (e) The Myers Employers unlawfully deducted wages belonging to Gonzalez Garcia and all of the other Aggrieved Employees;

- (f) The Myers Employers knowingly and intentionally failed to issue to Gonzalez Garcia and all of the other Aggrieved Employees accurate and complete wage statements;
- (g) The Myers Employers failed to provide acceptable temperatures for the work areas it expected Gonzalez Garcia and all of the other Aggrieved Employees to perform their job duties in;
- (h) The Myers Employers willfully failed to timely pay Gonzalez Garcia and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Myers Employers and when their employment ended; and
- (i) The Myers Employers failed to maintain accurate employment records pertaining to Gonzalez Garcia and all of the other Aggrieved Employees.

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

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean, "any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Myers Employers, Gonzalez Garcia, and all of the Aggrieved Employees were covered by the Wage Order because the Myers Employers operated, and Gonzalez Garcia, and all of the Aggrieved Employees worked for, one or more establishments that manufacture containers. Accordingly, Gonzalez Garcia and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Minimum Wages For All Hours Worked
(Lab. Code §§ 1194, 1197, and 1198)

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

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

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1194 states:

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

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

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

As discussed above, at all relevant times during the applicable limitations period, the Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees with minimum wages for all hours worked. Accordingly, Gonzalez Garcia

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

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

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

Section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As discussed above, the Myers Employers failed to authorize and permit Gonzalez Garcia and all of the other Aggrieved Employees to take ten-minute, paid, duty-free

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

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

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages

are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Myers Employers required Gonzalez Garcia and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. However, the Myers Employers did not provide these items and did not reimburse Gonzalez Garcia and the other Aggrieved Employees for these expenses. Accordingly, Gonzalez Garcia seeks civil penalties for these Labor Code violations that the Myers Employers have committed against him and all of the other Aggrieved Employees as follows:

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, the Myers Employers deducted wages from the wages earned by Gonzalez Garcia and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Gonzalez Garcia seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor

Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Myers Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Myers Employers failed to state in the wage statements they issued to Gonzalez Garcia and all of the other Aggrieved Employees all their hours worked and wages earned, including, wages for work they performed off the clock (as described above). The Myers Employers knowingly and intentionally failed to state on the wage statements they issued to Gonzalez Garcia and all of the other Aggrieved Employees the earned but unpaid wages described above. Accordingly, Gonzalez Garcia seeks civil penalties for the Labor Code violations that the Myers Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

The Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees for minimum wages earned, and related compensation at the intervals stated above. As a result, the Myers Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gonzalez Garcia now seeks civil penalties for the Labor Code violations that the Myers Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of

Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Myers Employers failed to pay Gonzalez Garcia and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gonzalez Garcia, including minimum wages, and related compensation. By failing to pay Gonzalez Garcia and all of the other Aggrieved Employees as set forth above at the end of employment, the Myers Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gonzalez Garcia seeks civil penalties from the Myers Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200

per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Acceptable Work Temperatures
(Lab. Code § 1198)

Section 15(C) of Wage Order states, “A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

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

Throughout the relevant time period, the Myers Employers failed to provide acceptable temperatures for the work areas it expected Gonzalez Garcia and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Myers Employers fail to notify my office in writing by certified mail that they have cured the violations of the Wage Order mentioned above, Gonzalez Garcia, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Myers Employers as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

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

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

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

The Myers Employers failed to compensate Gonzalez Garcia and all of the other Aggrieved Employees for all hours worked. As a result, the Myers Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gonzalez Garcia and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gonzalez Garcia seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

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

Sincerely,



David Glenn Spivak Esq.
david@spivaklaw.com
cc: Mr. Juan Gonzalez Garcia

Louis M. Benowitz, Esq.
Benowitz Law Corporation
8605 Santa Monica Boulevard
PMB 97638
West Hollywood CA 90069
louis@benowitzlaw.com

Myers Container, LLC
c/o Agent for service of process
1505 Corporation C T CORPORATION SYSTEM
330 N Brand Blvd.
Glendale CA 91203

Container Management Services, LLC
c/o Agent for service of process
1505 Corporation C T CORPORATION SYSTEM

LWDA / The Myers Employers
Re: Juan Gonzalez Garcia
5/3/2024
Page 18 of 18

330 N Brand Blvd.
Glendale CA 91203

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1801 Century Park East,
25th Fl, Los Angeles, CA 90067.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Wednesday, July 10, 2024, I served the foregoing document described
11 as **FIRST AMENDED CLASS ACTION COMPLAINT** on interested parties by placing a
true and correct copy thereof enclosed in a sealed envelope, with postage
fully prepaid, addressed as follows:

12 **Myers Container, LLC**
13 **c/o Agent for service of process**
14 **1505 Corporation C T CORPORATION SYSTEM**
15 **330 N Brand Blvd.**
Glendale CA 91203

16 **Container Management Services, LLC**
17 **c/o Agent for service of process**
18 **1505 Corporation C T CORPORATION SYSTEM**
330 N Brand Blvd.
Glendale CA 91203

19 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
20 collection and mailing, in the course of ordinary business practice, with
other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl,
Los Angeles, CA 90067.

21 EXECUTED on Wednesday, July 10, 2024, at Riverside, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 ____ (Federal) I declare that I am employed in the office of a member of the
25 bar of this court at whose direction the service was made.

26 
27 _____
LIZZETT CORTEZ
28