



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

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VIA ONLINE SUBMISSION

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

Subject: *Miryam Sanchez v. Kelcourt Plastics, Inc., et al.*

Dear PAGA Administrator:

This office represents Miryam Sanchez in connection with her claims under the California Labor Code. Ms. Sanchez was an employee of KELCOURT PLASTICS, INC. and/or PPC INDUSTRIES INC. For the purpose of this letter, Ms. Sanchez collectively refers to these entities as "KELCOURT."

The employers may be contacted directly at the addresses below:

KELCOURT PLASTICS, INC.
1000 CALLE RECODO
SAN CLEMENTE, CA 92673

PPC INDUSTRIES INC.
10101 78TH AVE
PLEASANT PR, WI 53158

Ms. Sanchez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Sanchez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by KELCOURT in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

KELCOURT employed Ms. Sanchez as a non-exempt, hourly paid employee from approximately September 2021 to December 2023. Ms. Sanchez worked for KELCOURT as a Production Operator and Quality Technician at its facility in San Clemente, California. During her employment, Ms. Sanchez typically worked eight (8) hours or more per day and five (5) days per week. Ms. Sanchez's job duties included, without limitation, performing and documenting inspections, checks, tests, and sampling procedures during the manufacturing processes of medical tubing extrusion devices; performing line clearance for removal of all previous products, components, and foreign materials; and reporting manufacturing operations non-conformances to supervisors.

KELCOURT has committed one or more of the following Labor Code violations against Ms. Sanchez, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹

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

KELCOURT PLASTICS, INC. is a California corporation; PPC INDUSTRIES, INC. is a Delaware corporation; and together, they design, develop, and manufacture specialty medical components, with at least two (2) facilities in California. Upon information and belief, KELCOURT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Clemente, California, or Pleasant Prairie, Wisconsin for all non-exempt, hourly paid employees working for KELCOURT in California, including Ms. Sanchez and other aggrieved employees. At all relevant times, KELCOURT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Sanchez and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

KELCOURT willfully failed to pay all overtime wages owed to Ms. Sanchez and other aggrieved employees. During the relevant time period, Ms. Sanchez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Ms. Sanchez’s experience and counsel’s review of those records currently available relating to Ms. Sanchez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Sanchez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, KELCOURT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Sanchez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with KELCOURT's practices of understaffing and assigning heavy workloads (*see infra*), led Ms. Sanchez and other aggrieved employees to work off-the-clock outside of their scheduled shifts or on their days off in order to complete their assigned tasks. For example, at least once per month, Ms. Sanchez was required to spend approximately two (2) hours performing work-related administrative tasks, such as completing quality assurance auditing paperwork, while at home on her days off, but was not compensated for this time spent working. Thus, KELCOURT failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. Sanchez and other aggrieved employees received no compensation for this time.

Moreover, KELCOURT had, and continues to have, a company-wide policy and/or practice of requiring Ms. Sanchez and other aggrieved employees to complete mandatory training modules, but did not permit them to complete them during their shifts. For example, Ms. Sanchez was required to complete a training module while she was at home, which consisted of watching videos on KELCOURT's company policies, which took about two (2) hours to complete. However, upon information and belief, KELCOURT only agreed to pay Ms. Sanchez for one (1) hour of pay to complete the mandatory training. Thus, KELCOURT failed to track all the time Ms. Sanchez and other aggrieved employees spent completing the mandatory training modules, and Ms. Sanchez and other aggrieved employees received no compensation for this time.

Second, KELCOURT had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet production deadlines and time-sensitive quality assurance verifications. KELCOURT's policies and/or practices resulted in a failure to provide Ms. Sanchez and other aggrieved employees with adequate meal period coverage, and thus, Ms. Sanchez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. KELCOURT also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Sanchez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Sanchez was required to perform multiple, time-sensitive inspections of KELCOURT's production lines, on a daily basis, which often caused Ms. Sanchez to work through her meal periods, due to lack of coverage and heavy workload. Additionally, and for the same reasons, Ms. Sanchez was regularly required to work through her meal periods in order to complete rush quality assurance verifications, typically when KELCOURT's high-priority clients placed urgent orders. As another example, Ms. Sanchez's meal periods were frequently interrupted by requests from KELCOURT's shift leads to discuss the status of audits, cutting her meal periods short by 15 minutes. Consequently, Ms. Sanchez and other aggrieved employees were required to work through their meal periods and/or had their meal periods interrupted or cut short in order to complete their assigned duties, time for which they were not paid.

Additionally, on information and belief, because KELCOURT frowned upon employees accruing meal period penalties, KELCOURT's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by KELCOURT.

Thus, KELCOURT did not record all hours worked during meal periods, and Ms. Sanchez and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, KELCOURT did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, KELCOURT paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, KELCOURT failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, KELCOURT failed to pay all overtime wages by paying a lower overtime rate than required.

KELCOURT's failure to pay Ms. Sanchez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, as a result of KELCOURT's policy of limiting the amount of overtime employees could accrue, KELCOURT required Ms. Sanchez and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts to complete work-related tasks, such as completing quality assurance auditing paperwork while at home on days off, and completing mandatory online training modules. KELCOURT failed to track this time that Ms. Sanchez and other aggrieved employees spent working off-the-clock, and Ms. Sanchez and other aggrieved employees received no compensation for this time.

Further, as also stated, due to KELCOURT's policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressure to meet production deadlines and time-sensitive quality assurance verifications, and failing to schedule meal periods, Ms. Sanchez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Also, as stated above, on information and belief, because KELCOURT frowned upon employees accruing meal period penalties, KELCOURT's managers pressured employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, KELCOURT systematically failed to pay Ms. Sanchez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, KELCOURT did not pay minimum wages for all hours worked by Ms. Sanchez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, KELCOURT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, KELCOURT regularly failed to pay at least minimum wages to Ms. Sanchez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, KELCOURT had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet production deadlines and time-sensitive quality assurance verifications, which has resulted in a lack of meal period coverage and prevented Ms. Sanchez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, KELCOURT had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Sanchez and other aggrieved employees to not be relieved of their duties for complaint meal periods.

As a result, Ms. Sanchez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Sanchez was often required to work straight through her meal periods in order to complete rush quality assurance verifications or to keep up with time-

sensitive inspections of KELCOURT's production lines; and had her meal periods interrupted by requests from KELCOURT's shift leads to discuss the status of audits. Additionally, Ms. Sanchez sometimes took her meal periods late, after the fifth hour of work, and as late as the seventh hour of work, due to the lack of coverage.

Second, as stated above, on information and belief, because KELCOURT frowned upon employees accruing meal period penalties, KELCOURT's management pressured Ms. Sanchez and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period or not. For example, Ms. Sanchez was required to clock out for her first meal periods to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely, uninterrupted meal periods.

Further, KELCOURT did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Sanchez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, KELCOURT knew or should have known that, as a result of its policies, Ms. Sanchez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. KELCOURT further knew or should have known that it did not pay Ms. Sanchez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, KELCOURT engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Sanchez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that KELCOURT did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, KELCOURT did not pay other aggrieved employees at the correct rate of pay for premiums because KELCOURT systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, KELCOURT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.”

Augustus, et al. v. ABM Security Services, Inc., 2 Cal. 5th 257, 273 (2016).

During the relevant time period, KELCOURT regularly failed to authorize and permit Ms. Sanchez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, KELCOURT’s company-wide policies and/or practices, including understaffing and assigning heavy workloads, prevented Ms. Sanchez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, KELCOURT failed to schedule rest periods, which, coupled with KELCOURT’s failure to provide adequate rest period coverage, further led to Ms. Sanchez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Moreover, on information and belief, KELCOURT maintained a company-wide on-premises rest period policy, which mandated that Ms. Sanchez and other aggrieved employees remain on KELCOURT’s premises during their rest periods. Specifically, KELCOURT’s managers erroneously informed employees that should they leave KELCOURT’s premises during rest periods, they were to only go as far as KELCOURT’s parking lot area. Because Ms. Sanchez and other aggrieved employees were effectively restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, KELCOURT effectively maintained control over Ms. Sanchez and other aggrieved employees during rest periods.

As a result of KELCOURT’s practices and policies, Ms. Sanchez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Sanchez regularly missed one (1) rest period she was entitled to per day, due to the lack of coverage and KELCOURT’s failure to schedule rest periods for employees.

KELCOURT also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Sanchez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that KELCOURT did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, KELCOURT did not pay other aggrieved employees at the correct rate of pay for premiums because KELCOURT failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, KELCOURT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. KELCOURT has not provided Ms. Sanchez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, KELCOURT has knowingly and intentionally provided Ms. Sanchez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, KELCOURT issued uniform wage statements to Ms. Sanchez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, KELCOURT violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because KELCOURT did not record the time Ms. Sanchez and other aggrieved employees spent working off-the-clock, KELCOURT did not list the correct amount of gross wages and net wages earned by Ms. Sanchez and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, KELCOURT failed to accurately list the total number of the hours worked by Ms. Sanchez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because KELCOURT did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, KELCOURT did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). KELCOURT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

Additionally, and separate from these violations, KELCOURT issued uniform wage statements to Ms. Sanchez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Sanchez's and other aggrieved employees' wage statements incorrectly list the employer's address as "2500 NORTHWINDS PKWY 472 ALPHARETTA GA 30009," but, according to the California Secretary of State's website, KELCOURT's address should be "1000 CALLE RECONDO SAN CLEMENTE, CA 92673."

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), KELCOURT willfully failed to maintain accurate payroll records for Ms. Sanchez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, KELCOURT engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Ms. Sanchez and other aggrieved employees in violation of section 1198. Furthermore, in light of KELCOURT’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, KELCOURT kept no records of meal start and end times for second meal periods.

Because KELCOURT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Sanchez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Sanchez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a

request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h) states "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

California Labor Code section 432 states, "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states, "[a]ny person violating this article is guilty of a misdemeanor."

California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 1-2001, subdivision 7(A), provides "[e]very 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." IWC Wage Order No. 1-2001, subdivision 7(C), also provides "[a]ll 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 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."

During the relevant time period, Ms. Sanchez sent KELCOURT reasonable written requests for documents and records relating to her employment with KELCOURT. During the relevant time period, KELCOURT failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Ms. Sanchez's employment. For example, on February 5, 2024, Ms. Sanchez sent a written request to KELCOURT via First-Class mail. Also, on April 25, 2024, Ms. Sanchez sent a second written request to KELCOURT via First-Class mail. Furthermore, on May 8, 2024, Ms. Sanchez sent a third written request to KELCOURT via FedEx overnight. FedEx confirmed KELCOURT received Ms. Sanchez's most recent written request for records, on May 9, 2024. To date, KELCOURT has failed to respond to any of Ms. Sanchez's written requests for records. Thus, KELCOURT has failed to comply with the reasonable written requests for documents and records relating to Ms. Sanchez's and other aggrieved employees' employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, KELCOURT failed to pay Ms. Sanchez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, KELCOURT has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Sanchez voluntarily resigned from her employment with KELCOURT on or about December 15, 2023. However, on information and belief, KELCOURT did not provide Ms. Sanchez with her final wages until December 21, 2023. Thus, KELCOURT failed to pay Ms. Sanchez her final wages within seventy-two (72) hours of her leaving KELCOURT's employ, in violation of California Labor Code section 202.

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

Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[.]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, KELCOURT did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, KELCOURT paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, KELCOURT failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, KELCOURT failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, KELCOURT paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

KELCOURT's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, KELCOURT, on a company-wide basis, required Ms. Sanchez and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular

phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Ms. Sanchez was required to use her personal cellular phone to communicate with her shift leads to discuss work-related matters, such as alerting Ms. Sanchez of urgent orders placed by KELCOURT's clients, or to confirm that Ms. Sanchez performed her production line inspections. Although KELCOURT required Ms. Sanchez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, KELCOURT failed to reimburse them for their costs incurred.

Also, during the relevant time period, KELCOURT required Ms. Sanchez and other aggrieved employees to wear special safety shoes such as steel-toed boots, which they were required to wear while at work and necessary for the performance of their duties. For example, Ms. Sanchez spent approximately \$20-40 per year during her employment on steel-toed boots, but she was not reimbursed for these costs. Thus, KELCOURT failed to provide or reimburse Ms. Sanchez and other aggrieved employees for the steel-toed boots they required employees to wear during their shifts.

KELCOURT could have provided Ms. Sanchez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and steel-toed boots, or KELCOURT could have reimbursed employees for the cost of their mobile device usage and supplied and/or boot expenses. Instead, KELCOURT passed these operating costs off onto other aggrieved employees. At all relevant times, Ms. Sanchez did not earn at least two (2) times the minimum wage.

Thus, KELCOURT had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, KELCOURT failed to provide Ms. Sanchez and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). KELCOURT's failure to provide Ms. Sanchez and other aggrieved employees with written notice of basic information regarding their employment with KELCOURT is in violation of Labor Code section 2810.5.

Ms. Sanchez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." KELCOURT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Sanchez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Sanchez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Sanchez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against KELCOURT for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Sanchez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: KELCOURT PLASTICS, INC. (via U.S. Certified Mail); PPC INDUSTRIES INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



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