

July 17, 2024

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Gerber Collision California, Inc.
400 W Grand Ave
Elmhurst, IL 60126

CT CORPORATION SYSTEM
Agent for Service of Process
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Ryan Yatman's Wage and Hour Claims Against Gerber Collision California, Inc.

Dear California Labor and Workforce Development Agency and Gerber Collision California, Inc.:

Please be advised that Ryan Yatman ("Claimant") has retained our firm to represent him for various claims against his former employer, Gerber Collision California, Inc. (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant intends to file a civil action to enforce his rights under the Labor Code and seeks compensation accordingly.

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Allison Schubert

Alex Kuner

Dawn M. Berry

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Samara Bahu

Ommar Chavez

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current or former non-exempt employees in California who performed work for the Company and who have suffered at least one of the Labor Code violations described herein during the relevant time period (“Aggrieved Employees”).

FACTUAL BACKGROUND

Gerber Collision California, Inc. is a Delaware corporation that provides auto collision and glass repair services at approximately 52 locations in California, as well as other locations across the United States. The Company is headquartered and has its principal place of business in Elmhurst, Illinois.

The Company employed Claimant as an estimator at the Gerber Collision & Glass location in Escondido, California from approximately October 24, 2022 until June 3, 2024. As an estimator, Claimant’s job duties consisted of creating estimates, coordinating repair needs, preparing and completing paperwork, and communicating with customers and insurance companies throughout the repair process. At all relevant times, Claimant was classified as a non-exempt employee and was paid an hourly wage of \$40 per hour on a weekly basis. Claimant typically worked Monday through Friday from 8:00 a.m. to 5:00 p.m., although he frequently worked shifts longer than 10 hours.

The Company denied, and continues to deny, Claimant and other Aggrieved Employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company (1) failed to provide compliant meal periods and/or pay premium wages; (2) failed to authorize or permit compliant rest periods and/or pay premium wages; (3) failed to pay all minimum, regular, and/or overtime wages; (4) failed to timely pay all wages due and owing upon separation of employment; (5) failed to furnish accurate itemized wage statements; (6) failed to maintain accurate records; (7) failed to reimburse for necessary business expenses; and (8) engaged in retaliation.

The Company required Claimant and, on information and belief, other Aggrieved Employees to work through their meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of their fifth and/or tenth hour of work. For instance, on several occasions, Claimant was unable to clock out for his second meal period because his location was short staffed and there was too much work to do. Claimant made a note on his timesheets that he was unable to take his meal period; however, his supervisor would correct his time records to reflect that he took a meal period to avoid having to pay a meal period premium. This happened to Claimant on multiple occasions from April 2023 to December 2023 during his shifts, which typically were longer than 10 consecutive hours. Claimant brought the unauthorized time record corrections to the attention of multiple supervisors, but he was not paid the requisite meal period premium wages for

missing his meal periods. Claimant is informed and believes that, based on the Company's uniform policies and practices, other Aggrieved Employees were similarly mandated to take non-compliant meal breaks and were not compensated for meal period premium wages.

Additionally, the Company failed to provide Claimant and other Aggrieved Employees with 10 minute rest periods per every four-hour work period, or major fraction thereof. Due to staffing issues and the amount of work assigned to him, Claimant was mandated to work through at least one of his rest periods during his shifts. Specifically, Claimant was mandated to work through his first or second rest period at least one time per week. Moreover, Claimant was informed by the Company that taking a third rest period for shifts over 10 hours was "optional," and so Claimant did not take a third rest period. Claimant is informed and believes that, based on the Company's uniform policies and practices, other Aggrieved Employees were similarly not authorized or permitted to take a rest period for every 3.5 hours that they worked.

Although Claimant and, on information and belief, other Aggrieved Employees did not receive legally compliant meal and/or rest periods, the Company did not pay Claimant and other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Accordingly, the Company owes Claimant and other Aggrieved Employees meal and/or rest period premiums at their regular rate of compensation for each workday they were not provided with a meal and/or rest period.

Claimant and, on information and belief, other Aggrieved Employees were not paid all minimum, regular, and/or overtime wages owed for all time actually worked on behalf of the Company. For instance, as a result of the Company's falsification of Claimant's timesheets to add in meal periods that Claimant did not actually take, Claimant was deprived of his earned minimum, regular, and/or overtime wages. Claimant is informed and believes that other Aggrieved Employees' wages were deducted as a result of the Company's unauthorized timesheet adjustments to avoid meal period violations and the obligation to pay meal period premiums.

The Company did not pay Claimant and, on information and belief, other Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, and/or overtime wages for all hours worked, and meal and rest period premiums. As stated above, the Company made improper deductions from Claimant's hours worked, which were never corrected prior to Claimant's termination despite his multiple complaints. The Company further failed to pay Claimant all meal and/or rest period premiums owed upon separation of employment. The Company knew or should have known that the employees were not paid for all wages owed due to Claimant's complaints about the timecard alterations, and/or knew or should have known that the meal breaks provided were short, late, or interrupted. The Company took no steps to remedy the illegal timecard modifications or the illegal practice of not paying for meal or rest period

premiums. Therefore, the Company's failure to timely pay final wages was willful and/or intentional. Claimant and other former Aggrieved Employees are therefore entitled to civil penalties for the Company's violation of Labor Code § 203.

Furthermore, the Company knowingly and/or intentionally failed to provide Claimant and other Aggrieved Employees with accurate itemized wage statements. The Company issued wage statements that failed to accurately show employees' actual regular and overtime hours worked during the pay period, the applicable hourly rates and the corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages earned. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

As a direct result of the Company's illegal policies, procedures, guidelines, and practices described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law. For instance, the Company's improper adjustment of Claimant's time entries to reflect compliant meal periods caused Claimant's time records to be inaccurate.

The Company also failed to reimburse Claimant and, on information and belief, other Aggrieved Employees for all necessary business expenses. Claimant and other Aggrieved Employees were required to use their personal cell phones for work-related purposes, such as taking pictures of body work, paint work, and other project details; downloading and using the "CCC ONE" app to provide pictures to the insurance companies; and communicating with customers, among other things. Claimant and other Aggrieved Employees were not provided reimbursement by the Company for use of their personal cell phones. This is despite the fact Claimant made several written requests to the Company's HR Department to be reimbursed a portion of his cell phone bill.

Moreover, the Company engaged in retaliation against Claimant in violation of Labor Code §§ 98.6 and 1102.5. Claimant made several complaints to his supervisors and higher management about being owed wages for hours worked and the fact that his timesheets were altered to reflect unpaid off-duty meal periods of 30-minutes that he was not actually able to take. Claimant believes that the Company similarly retaliated against other employees that complained about being owed wages, or those who refused to acquiesce to the deduction of 30-minutes for meal periods that they were not actually allowed to take. For example, in or around March 2024, Claimant made both verbal and written complaints to his supervisors Gregory Sunds and Eric Barron about these discrepancies in his timesheets and pay. Within two weeks of making these complaints, Claimant was written up for the first time after being an exemplary worker for at least one year and four months with the Company. Claimant continued

to complain about owed wages, and shortly thereafter received several more disciplinary notices in April 2024, and was ultimately terminated in June 2024. Upon information and belief, the Company retaliatorily terminated Claimant after he made formal and informal complaints about the Company's Labor Code violations against him and other employees, and thus, after Claimant had engaged in protected activity. On information and belief, the Company did not investigate any of Claimant's alleged wage and hour violations and/or cure any Labor Code violations prior to terminating Claimant.

Due to the foregoing Labor Code violations, the Company denied Claimant and other Aggrieved Employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR PAY PREMIUM
WAGES**

(Labor Code §§ 226.7, 512, 558 and the "Meal Periods" section of the Applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n 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..." Labor Code § 226.7(c) states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... 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."

Labor Code § 512(a) states, "[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...[and] shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." A meal period generally comports with the requirements of California law if the employee has at least 30 minutes of uninterrupted time and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at p. 1040 [internal citations omitted].)

The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee." Moreover, "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

The "Meal Periods" section of the applicable IWC Wage Order also states, "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

Labor Code § 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the end of their fifth and/or tenth hour of work. Claimant and other

Aggrieved Employees were not paid one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current or former Aggrieved Employees to the extent allowed by law.

**FAILURE TO AUTHORIZE OR PERMIT COMPLIANT REST PERIODS AND/OR
PAY PREMIUM WAGES**

(Labor Code § 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(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 of 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.

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a ... rest ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission,

(c) If an employer fails to provide an employee a ... rest ... 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 employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the ... rest ... period is not provided.

As discussed herein, the Company failed to authorize and permit Aggrieved Employees, including Claimant, to take an off-duty, uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Claimant and other Aggrieved Employees were not paid one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and the
“Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage
Order)

Labor Code § 1197 states, “[t]he 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.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203...”

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 provides, “[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code § 1194(a) mandates that “...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.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular, and/or overtime wages for all time engaged in work on behalf of the Company. Specifically, the Company altered Claimant’s and, on information and belief, other Aggrieved Employees’ time entries to fix meal period violations, thereby depriving them of compensation for all hours worked. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states, in pertinent part: “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.”

Labor Code § 203(a) further states, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.”

As set forth above, the Company violated these Labor Code sections by willfully and/or intentionally failing to pay Claimant and other Aggrieved Employees all minimum, regular, and/or overtime wages and/or meal and rest period premium wages owed within the required time upon separation of their employment. As a result of the Company’s failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and other Aggrieved Employees, which it has not yet paid. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former Aggrieved Employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...”

The “Records” section of the applicable IWC Wage Order further provides, in pertinent part: “Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.”

Labor Code § 226(e) imposes a penalty of 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 exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226(h) states, “an 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 attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

The Company knowingly and/or intentionally failed to provide Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate. The wage statements issued by the Company further failed to reflect meal and rest period premiums owed to Claimant and other Aggrieved Employees. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current or former Aggrieved Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments."

The "Records" section of the Applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per Aggrieved Employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated its recordkeeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages earned and paid, among other things. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current or former Aggrieved Employees to the extent allowed by law.

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FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required Claimant and, on information and belief, other Aggrieved Employees to use their personal cell phones in the discharge of their job duties without reimbursement. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6 and 1102.5)

Labor Code § 98.6(a) states, “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant ... made a written or oral complaint that he or he is owed unpaid wages, ... or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

In addition to other remedies available, an employer who violates Labor Code § 98.6 is “liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.” (Labor Code § 98.6(a)(3).)

Labor Code § 1102.5(b) states, “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority

over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

In addition to other penalties, "an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section." (Labor Code § 1102.5(f).)

As set forth above, the Company engaged in retaliation against Claimant after he made complaints to his supervisors concerning the falsification of his time records and not receiving compensation due to him. Claimant will pursue all available remedies for the Company's violations to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 98.6, 226.3, 558, 558.1, 1102.5, 1174.5, 1197.1, and 2699(f))

Labor Code § 98.6(a)(3) imposes on any employer who violates Labor Code § 98.6 "a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation."

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Labor Code § 558.1(a) further states that "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." This includes the owners, officers, directors, or managing agents of the employer. (Labor Code § 558.1(b).)

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000)” for each violation of Labor Code § 1102.5. (Labor Code § 1102.5(f).)

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be 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. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be 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. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per aggrieved employee for violations of certain Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 226.7, 1198, 2802, and relevant IWC Wage Orders. If the alleged violation results from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods, the civil penalty is \$50 for each aggrieved employee per pay period.

Moreover, Labor Code § 2699(f) imposes a civil penalty of \$200 per pay period, per aggrieved employee if either of the following are met: (1) within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful; or (2) the court determines that the employer’s conduct giving rise to the violation was malicious, fraudulent, or oppressive.

For violations of paragraphs (1) to (7), inclusive, or paragraph (9) of Labor Code § 226(a), Labor Code § 2699(f) imposes a civil penalty of \$25 for each aggrieved employee per pay period if the employee can promptly and easily determine from the wage statement alone the accurate information specified by section 226(a). For violations of paragraph (8) of Labor Code § 226(a),

Labor Code § 2699(f) imposes a civil penalty of \$25 per each aggrieved employee per pay period “if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer.”

For violations of Labor Code § 226(a) resulting from an employer’s failure to provide employees with a wage deduction statement or failure to keep records required by this section, Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to provide compliant meal periods and/or pay premium wages; failing to authorize or permit compliant rest periods and/or pay premium wages; failing to pay all minimum, regular, and/or overtime wages; failing to timely pay all wages due and owing upon separation of employment; failing to furnish accurate itemized wage statements; failing to maintain accurate records; failing to reimburse for necessary business expenses; and engaging in retaliation. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies for the Company’s violations stated herein, on behalf of himself and other current or former Aggrieved Employees to the extent allowed by law.

**ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND
PENALTIES**

(Labor Code §§ 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2698, *et seq.*, and 2802)

Labor Code §§ 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2698, *et seq.*, and 2802, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code § 2699(m), an aggrieved employee is entitled to collect 35% of the penalty assessment. Under Labor Code § 2699(k)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur such as a result of the Company’s unlawful actions. Claimant will pursue all available remedies, including but not limited to those provided by the PAGA, on behalf of himself and other Aggrieved Employees to the extent permitted by law for the violations of law described herein and those later discovered.

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CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former non-exempt employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

A handwritten signature in black ink, appearing to read "Allison E. Schubert". The signature is fluid and cursive, with a long horizontal stroke at the end.

Allison E. Schubert