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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ROBERT FROSIO, on behalf of others similarly situated and the State of California under the Private Attorneys General Act, Plaintiffs, vs. LA JOLLA BEACH AND TENNIS CLUB PARTNERS L.P. and DOES 1 through 50, inclusive, Defendants.	Case No. 24CU003072C **SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT** 1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff ROBERT FROSIO, on behalf of all others similarly situated, and the State of California under the Private Attorneys General Act ("Plaintiff") brings this SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT against Defendants LA JOLLA BEACH AND TENNIS CLUB PARTNERS L.P. and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action brought under the California Labor Code §§ 2698 *et seq*.

2. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked.

3. Defendants failed to provide, authorize, and/or permit Plaintiff and other aggrieved employees to take all complaint meal and rest periods to which they were entitled. However, Defendants did not pay Plaintiff and other aggrieved employees all meal premiums.

4. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages.

5. Defendants failed to properly reimburse Plaintiff and the other aggrieved employees for using their cell phones and devices to complete work-related duties.

6. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

7. Defendants are further liable for derivative claims for wage statements, untimely payment, and other associated violations.

8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

9. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

10. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

11. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Robert Frosio

13. Plaintiff Frosio is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about 2014 to June 2024. Plaintiff worked as a Guest Services Supervisor.

14. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th _____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

15. Defendant La Jolla Beach and Tennis Club Partners L.P. is a California limited partnership that maintains operations and conducts business throughout the State of California, including in this county.

16. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some

manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

17. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

18. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

19. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

20. Plaintiff and other aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

21. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked as a result of off-the-clock work resulting in unpaid minimum wages.

22. Defendants failed to provide Plaintiff and the other aggrieved employees with compliant meal periods and meal period premiums.

23. Defendants failed to provide Plaintiff and the aggrieved employees with compliant rest periods.

24. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and/or interrupted meal and rest periods due to employee responsibilities and the steady flow of business.

25. For example, Plaintiff worked Plaintiff worked a consecutive 5.05 hours on November 17, 2023, and 5.42 hours on November 23, 2023, before taking his meal break. In his corresponding pay statement, Plaintiff was not paid a meal period premium despite the violations.

26. On or about June 7, 2024, Defendants' agents incorrectly interpreted the law by misinforming Plaintiff that "an employee must start their meal before the completion of the 5th hours which by 5 hours and 59 minutes."

27. As a result, Defendants maintained an unlawful policy and practice of non-compliant meal periods and failed to pay all owed meal period premiums at the regular rate of compensation.

28. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent that this off-the-clock work resulted in Plaintiff and the aggrieved employees working more than 8 hours per day or more than 40 hours per week, this resulted in unpaid overtime wages.

29. Defendants required Plaintiff and the other aggrieved employees to incur costs for work-related purposes without full reimbursement.

30. For example, Plaintiff and the other aggrieved employees were expected to use an app their cell phone to clock in and out of work.

31. Thus, in direct consequence of their job duties, Plaintiff and the other aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice.

32. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment.

33. Defendants failed to provide accurate itemized wage statements to Plaintiff and the other aggrieved employees each pay period as a result of the policies and practices ser forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

34. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

35. All outside paragraphs of this Complaint are incorporated into this section.

36. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

37. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

38. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

39. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. "

40. Labor Code section 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

41. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

42. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

43. On or about **July 8, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

44. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

45. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

46. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

47. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

48. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

c. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

d. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

49. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: October 28, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorney for Plaintiff Robert Frosio

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
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July 8, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

La Jolla Beach and Tennis Club Partners L.P.
2000 Spindrift Drive
La Jolla, CA 92037

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **ROBERT FROSIO** ("Plaintiff") and all other "aggrieved employees" of the following "Defendant(s)":

LA JOLLA BEACH AND TENNIS CLUB PARTNERS L.P.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Guest Services Supervisor from about 2014 to June 20, 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

<u>Unpaid Meal Period Premium Wages</u>
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 512</u> and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. <u>Labor Code section 226.7</u> requires that if a meal period is late, missed,

short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

In violation of Labor Code 226.7, Defendants did not consistently pay meal period premiums for missed, late, short, or interrupted meal periods. Due to employee responsibilities, and the steady flow of business, Plaintiff and aggrieved employees were not always provided their 30-minute, duty-free meal period before their fifth hour of work on shifts over six hours.

Below is an example of Defendants' failure to pay Plaintiff his owed meal period premium:

Friday	11/17/2023	ADJ			1647	6092	^Meal Units Memo	1.00		1.00
Friday	11/17/2023	06:08 AM	(11:11 AM)	5.05 HR	1647	6092	Hourly Regular	5.05	5.05	
		(11:41 AM)	(02:38 PM)		1647	6092	Hourly Regular	2.95	2.95	
		(02:38 PM)	02:58 PM		1647	6092	Overtime	0.33	0.33	
								8.33	**8.33**	
Saturday	11/18/2023	ADJ			1647	6092	^Meal Units Memo	1.00		1.00
Saturday	11/18/2023	05:44 AM	(10:16 AM)		1647	6092	Hourly Regular	4.53	4.53	
		(10:46 AM)	(02:14 PM)		1647	6092	Hourly Regular	3.47	3.47	
		(02:14 PM)	02:40 PM		1647	6092	Overtime	0.43	0.43	
								8.43	**8.43**	
Sunday	11/19/2023	ADJ			1647	6092	^Meal Units Memo	1.00		1.00
Sunday	11/19/2023	07:35 AM	(12:00 PM)		1647	6092	Hourly Regular	4.42	4.42	
		(12:30 PM)	(04:05 PM)		1647	6092	Hourly Regular	3.58	3.58	
		(04:05 PM)	04:18 PM		1647	6092	Overtime	0.22	0.22	
								8.22	**8.22**	
Wednesday	11/22/2023	06:30 AM	02:30 PM		1647	6092	Sick	**8.00**	**8.00**	
Thursday	11/23/2023	ADJ			1647	6092	^Meal Units Memo	1.00		1.00
Thursday	11/23/2023	05:44 AM	(11:09 AM)	5.42 HR	1647	6092	Hourly Regular	5.42	5.42	
		09:00 AM	05:00 PM		1647	6092	Holiday	8.00	8.00	
		(11:39 AM)	01:08 PM		1647	6092	Hourly Regular	1.48	1.48	
								14.90	**14.90**	

Plaintiff's time records from November 17, 2023 to November 23, 2023.

Statement of Earnings For:	Robert Alan Frosio							La Jolla Beach & Tennis Club Partners LP
Employee #:	77387	Division	3	Period Begin:	11/12/2023	Check Date:	12/1/2023	2000 Spindrift Dr
Clock Number:		Department	1647	Period End:	11/25/2023	Pay Type:	Hourly	La Jolla, CA 92037
Company Id:	SDLBTC	Federal Filing:	Single	Exemptions:	1	Additional Tax:		858-551-4643
		State Filing:	Single or	Exemptions:	1	Additional Tax:		

Voucher Id	Check Amount	Gross Pay	Net Pay	Check Message
V8909265	$0.00	$1,881.44	$1,386.84	

EARNINGS	*Not included in Totals		^Hrs/Units = Units (Units not included in Totals)			TAXES			DEDUCTIONS		
Description	Rate	Hrs/Units	Dollars	YTD Hrs/Unit	YTD Dollars	Description	Current	YTD	Description	Current	YTD
Hourly Regular	22.0000	67.75	1,490.50	1,745.52	37,442.29	SOC SEC EE	116.65	2,621.62	Personal Exp	12.66	238.61
Holiday	22.0000	8.00	176.00	48.00	1,033.60	MED EE	27.28	613.12	D401K	56.44	1,272.32
Sick	22.0000	8.00	176.00	26.00	560.80	FEDERAL WH	166.46	3,660.53	401K Loan	53.47	1,283.28
*Meals TXBL H			44.55	0.00	1,012.95	CALIFORNIA WH	44.82	904.87			
Overtime	33.0000	1.18	38.94	36.54	1,185.18	CALIFORNIA SDI	16.82	378.22			
*401(k) Match			28.22	0.00	583.71						
Porterage			0.00	0.00	27.00						
Vacation			0.00	85.43	1,863.46						
CA Meal Premium			0.00	8.00	171.80						

Plaintiff's Pay Statement for the period of November 12, 2023 to November 25, 2023.

As shown in Plaintiff's time records, he worked 5.05 hours on November 17 and 5.42 hours on November 23, 2023 before taking his meal breaks. In the corresponding pay statement, Plaintiff was not paid a meal period premium despite the violations.

Further, Plaintiff sought clarification from Defendants' Human Resources Department regarding a meal period violation on June 7, 2024. Defendants' agents misinformed Plaintiff that "an employee must start their meal before the completion of the 5th hours which by 5 hours and 59 minutes." However, Defendants' agent's interpretation of the statute is incorrect and resulting in an underpayment of meal period premiums.

From: Tracey Wiese <TWiese@LJBTC.COM>
Sent: Wednesday, June 12, 2024 12:52 PM
To: Rob Frosio <RFrosio@ljbtc.com>; Brenda Calderon <BCalderon@ljbtc.com>; Caleigh McClenahan <CMcClenahan@ljbtc.com>; zzPayroll <zzPayroll@ljbtc.com>
Cc: Luis Simental <LSimental@ljbtc.com>; Monty Cantero <MCantero@LJBTC.COM>
Subject: RE: Robert Frosio Isolved: Meal Premium Not populating 6/7

Hello Rob,

The rule is that an employee must start their meal before the completion of the 5th hour which by 5 hours and 59 minutes. We do, however, advise that best practice is to get employees our earlier to give yourself a buffer in case of delay or business levels.

Tracey

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Untimely Payment of Wages During Employment</u>
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

<u>Labor Code section 204(a)</u> requires payment of "all wages" for non-exempt employees at least twice each calendar month. <u>Labor Code section 204(d)</u> states all wages due must be paid "not

more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Specifically, Defendants failed to pay Plaintiff all premiums owed, as noted above, resulting in violation of the forgoing sections of the Labor Code.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. Specifically, Defendants did not pay the required meal premiums resulting in underpayment of wages. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice.

Labor Code section 2802 requires an employer to "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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants allowed Plaintiff and aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants expected Plaintiff and aggrieved employees to utilize their personal cell phone to complete necessary work tasks, such as to clock in and clock out of work. Plaintiff and aggrieved employees used an app to facilitate these work-related functions from their personal cellular devices. Defendants did not provide reimbursement for the use of personal cell phones. Instead, Plaintiff and aggrieved employees bore the cost of these requirements, without reimbursement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "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." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Robert Frosio

Quarles & Brady LLP
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Counsel for Defendant