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LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
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(Via Online Submission)

E. Clarke Moseley
Agent for Service of Process
Eagle Motors, Inc.
2401 Oakwood Street
Paso Robles, CA 93446
(Via Certified Mail, Return Receipt Requested)

Re: ***Sandoval v. Eagle Motors, et al.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that our office has been retained by Jose Sandoval ("Sandoval") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employee's former employer, Eagle Motors, Inc. dba Paso Robles Ford ("Eagle Motors" or "Employer"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Employee and potentially all of Employer's Aggrieved Employees.

Sandoval wishes to pursue this action on behalf of Employees as Aggrieved Employees, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Eagle Motors in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Mr. Sandoval's Employment with Eagle Motors

Eagle Motors is a Ford dealership and service center. Employee worked for Eagle Motors as a Lube Technician. Employee's primary job functions were to change oil, rotate tires, and conduct vehicle inspections, among other things. In performing Employee's duties, Employee was regularly required to perform off-the-clock work without compensation.

Due to understaffing and high workloads, Employee was also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Employer failed to provide Employee and other Aggrieved Employees with the meal and rest break premiums as required by the Labor Code and had noncompliant meal and rest break policies. Additionally, Employee necessarily incurred business-related expenses, such as tools needed to perform his duties because Employer provided cheap, low-quality tools making the job harder. Not only Employer failed to reimburse such business-related expenses, but it also had Employee and the Aggrieved Employees sign

agreements declaring any tools they had to bring with them to work “voluntary” and “unnecessary.” These are just non-exhaustive examples of the facts and theories the Employee asserts, which are described in more detail below.

Employer owns and operates an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employer’s business in California, Employer is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

Ms. Sandoval is a resident of San Luis Obispo County who worked for Employer in San Luis Obispo County, California, as an hourly-paid, non-exempt employee from approximately September of 2022 to approximately March of 2024.

During Employee’s employment for Employer, Employer paid Employee an hourly wage and classified Employee as non-exempt from overtime.

Throughout Employee’s employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employee with legally compliant meal periods, failed to authorize and permit Employee to take rest periods, failed to furnish accurate wage statements to Employee, failed to indemnify Employee for business expenditures, failed to timely produce Employee’s requested employment records, among other things. As discussed below, Employee’s experience working for Employer was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employer at time required Employee and the Aggrieved Employees, or some of them, to work “off-the-clock,” uncompensated, by, for example, requiring Employee and the Aggrieved Employees to perform work during uncompensated meal periods and rest periods, and requiring Employee and the Aggrieved Employees to perform work before clocking in and/or after clocking out.

Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that Employer compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee’s regular rate of pay when paying overtime, by failing to include all compensation in Employee’s overtime

calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them, worked.

Throughout the statutory period, Employer also engaged in a practice of improper rounding. Under *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, because Employer could and did track the exact time in minutes that Employee worked, they must pay for all time worked. When an employer uses an electronic timekeeping system to record time worked, this ability to “precisely capture time worked” means that “the employer must pay the employee for that worktime when due.” (*Id.* at 671.) As a result of Employer’s rounding policy, Employee consistently was not compensated at least minimum wage for all hours that Employee worked.

Employee and the Aggrieved Employees also frequently had to monitor work-related text messages and calls on their personal cell phones and to respond.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, Employer have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employer at times wrongfully failed to provide Employee and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including but not limited to, failing at times to provide Employee and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Employee and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employee and the Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Employee and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. Employer also did not inform Employee of Employee’s right to, nor permitted Employee to take, all of Employee’s second meal periods when Employee worked at least ten hours of work in a workday and otherwise unlawfully pressured Employee to waive such breaks. Accordingly, Employer at times failed to provide meal periods to Employee and the Aggrieved Employees, or some of them, in compliance with California law.

Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employer, however, at times failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employer is required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer at times have wrongfully failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take legally compliant rest periods in a manner required by law (and also including but not limited to, failing, at times, to authorize and permit Employee and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take rest periods). Employer at times required Employee and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day without Employer's authorizing and permitting Employee to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employee and the Aggrieved Employees, or some of them, for rest periods that were not authorized or permitted.

Instead, Employer at times continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or at times by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employer at times failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law. Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however, at times failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employer's failure at times to pay Employee and the Aggrieved Employees, or some of them, for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires Employer to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employer failed and refused to pay the Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all meal periods not provided by Employer, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. As a result, Employer owe Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

At no time may any employee perform off-the-clock work or otherwise alter, falsify or manipulate any aspect of their time-keeping records to inaccurately reflect or hide hours worked, meal periods taken or time spent working during meal periods. In 2021, UPS employees in California sued the company accusing them of changing their time cards and not paying them for work-related activities. The time cards were changed on multiple occasions.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employee seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however, at times failed to maintain accurate records of hours worked and all meal periods taken or missed by Employee and the Aggrieved Employees, or some of them. On information and belief, Employer and/or its supervisors may have engaged in altering Employee and the Aggrieved Employees' time records.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records.

Therefore, Employee and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Produce Requested Employment Records

Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. Labor Code § 1198.5(a) also provides that every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employees' performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of

the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request.

On information and belief, Employee and the Aggrieved Employees, or some of them, submitted written request(s) to Employers for their payroll records, timecards, and personnel records, but did not timely receive them or some of them, as required by the Labor Code.

As a result, Employers are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer at times failed, and continue at times to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal and rest period premium wages, and unlawful deductions for cash shortages. Employer also violated, and continue to violate, Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without the employee's voluntary authorization.

Employer's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Employee and the Aggrieved Employees, or some of them, are entitled to recover from Employer their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at

termination, and for unlawfully making any such payment (if any) via direct deposit without the employee's voluntary authorization.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employer at times failed to, and continue at times to fail, to timely furnish Employee and the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all deductions from wages, applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employer at times violated Labor Code § 226, Employee and similarly Aggrieved Employees, or some of them, suffered injury and damage to their statutorily protected rights. Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that Employer shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employer at times wrongfully required Employee and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employer.

Employee and the Aggrieved Employees, or some of them, at times paid out-of-pocket for necessary employment-related expenses. Employee and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employer,

but Employer failed to indemnify Employee and the Aggrieved Employees, or some of them, for these employment-related expenses.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees, or some of them, for necessary business expenditures.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires Employer to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by Employees and Aggrieved Employees. All applicable IWC Wage Orders, section 7 similarly requires Employer to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employer at times failed, and continue at times to fail, to keep accurate and complete payroll records as required by law, including but not limited to, the following records: total daily hours worked, applicable rates of pay, time records showing when Employee and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employer at times failed and continue at times to fail to keep accurate and complete records showing total hours worked by Employee and Aggrieved Employees, or some of them, by virtue of Employer’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices. Employer failed at times and continue at times to fail to keep accurate and complete records showing total hours worked by virtue of Employer’s failure to relieve Employee and Aggrieved Employees, or some of them, of all duties and Employer’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employer further failed at times, and continue at times to fail, to record the true start and end times of Employee’s and Aggrieved Employees’ meal periods, or some of them.

Based on further information and belief, Employer further failed at times and continue at times to fail, to record the true start and end times of Employee’s and Aggrieved Employees’ work shifts, or some of them.

Violation of Wage Theft Protection Act of 2011

Based on information and belief, Employer failed at times, and continue at times to fail, to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and Aggrieved Employees, or some of them, with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay Aggrieved Employees, or some of them, at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among

other relief, Aggrieved Employees, or some of them, may collect from Employer in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Refusal to Make Payment

Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employer at times violated and continue at times to violate Labor Code section 216 by failing to pay Employee and Aggrieved Employees, or some of them, for all hours worked at the proper wage rate and by failing to pay Employee and Aggrieved Employees, or some of them, an additional hour of pay for each meal and/or rest period not provided or that was invalid. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.)

These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employee (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.¹

Statutory Wage Violations

Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Employer at times willfully and systematically denied Employee and other Aggrieved Employees, or some of them, of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employer at times acted with the intent to deprive some or all of them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employer at times paid Employee and other Aggrieved Employees, or some of them, lower wages than those to which they were entitled, while purporting that Employee and all Aggrieved Employees were properly paid. As such, Employee and Aggrieved Employees, or some of them, are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Unlawful PAGA Waiver

Additionally, Employer at times violated Labor Code section 432.5 by requiring Employee, Aggrieved Employees and Exempt Aggrieved Employees, or some of them, to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions, as a condition of employment.

An action pursuant to PAGA "...is a representative action on behalf of the state" *Kim v Reins*

¹ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Int'l California, Inc. (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.").

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action ... is a representative action on behalf of the state.'").

Upon information and belief, Employer at times required Employee, Aggrieved Employees and Exempt Aggrieved Employees, or some of them, to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By at times requiring Employee, Aggrieved Employees and Exempt Aggrieved Employees, or some of them, to agree, in writing, to an unlawful PAGA waiver, Employer at times required written agreement to an unlawful provision as a condition of employment, which is a violation of labor code section 432.5.

As such, Employee, Aggrieved Employees and Exempt Aggrieved Employees, or some of them, continue to be subject at times to various unlawful provisions as a condition of employment.

Violation of California Labor Code §§ 245-248.5

Throughout the relevant time period, Employers at times failed to provide proper paid sick leave to Employee and other Aggrieved Employees, or some of them. Employers either failed at times to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to Employee and other Aggrieved Employees, or some of them, by failing at times to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to Employers' premises) and by failing at times to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, Employers further failed at times to provide notice of the correct sick leave amount balance available to Employee and other Aggrieved Employees, or some of them, on their wage statements or other written statement.

Based on information and belief, Employers at times failed to put Aggrieved Employees, or some of them, on notice of their paid sick leave rights, thereby failing at times to put their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, Employers at times failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the Aggrieved Employees, or some of them.

Based on information and belief, Employers at times failed to provide notice of sick leave amount balance left for Employee and other Aggrieved Employees, or some of them, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Employee, and other Aggrieved Employees, or some of them, would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the

banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful, and Employee seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of Employee and the Aggrieved Employees, or some of them.

In violation of Labor Code section 247.5, Employers at times failed to maintain records documenting the hours worked and paid sick days accrued and used by Employee and Aggrieved Employees, or some of them, permitting the presumption that Employee and these Aggrieved Employees, or some of them, were entitled to the maximum number of hours accruable under this article.

Upon information and belief, Employers at times further failed and continue at times to fail to comply with Labor Code section 246, by failing to provide Employee and Aggrieved Employees, or some of them, with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages. Employers at times unlawfully retained and continue at times to retain paid sick leave that should have been paid but was not, as a result of Employers' failure, at times, to properly institute a paid sick leave program.

On information and belief, Employee alleges that these practices at times were experienced and continue to be experienced at times by other Aggrieved Employees, or some of them. Employee requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to Employers' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, Employee and other Aggrieved Employees, or some of them, are entitled to injunctive relief, attorneys' fees, declaratory relief, restitution, and penalties as permitted by law. Employee requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Action for Civil Penalties Under PAGA

In light of the above, Employee alleges that Employer violated the following provisions of the Labor Code, among others, with respect to the Aggrieved Employees, or some of them:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing at times to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing at times to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing at times to authorize and permit rest periods;
4. Labor Code § 204 by failing at times to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing at times to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code § 226 by failing at times to provide accurate itemized wage statements;
7. Labor Code § 2802 by failing at times to indemnify for necessary expenditures;
8. Labor Code § 1174 by failing at times to keep accurate and complete payroll records;

9. Labor Code §§ 226, 432, and 1198.5 by failing at times to timely produce requested payroll records, timecards, and personnel records;
10. Labor Code § 216 for refusal at times to pay wages due and payable and/or denial at times of the validity of any claim to wages due;
11. Labor Code § 223 for at times secretly paying wages lower than required by statute while purporting to pay legal wages;
12. Labor Code § 432.5 for unlawful agreements;
13. Labor Code §§ 245-248.5 by failing at times to provide proper sick leave and supplemental paid sick leave.

Therefore, on behalf of potentially Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

M. DeSario

Molly DeSario, Esq.