

LAW OFFICE OF  
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August 28, 2024

Labor & Workforce Development Agency  
Attention: PAGA Administrator  
151 Clay Street, Suite 801  
Oakland, California 94612

*VIA ELECTRONIC SUBMISSION*

Re: Blanca Delao's Claims Against The Flower Parrot Co., Inc., et al. Under  
Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.)

Dear Sir or Madam:

This office and Mahoney Law Group, A.P.C. represents Blanca Delao in connection with her employment law claims against The Flower Parrot Co., Inc. and Christopher D. Stanley (collectively, "FPC") from in or around in or around November 2012 to on or around April 7, 2024 ("Employment Period"). This letter is notice to Labor Workforce Development Agency ("LWDA") of Ms. Delao's claims—on behalf of herself, the aggrieved employees, and the State of California—under Labor Code section 2699.3(a). This letter is also notice to FPC so that it may cure<sup>1</sup> its Labor Code violations.

FPC blatantly disregarded the Labor Code and IWC Wage Orders MW-2024 and 7-2001. As a direct and proximate result, FPC is liable to Ms. Delao, the aggrieved employees, and the State of California, under the Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA"), for civil penalties unless California's Labor Code is enforced by LWDA.

If LWDA declines to investigate Ms. Delao's claims, she will seek civil penalties against FPC pursuant to Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233,

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<sup>1</sup> Effective October 1, 2024, the term "cure" means that (1) FPC "corrects" all violations enumerated in this letter, (2) FPC is "in compliance with the underlying statutes specified in th[is] notice," and (3) "each aggrieved employee is made whole." See 2023 Bill Text CA A.B. 2288. The term "aggrieved employee" means "any person who was employed by" FPC during the relevant time period. *Id.* Moreover, "[a]n employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney's fees and costs to be determined by the agency or the court." *Id.*

August 28, 2024  
Labor & Workforce Development Agency  
Page 2 of 16

234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 on behalf of herself, the aggrieved employees, and the State of California.

## **1. Statement of Facts**

### **a. FPC**

The Flower Parrot Co., Inc. is a California corporation with a principal place of business located at 2521 Oceanside Boulevard, Suite 8, Oceanside, California 92054. According to its State of Information filed with the Secretary of State on April 29, 2024, the corporation's Chief Executive Officer, Secretary, Chief Financial Officer, and sole Director is Christopher D. Stanley. Ms. Delao is informed and believes that Mr. Stanley is also the corporation's controlling stockholder. Ms. Delao is further informed and believes that FPC employed at least 30 employees at any given time during the Employment Period.

FPC is a "provider of fresh floral bouquets" and sells its arranged flowers in the "greater southern [sic] California area."<sup>2</sup> For example, FPC sells its arranged flowers at various Home Depot stores throughout Southern California. Moreover, FPC instructs its employees to visit the various Home Depot stores where its flowers are sold to provide on-site floral arrangement support for end-user customers.

### **b. Individual Allegations**

From in or around November 2012 to on or around April 7, 2024 ("Employment Period"), FPC employed Ms. Delao as a Flower Merchandiser and most recently assigned her to work at three Home Depot stores in Southern California (i.e., Rialto, San Bernardino, and South San Bernardino). She was classified as an independent contractor. But FPC set her daily work schedule and supplied the flowers, price labels and signs used in her flower arrangement; in 2023 and 2024, she was required to service the Rialto, San Bernardino, and South San Bernardino Home Depot stores at least three times each day

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<sup>2</sup> The Flower Parrot Company, Our mission, available at <https://www.flowerparrot.com/FlowerTipsTFPC.htm> (last visited Aug. 14, 2024)

August 28, 2024  
Labor & Workforce Development Agency  
Page 3 of 16

(i.e., morning, noon, and night), *seven* consecutive days each workweek. FPC's supervisors directed, controlled, and supervised Ms. Delao's work.

Unlike FPC, Ms. Delao was not—and is not—personally engaged in the independent business of selling flowers during the Employment Period. Ms. Delao did not market, advertise or promote the sale of arranged flowers in-person or in a print or digital medium. She maintained no offices, warehouses or flower inventories. Ms. Delao also had no employees or no actual or prospective customers. Instead, Ms. Delao arranged flowers *exclusively* for FPC during the Employment Period. Ms. Delao also entered inventory data on FPC's website and ordered supplies for FPC, as needed, before 9:30 a.m. each day during the Employment Period.

As a condition of employment, FPC required Ms. Delao execute various express instruments during the Employment Period, including independent contractor agreements every six months. Most recently, Ms. Delao was forced to execute a written contract titled Independent Merchandiser Agreement (“IMA”) on or around October 11, 2023. Under the IMA, Ms. Delao was entitled to receive a \$625 “weekly draw...against commissions” plus “commissions” of seven percent (7%) to nine percent (9%) of “total retail value of sales.” But beginning in or around January 2024, FPC ceased paying Ms. Delao any commissions. In fact, FPC issued an invoice for \$800 to Ms. Delao, demanding that *she pay* FPC monies. Thus, Ms. Delao was not only effectively working without any pay like an indentured servant, FPC demanded money from her for her servitude

Specifically, Ms. Delao worked eight to 10 hours each workday each workweek during the Employment Period. Ms. Delao also worked seven consecutive days each workweek. However, FPC did not pay Ms. Delao at least minimum wage during those workdays let alone applicable overtime wages.

Similarly, FPC did not authorize or permit Ms. Delao to take 30-minute uninterrupted duty-free meal periods after each five hours of work during the Employment Period. FPC did not pay Ms. Delao a meal period wage for those workdays. Ms. Delao was also not authorized or permitted to take a second meal period when she worked 10 hours each workday.

August 28, 2024  
Labor & Workforce Development Agency  
Page 4 of 16

During the Employment Period, FPC did not authorize or permit Ms. Delao to take a 10-minute uninterrupted rest period after each four hours of work or major fraction thereof. FPC did not pay Ms. Delao a rest period wage for those workdays.

FPC required Ms. Delao to use her personal cell phone and car for work during the Employment Period. For example, FPC would send text messages to Ms. Delao's personal cell phone with her work schedule. She was also required to take pictures of the flowers that she arranged using her personal cell phone camera. Ms. Delao was then instructed to send those pictures to FPC via text message using her personal cellphone. FPC not only refused to pay Ms. Delao for the time that she spent sending and receiving text messages and taking photographs of the flowers that she arranged, but FPC also failed and/or refused to reimburse her cell phone expenses, which were necessary business expenses.

FPC required Ms. Delao to use her personal car for work during the Employment Period as well. As a condition of employment, most recently, FPC required Ms. Delao to drive to-and-from the Rialto, San Bernardino, and South San Bernardino Home Depot stores each workday during the Employment Period. But FPC not only did not pay Ms. Delao for her travel time, but FPC also failed and/or refused to reimburse Ms. Delao for mileage, which was a necessary business expense.

FPC did not authorize or permit Ms. Delao to take any paid sick leave during the Employment Period. In fact, on the occasions that Ms. Delao was unable to report to work during the Employment Period, she was required to find a substitute worker and pay for that worker's wages out of her own personal pocket. FPC failed and/or refused to reimburse Ms. Delao for those substitute workers' wages, which were necessary business expenses.

Moreover, FPC did not furnish Ms. Delao with *any* wage statements. Instead, FPC furnished Ms. Delao with arbitrary calculations of flowers sold and commissions earned, which did not reflect the true and correct number of piece rate work actually performed let alone the actual number of compensable hours actually worked. Accordingly, Ms. Delao was regularly confused about how FPC was computed her wages and why she was not being paid for her all of her compensable work during the Employment Period.

August 28, 2024  
Labor & Workforce Development Agency  
Page 5 of 16

On April 7, 2024, FPC terminated Ms. Delao's employment. FPC did not pay Ms. Delao all of her earned but unpaid wages immediately upon termination. To date, FPC has not paid Ms. Delao all of her earned but unpaid wages.

On June 11, 2024, this office served a records request letter via to FPC demanding to inspect Ms. Delao's payroll records and personnel file. To-date, FPC failed and/or refused to produce Ms. Delao's payroll records or personnel file.

### **c. Aggrieved Employee Allegations**

Ms. Delao is informed and believes that FPC employed approximately 30 aggrieved employees from August 16, 2024 to the present ("PAGA Period"). Ms. Delao is further informed and believes that FPC misclassified the aggrieved employees as independent contractors, set their daily work schedules, supplied them with flowers, price labels, and signs, and generally directed, controlled and supervised their work.

Ms. Delao is informed and believes that the aggrieved employees were not and are not in the independent business of selling flowers during the PAGA Period. Moreover, Ms. Delao is informed and believes that the aggrieved employees arranged flowers *exclusively* for FPC.

Ms. Delao is informed and believes FPC required the aggrieved employees to execute independent contractor agreements as a condition of employment and contractually agreed to pay a "weekly draw...against commissions" plus "commissions" instead of paying for their compensable time. Ms. Delao is further informed and believes that FPC ceased paying the aggrieved employees any and all remuneration in or around January 2024.

Ms. Delao is informed and believes FPC required the aggrieved employees to work eight to 10 hours each workday. Ms. Delao is informed and believes that FPC required the aggrieved employees to work seven consecutive days each workweek during the PAGA Period. Ms. Delao is further informed and believes that FPC did not pay the aggrieved employees at least minimum wage during those workdays let alone applicable overtime wages.

August 28, 2024  
Labor & Workforce Development Agency  
Page 6 of 16

Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant meal period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant rest period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC required the aggrieved employees to incur necessary business expenses (e.g., personal cell phone, personal vehicle mileage expenses, and substitute worker wages) without reimbursement during the PAGA Period.

Ms. Delao is informed and believes FPC did not authorize or permit the aggrieved employees to take any paid sick leave during the PAGA Period.

Ms. Delao is informed and believes that FPC did not furnish the aggrieved employees with any wage statements during the PAGA Period. Accordingly, Ms. Delao is informed and believes that the aggrieved employees were confused about how FPC computed their wages and why they were not being paid any wages during the PAGA Period.

Ms. Delao is informed and believes a subset of the aggrieved employees voluntarily quit or were terminated. Ms. Delao is further informed and believes that FPC did not pay those aggrieved employees all of their earned but unpaid wages immediately upon termination or within 72-hours of resignation.

Ms. Delao is informed and believes that a subset of the aggrieved employees requested their payroll records and personnel files during the PAGA Period and that FPC failed and/or refused to produce those records.

## **2. Joint Employer Liability**

An “employer” includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any employee.” 8 CCR 11070(2)(H). The term “employer” is broadly construed under federal law and allows for multiple persons to be liable for

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 7 of 16

unpaid wages and penalties. Cal. DLSE Man. § 37.1.2; *Real v. Driscoll Strawberry Assoc.* (9th Cir. 1979) 603 F.2d 748, 754 (wage claim against joint employer decided under federal wage and hour laws).

In California, the term “employer” is even more broadly construed because the Labor Code is more protective than federal wage and hour laws. That is because “[t]he language of the IWC’s ‘employer’ definition has the obvious utility of reaching situation in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work.” *Martinez v. Coombs* (2010) 49 Cal. 4th 35, 59; see, also *Guerrero v. Superior Court* (2013) 213 Cal. App. 4th 912, 945-47 (employer includes person who merely controls the “power of the purse” and exercises “quality control authority.”) A person is an “employer” if it exercises “control” over the worker. *Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 126.

Moreover, Labor Code section 558.1 imposes liability for the employer and “any other person acting on behalf of an employer who violates, or causes to be violated, a section of...[the Labor Code]...” In fact, Labor Code section 558.1(b) makes “a natural person who is an owner, director, officer, or managing agent” of a corporation or limited liability company an “employer” purposes of the Labor Code compliant. As a result, “[s]uch a person is personally liable for overtime, meal period, rest period, and reporting time wages.” Cal. DLSE Man. § 37.1.4. Additionally, he or she would also be liable to the employee for minimum wage restitution, liquidated damages, and waiting time penalties. Cal. Lab. Code § 1197.1.

Here, Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole corporate officer and director. Ms. Delao is also informed and believes that Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole stockholder. Mr. Stanley also controls/controlled The Flower Parrot Co., Inc.’s “purse” and “exercise[d]” control over Ms. Delao and the aggrieved employees during the PAGA Period. Accordingly, Mr. Stanley is/was a “managing agent” of The Flower Parrot Co., Inc. during the PAGA Period. For these reasons, both The Flower Parrot Co., Inc. and Mr. Stanley are jointly and severally liable as “employers” to Ms. Delao and the aggrieved employees for the myriad Labor Code violations enumerated in this letter.

### 3. Labor Code Violations

#### a. Misclassification in Violation of Cal. Lab. Code § 226.8

Willfully misclassifying workers as independent contractors is unlawful. Cal. Lab. Code § 226.8(a)(1). An employer that willfully misclassifies a worker as an independent contractor “shall be subject to a civil penalty of not less than...\$5,000...and not more than...\$15,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(b). If an employer engages in a “pattern or practice” of willfully misclassifying a worker as an independent contractor, the employer “shall be subject to a civil penalty of not less than...\$10,000...and not more than...\$25,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).

In California, there is rebuttable presumption that most workers are employees rather than independent contractors. Cal. Lab. Code § 2750.5. That is because an independent contractor is “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” Cal. Lab. Code § 3353. A worker is an independent contractor *only if all three* of the following factors are satisfied:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order.

*Dynamex Ops. W. v. Superior Court* (2018) 4 Cal. 5th 903, 964.

August 28, 2024  
Labor & Workforce Development Agency  
Page 9 of 16

Here, FPC willfully misclassified Ms. Delao and the aggrieved employees as independent contractors during the PAGA Period. Ms. Delao and the aggrieved employees were subject to FPC's control and direction during the PAGA Period. Ms. Delao and the aggrieved employees arranged flowers, which is part of FPC's core business of selling "fresh floral bouquets" in Southern California. Ms. Delao and the aggrieved employees are/were *not* engaged in an independent business of selling flowers during the PAGA Period. Moreover, FPC's practice of classifying *all* of the aggrieved employees as independent contractors is evidence of its "pattern" and "practice" of willful misclassification. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 226.8(c).

**b. Failure to Pay at Least Minimum Wages in Violation of Cal. Lab. Code §§ 1182.12 and IWC Wage Order MW-2001**

"The minimum wage for employees...is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Cal. Lab. Code § 1197. If an employer pays an employee less than the applicable minimum wage, it is liable for civil penalties of \$100 "for each underpaid employee for each pay period for which the employee is underpaid" and \$250 "for each underpaid employee for each [subsequent] pay period for which the employee is underpaid." Cal. Lab. Code § 1197.1(a).

The minimum wage for employers was \$13 to \$14 per hour in 2021 and \$14 to \$15 per hour beginning January 1, 2022. Cal. Lab. Code § 1182.12(b)(1). An employer that pays an employee less than the applicable statutory minimum wage is liable for "the full amount of...minimum wage or overtime compensation, including interest...reasonable attorney's fees, and costs of suit." Cal. Lab. Code § 1194. Such employees are also entitled to recover liquidated damages "in an amount equal to the wages unlawfully unpaid and interest thereon." Cal. Lab. Code § 1194.2(a).

Here, FPC failed and/or refused to pay Ms. Delao and the aggrieved employees at least minimum wage during the PAGA. FPC contractually agreed to pay Ms. Delao and the aggrieved employees a "commission" on flower sales. But FPC's "commission" policy did not contain any safeguards to ensure that Ms. Delao and the aggrieved employees earned at least the prevailing minimum wage during the PAGA Period. Moreover, FPC ceased paying all "commissions" in or around January 2024. Thus, Ms.

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 10 of 16

Delao and the aggrieved employees worked without *any* compensation in or around January 2024 let alone the prevailing minimum wage.

**c. Failure to Pay Overtime Pay in Violation of Cal. Lab. Code § 510 and IWC Wage Order No. 7-2001**

If an employee works more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek, the employee is entitled to overtime compensation in the form of one and one-half times his or his regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(a). If an employee works more than twelve hours in a workday, that employee is entitled to twice their regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(b).

Here, Ms. Delao and the aggrieved employees worked more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in a workweek during the PAGA Period. But FPC did not pay them applicable overtime wages on those occasions. In fact, beginning in or around January 2024, FPC ceased paying Ms. Delao and/or the aggrieved employees *any* wages let alone applicable overtime wages.

**d. Failure to Authorize or Permit Meal Breaks in Violation of Cal. Lab. Code §§ 226.7, 512 And 1198, And IWC Wage Order No. 7-2001**

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. “An employer may 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....” Cal. Lab. Code § 512(a). During a meal break, employers must relieve employees of all work. Cal. Lab. Code § 226.7(b); 8 CCR 11070(11); *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal. 4th 1004, 1035-36; *In re Dear Mr. Rosenberg*, 1988 Cal. DLSE LEXIS 21 (Cal. DLSE, Jan. 5, 1988). If an employee works during a meal period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.” Cal. Lab. Code § 226.7(c); *Brinker Restaurant Corp.*, 53 Cal. 4th at 1039-40.

Here, Ms. Delao and the aggrieved employees worked more than five hours and 10-hours in a workday during the PAGA Period. But FPC did not authorize or permit

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 11 of 16

them to take 30-minute uninterrupted duty-free meal periods after each five hours of work. FPC also did not pay Ms. Delao and the aggrieved employees a meal period wage on those occasions.

**e. Failure to Authorize or Permit Rest Breaks in Violation of Cal. Lab. Code §§ 226.7, 1198 And 1199, And IWC Wage Order No. 7-2001**

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. Employers must authorize and permit employees a 10-minute uninterrupted paid rest break after four hours of work. 8 CCR 11070(12)(A). Specifically, employers must “relieve employees of all work-related duties and employer control” during an employee’s rest break. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 270. If an employer fails to authorize or permit an employee from taking their mandatory rest period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.” Cal. Lab. Code § 226.7(c).

Here, Ms. Delao and the aggrieved employees worked more than four hours or major fraction thereof during the PAGA Period. But FPC did not authorize or permit them to take 10-minute uninterrupted duty-free rest periods after each four hours of work or major fraction thereof. FPC also did not pay Ms. Delao and the aggrieved employees a rest period wage on those occasions.

**f. Failure to Furnish Accurate or Itemized Wage Statements in Violation Of Cal. Lab. Code § 226 And IWC Wage Order No. 7-2001**

Employers must furnish accurate and itemized wage statements to employees semimonthly or at the time of payment of wages. Cal. Lab. Code § 226(a); 8 CCR 11070(7). A proper wage statement must enumerate, *inter alia*, gross wages earned and total hours worked. *Id.* Failure to furnish accurate and itemized wage statements entitles an employee to recover \$50 for the first violation, \$100 for each subsequent violation, up to a maximum penalty of \$4,000 plus attorney’s fees and costs. Cal. Lab. Code §§ 226(e)(1) and 218.5; 8 CCR 11070(7); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. Aug. 13, 2008)(Labor Code section 226 is intended to prevent employee confusion about wages).

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 12 of 16

Here, FPC did not furnish Ms. Delao and the aggrieved employees with any wage statements let alone wage statements that were accurate and sufficiently itemized. Ms. Delao and the aggrieved employees were confused about how FPC computed their wages as a result.

**g. Failure to Reimburse Necessary Business Expenses in Violation Of Cal. Lab. Code § 2802 And IWC Wage Order No. 7-2001**

Employers are required to indemnify employees for all necessary business expenses incurred on behalf of the employer. Cal. Lab. Code § 2802. For example, employers are required to reimburse an employee's use of his or cell phone for work. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140. An employer must even reimburse an employee for using his or cell phone for work even if the employee has unlimited cell phone minutes or data. *Tehrani v. Macy's W. Stores, Inc.*, 2016 U.S. Dist. LEXIS 51713 at \*24-25 (C.D. Cal. Apr. 18, 2016).]

Similarly, If an employer requires an employee to use the employee's personal vehicle for work, the employer is obligated to reimburse the employee for "all reasonable operating costs." DLSE O.L. 1993.02.22. In particular, employers are obligated to reimburse employees who use their personal vehicles for "fuel, maintenance, repair, depreciation, and insurance...." *Gatusso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569. "DLSE has opined that use of the IRS mileage allowance will satisfy the expenses incurred in use of an employee's car in the absence of evidence to the contrary." Cal. DLSE Man. § 29.2.4. In 2015, the IRS mileage rate was \$0.575 per mile; in 2016 it was \$0.54 per mile. See New Standard Mileage Rates Now Available; Business Rate to Rise in 2015 (Dec. 10, 2014), <https://www.irs.gov/newsroom/new-standard-mileage-rates-now-available-business-rate-to-rise-in-2015> (last visited Jan. 30, 2019); 2016 Standard Mileage Rates for Business, Medical and Moving Announced (Dec. 17, 2015), <https://www.irs.gov/newsroom/2016-standard-mileage-rates-for-business-medical-and-moving-announced> (last visited Jan. 30, 2019).]

Here, FPC required Ms. Delao and the aggrieved employees to incur necessary business expenses without any reimbursement. For example, FPC required that Ms. Delao and the aggrieved employees use their personal cell phones and cars for work and were also required to pay substitute workers their wages during sick days. But FPC failed

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 13 of 16

and/or refused to reimburse Ms. Delao and the aggrieved employees for those necessary business expenses.

**h. Failure to Pay All Earned But Unpaid Wages Upon Separation of Employment in Violation of Cal. Lab. Code §§ 201 and 203**

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Failure to pay all wages earned and unpaid at the time of discharge will “continue” for 30 days. Cal. Lab. Code § 203(a). Specifically, the continued unpaid wages or waiting time penalties “accrue not only on the days that the employee might have worked, but also on nonworkdays.” *Mamika v. Barca* (1998) 69 Cal. App. 4th 487, 492-493. Waiting time penalties are computed by calculating the daily rate of pay “multiplied by the number of days of nonpayment, up to 30 days.” *Id.*

The purpose and intent of Labor Code sections 201 and 203 “is to compel the prompt payment of earned wages.” *Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal. App. 2d Supp. 897, 898-99. More specifically, “The object of the statutory plan is to encourage employers to pay amounts concededly owed by him to his discharged or terminated employee without undue delay and to hasten settlement of disputed amounts.” *Triad Data Services, Inc. v. Jackson* (1984) 153 Cal. App. Supp. 1, 11.

Here, Ms. Delao and a subset of the aggrieved employees were separated from their employment with FPC during the PAGA Period. But FPC did not pay Ms. Delao and those aggrieved employees all of their earned but unpaid wages immediately upon termination and/or within 72-hours of their resignation. FPC has yet to pay all of Ms. Delao’s earned but unpaid wages and she is informed and believes that FPC has not yet paid the affected aggrieved employees all of their respectively earned but unpaid wages.

**i. Failure to Maintain Accurate Payroll Records in Violation of Cal. Lab. Code § 1174 and IWC Wage Order No. 7-2001**

Employers must keep accurate payroll records of, *inter alia*, total hours worked and applicable rates of pay, and meal periods. Cal. Lab. Code § 1174(c); 8 CCR 11070(7)(A). Accurate payroll records “facilitates...information-gathering” and is “necessary for the employees’ welfare.” *Tidewater Marine Western, Inc. v. Bradshaw*

August 28, 2024  
 Labor & Workforce Development Agency  
 Page 14 of 16

(1996) 14 Cal. 4th 557, 577; *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App. 3d 95, 112. An employer's failure to maintain accurate payroll is a misdemeanor punishable by a \$500 civil penalty. Cal. Lab. Code §§ 1175(d) and 1174.5. This is so because an employer's failure to maintain accurate payroll records "affects a broad public interest." *Gould v. Maryland South Industries, Inc.* (1995) 31 Cal. App. 4th 1137, 1148-49.

Here, FPC's scheme of willfully misclassifying Ms. Delao and the aggrieved employees as independent contractors is evidence of FPC's willful failure to maintain accurate payroll records for them during the PAGA Period. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 1174.

**j. Failure to Produce Payroll Records in Violation of Cal. Lab. Code § 226**

"An employer who receives a written or oral request to inspect or receive a copy of records...shall comply...no later than 21 calendar days from the date of the request." Cal. Lab. Code § 226(c). An employer that fails or refuses to comply with a payroll records request is liable for a \$750 statutory penalty to the requesting employee. Cal. Lab. Code § 226(f).

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their payroll records during the PAGA Period and that FPC failed and/or refused to comply with the requests.

**k. Failure to Produce Personnel File in Violation of Cal. Lab. Code § 1198.5**

Employers are required to make an employee's "personnel records available for inspection...not later than 30 calendar days from the date the employer receives a written request..." Cal. Lab. Code § 1198.5(b); 1998 Cal. DLSE LEXIS 8. Personnel records include but are not limited to "the employee's performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5(a). Moreover, the term "personnel

August 28, 2024  
Labor & Workforce Development Agency  
Page 15 of 16

record” should be construed “broadly.” *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal. App. 4th 110, 124.

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their personnel file during the PAGA Period and that FPC failed and/or refused to comply with the requests.

### **I. PAGA Civil Penalties**

An employer that violates a provision of the Labor Code is guilty of a misdemeanor punishable by a \$100 fine. Cal. Lab. Code § 1199. PAGA imputes a civil penalty of \$100 for each aggrieved employee per pay period for the initial Labor Code violation and \$200 per each aggrieved employee for each subsequent violation. Cal. Lab. Code § 2699(f)(2). Moreover, an employee who asserts PAGA claims in a representative capacity is entitled to recover reasonable attorney’s fees and costs. Cal. Lab. Code § 2699(g); *see, also* Cal. Lab. Code § 218.5.

In 2024, PAGA was reformed. An employer with one or more employees is still liable for \$100 civil penalties “for each aggrieved employee per pay period.” 2023 Bill Text CA A.B. 2288. The \$200 civil penalty is triggered “for each aggrieved employee per pay period if...[t]he court determines that the employer’s conduct giving rise to the violation was malicious, fraudulent, or oppressive.” *Id.* Moreover, a prevailing aggrieved employee is also entitled to “injunctive relief” and “an award of reasonable attorney’s fees and costs, including any filing fees” paid. *Id.*

Here, for the reasons set forth above, FPC violated Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233, 234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 during the PAGA Period. FPC is liable to Ms. Delao, the aggrieved employees, and the State of California for civil penalties and attorney’s fees and costs.

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August 28, 2024  
Labor & Workforce Development Agency  
Page 16 of 16

Please investigate Ms. Delao's claims and act against FPC as soon as possible. However, if LWDA declines to take enforcement action against FPC, please notify me and my co-counsel, Kevin Mahoney, Esq. of Mahoney Law Group, A.P.C. (copied below) so that we may commence a civil action against FPC on behalf of Ms. Delao, the aggrieved employees, and the State of California.

Sincerely,

LAW OFFICE OF SHAFIEL A. KARIM,  
P.C.



Shafiel A. Karim  
Attorney at Law

cc: The Flower Parrot Co., Inc. (via Certified Mail, Return Receipt Requested)  
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File No. 2902.00001