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August 22, 2024

VIA ONLINE SUBMISSION

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

Subject: *Aaron Persons v. Wholesale Equipment of Fresno, Inc.*

Dear PAGA Administrator:

This office represents Aaron Persons in connection with his claims under the California Labor Code. Mr. Persons was an employee of WHOLESale EQUIPMENT OF FRESNO, INC. ("WEF").

The employer may be contacted directly at the addresses below:

WHOLESale EQUIPMENT OF FRESNO, INC.	WHOLESale EQUIPMENT OF FRESNO, INC.
3813 S GOLDENSTATE BLVD.	P.O. BOX 2637
FRESNO, CA 93725	FRESNO, CA 93745

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

WEF employed Mr. Persons as a non-exempt employee from approximately September 2018 to March 2024. Mr. Persons worked for WEF as a Service Technician out of its facility in Fresno, California. During his employment, Mr. Persons typically worked eight (8) hours or more per day and five (5) days per week. By the end of his employment, Mr. Persons was compensated approximately \$32.00 per hour. Mr. Persons's job duties included, without limitation, performing maintenance and repairs on industrial equipment such as tractors, scissor lifts, and boom lifts, at Defendants' facilities and customer jobsites.

WEF has committed each of the following Labor Code violations against Mr. Persons, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

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

WHOLESALE EQUIPMENT OF FRESNO, INC. is a California corporation. WEF specializes in the retail, maintenance, and leasing of pre-owned equipment, particularly forklifts, and operate at least five (5) locations throughout Central California. Upon information and belief, WEF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fresno, California, for all non-exempt, hourly paid employees working for WEF in California, including Mr. Persons and other aggrieved employees. At all relevant times, WEF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Persons and other aggrieved employees, regardless of their location or position.

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

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

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

WEF willfully failed to pay all overtime wages owed to Mr. Persons and other aggrieved employees. During the relevant time period, Mr. Persons and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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

First, during the relevant time period, on information and belief, WEF had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.10) of an hour. WEF's rounding policy resulted in the failure to compensate Mr. Persons and other aggrieved employees fully for all hours worked, causing Mr. Persons and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. WEF's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Persons and other aggrieved employees. To the extent WEF's rounding policy has taken away time worked that was eligible for overtime, Mr. Persons and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, WEF had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Persons and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Mr. Persons and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, at least once per month, WEF's management required Mr. Persons to assist customers with loading heavy equipment and parts, such as machines and tires, onto their vehicles, which could take from 5 to 30 minutes, but was not permitted to remain clocked in and record this time spent working after his scheduled shift end-time. Additionally, on information and belief, WEF's management would alter and/or falsify time records to shave off time Mr. Persons and other aggrieved employees spent working in order to limit overtime accrual.

Third, in conjunction with its policy of limiting overtime accrual, WEF had, and continues to have, a company-wide policy and/or practice requiring Mr. Persons and other aggrieved employees to respond to phone communications from WEF's management before and after their shifts or on their days off. For example, approximately three (3) times per week, Mr. Persons was required to answer work-related phone calls from his managers, while off-the-clock, to discuss part orders and customer repairs. Thus, WEF failed to track the time Mr. Persons and other aggrieved employees spent working outside of their shifts, and Mr. Persons and other aggrieved employees received no compensation for this time.

Fourth, WEF had, and continues to have, company-wide policies and/or practices of understaffing its facilities while assigning heavy workloads, which included pressure to meet repair service completion targets (*see infra*). WEF's policies and/or practices resulted in a failure to provide Mr. Persons and other aggrieved employees with adequate meal period coverage, and thus, Mr. Persons and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. WEF also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Persons and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately twice per week, Mr. Persons worked through his meal periods to keep up with the demands of work and meet WEF's target of completing \$20,000 in repair services each month, often eating meals while driving between customer jobsites. As another example, Mr. Person's meal periods would be interrupted by WEF's management calling him on his personal cellular phone to discuss work-related matters, which could take up to 20 minutes. When working at WEF's facilities, WEF's management would require Mr. Persons to cut his meal periods short to attend to customers or finish repairs. Thus, Mr. Persons and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. WEF did not compensate Mr. Persons and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fifth, because WEF frowned upon employees accruing meal period penalties, WEF's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when they had not received compliant meal periods. For example, Mr. Persons would clock out at his scheduled meal period time of 11:00 a.m. but would work through his unpaid meal period, out of fear of being disciplined by WEF. Thus, WEF did not record all hours worked during meal periods, and Mr. Persons and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

For example, WEF paid Mr. Persons and other aggrieved employees nondiscretionary bonuses, which were listed on Mr. Persons's and other aggrieved employees' wage statements as "BONUS." During pay periods that Mr. Persons and other aggrieved employees were paid overtime wages, WEF did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Persons's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, WEF paid Mr. Persons and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. WEF's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Persons and other aggrieved employees on a company-wide basis.

WEF's failure to pay Mr. Persons and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the

time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as set forth above, WEF had a company-wide policy and/or practice of rounding Mr. Persons’s and other aggrieved employees’ clock-in and clock-out times in its timekeeping system to the nearest quarter (0.10) of an hour, resulting in the failure to compensate Mr. Persons and other aggrieved employees fully for all hours worked. Additionally, as also set forth above, as a result of WEF’s policy of limiting the amount of overtime employees could accrue, WEF required Mr. Persons and other aggrieved employees to perform work off-the-clock outside of their scheduled shift times, such as assisting customers and responding to phone communications from WEF’s management, but they were not permitted to remain clocked in and/or record this time spent working outside of scheduled shifts. As also stated, on information and belief, due to WEF’s practices of management altering and/or falsifying time records, Mr. Persons and other aggrieved employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

Second, as also stated, due to WEF’s policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressure to meet repair service completion targets, and failing to adhere to a schedule for meal periods, Mr. Persons and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, WEF’s management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect complaint meal periods, even when meal periods were missed, short, and/or interrupted. Thus, WEF systematically failed to pay Mr. Persons and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, WEF regularly failed to pay at least minimum wages to Mr. Persons and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except

that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, WEF had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressure to meet repair service completion targets, which has resulted in a lack of meal period coverage and prevented Mr. Persons and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, WEF had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Persons and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Persons and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, approximately twice per week, Mr. Persons worked through his meal periods to keep up with the demands of work and meet WEF's repair service completion targets, often eating meals while driving between customer jobsites. As another example, as stated, Mr. Persons's meal periods would be interrupted by WEF's management calling him to discuss work-related matters, which could take up to 20 minutes. As also stated, when working at WEF's facilities, WEF's management required Mr. Persons to cut his meal periods short to attend to customers or finish repairing forklifts. Additionally, approximately two (2) times per week, Mr. Persons took his meal periods late, after the fifth hour of work, due to the lack of coverage

Also, as stated, on information and belief, because WEF frowned upon employees accruing meal period penalties, WEF's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by WEF.

Additionally, Mr. Persons and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Persons sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Persons and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, WEF knew or should have known that as a result of its policies, Mr. Persons and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. WEF further knew or should have known that it did not pay Mr. Persons and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, to the extent that WEF's rounding policy reported that Mr. Persons and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of

work or were less than 30 minutes, Mr. Persons and other aggrieved employees did not receive meal period premiums for these improperly rounded meal periods.

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

Accordingly, WEF failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

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

Furthermore, upon information and belief, during the relevant time period, WEF maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Persons and other aggrieved employees remain on the work premises during their rest periods.

Because Mr. Persons and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WEF effectively maintained control over Mr. Persons and other aggrieved employees during rest periods.

As a result of WEF's practices and policies, Mr. Persons and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Persons missed some of his rest periods due to the lack of coverage and WEF's failure to adhere to a schedule for rest periods. When Mr. Persons was able to take rest periods, they were often interrupted or cut short because WEF's managers required him to assist customers with loading equipment onto their vehicles or to complete repairs.

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

Accordingly, WEF failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

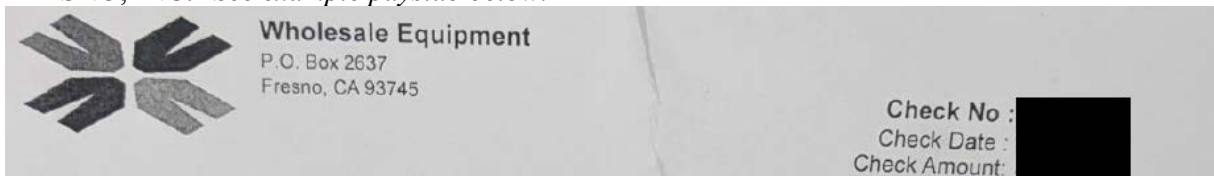
During the relevant time period, WEF has knowingly and intentionally provided Mr. Persons and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WEF issued uniform wage statements to Mr. Persons and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the

corresponding number of hours worked at each hourly rate. Specifically, WEF violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because WEF did not accurately record the time Mr. Persons and other aggrieved employees spent working off-the-clock, improperly rounded their Mr. Persons's and other aggrieved employees' total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), WEF did not list the correct amount of gross wages and net wages earned by Mr. Persons and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WEF failed to accurately list the total number of the hours worked by Mr. Persons and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

Further, and separate from these violations, WEF issued uniform wage statements to Mr. Persons and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Persons's and other aggrieved employees' wage statements incorrectly list the employer's address as "P. O. BOX 2637 FRESNO, CA 93745" but, according to the California Secretary of State's website, the correct address is "3183 GOLDENSTATE BLVD. FRESNO, CA 93725." Further, during the relevant time period, WEF systematically, and on a company-wide basis, issued wage statements to Mr. Persons and other aggrieved employees that incorrectly list the employer as "Wholesale Equipment", but according to the California Secretary of State's website, the correct name of the employing entity is "WHOLESALE EQUIPMENT OF FRESNO, INC." *See example paystub below.*



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

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

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

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

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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

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

WEF willfully failed to pay Mr. Persons and other aggrieved employees who are no longer employed by WEF the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WEF's employ.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 203, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, WEF violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because WEF failed to pay Mr. Persons and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, WEF had a company-wide practice of sending Mr. Persons and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Persons and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work a shift of eight (8) hours, WEF's managers sent Mr. Persons home one (1) hour after the start of his shift. Although Mr. Persons and other aggrieved employees would report to work based on the schedule that was provided to them, WEF would send them home before they had worked at least half of their scheduled shifts. When this occurred, WEF did not pay Mr. Persons and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay without giving them reporting time pay.

Accordingly, Mr. Persons and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, WEF, on a company-wide basis, required that Mr. Persons and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses and/or mobile data expenses. For example, Mr. Persons used his personal cellular phone to communicate with his managers to discuss work-related matters, such as materials, equipment, and repair issues. Although WEF required Mr. Persons and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities WEF failed to reimburse them for their costs incurred.

Second, WEF required Mr. Persons and other aggrieved employees to purchase supplies and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Persons approximately \$5.00 every couple of weeks on fuel for the company's gas-powered air compressor he used to complete customer repairs and other tasks. Although WEF required Mr. Persons and other aggrieved employees to purchase supplies and/or

equipment to carry out their work-related responsibilities, WEF did not reimburse them for these expenses.

WEF could have provided Mr. Persons and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies and/or equipment, or WEF could have reimbursed employees for the cost of their mobile device usage and supply and/or equipment expenses, such as fuel for company tools. Instead, WEF passed these operating costs off onto Mr. Persons and other aggrieved employees.

Thus, WEF had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and on their operating costs to Mr. Persons and other aggrieved employees in violation of California Labor Code section 2802. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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

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

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

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” WEF, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Persons’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Persons seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Persons, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against WEF for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: WHOLESALE EQUIPMENT OF FRESNO, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



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FRESNO, INC.
3813 S GOLDENSTATE BLVD.
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3813 S GOLDENSTATE BLVD.
FRESNO, CA 93725**



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A. Signature

☐ Agent

B. Received by (Printed Name)	C. Date of Delivery
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If YES, enter delivery address below: ☐ No

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Capstone Law, APC
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P.O. BOX 2637
FRESNO, CA 93745

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2. Article Number (Printed on the back of the mailpiece)

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☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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