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August 22, 2024

VIA WEBSITE UPLOAD

State of California
Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

M and S Enterprise LLC
5436 Senford Avenue
Los Angeles, CA 90056

Re: *Harper v. M and S Enterprise LLC*

Dear M and S Enterprise LLC:

This office represents Kaileb Douglas Harper. We are informing you of our representation and ask that all further communication regarding this matter be directed to our attention at the address located on this letterhead, and that no contact be made directly with our client. This letter is sent pursuant to the provisions of California Labor Code, §§2699, *et seq.*

I. FACTS & NATURE OF THE DISPUTE

This is a Class Action lawsuit Plaintiff is bringing, seeking relief for Defendant's violations of the California Business & Professions Code §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of their unlawful and unfair business practices, as well as injunctive relief.

This action is on behalf of Plaintiff and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to pay overtime, minimum wages, to afford proper meal/rest breaks (or pay the statutory compensation due), to issue accurate wage statements, to pay all wages due on termination, to reimburse business expenses, to provide a uniform maintenance allowance, to pay vested PTO/sick pay, for all hours worked and to allow inspection of employment records and unfair competition.

Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for himself and all members of the Class, to compensate these workers for the unpaid wages and to protect current

and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

II. § 2699, ET SEQ., LABOR CODE VIOLATIONS

Our client has numerous legal claims against M and S Enterprise LLC. Further investigation and formal discovery will likely uncover other claims and additional facts supporting liability herein.

The details of our client's Labor Code, §2699, claims include, but are not limited to:

A. OFF THE CLOCK WORK

(Labor Code § 203, 226, 510, 558, 1197, 1197.1, and 2699(f)(2); IWC Wage Order No. 9)

Defendant was required to pay their employees for all time worked, even if employees were not clocked in or after they were clocked out. Defendant failed to pay Plaintiff and the Class for any off the clock work they performed.

Defendant required Plaintiff and the Class to regularly perform compensable tasks pre and post-shift off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class members would arrive about 15 minutes early for their shifts, badge inside the hydration building to obtain water for their routes, then walk to the morning meeting prior to clocking in for their shifts. Further, Plaintiff and Class members would attend the morning meetings for 10-15 minutes, then be issued their mobile devices/phones and keys, then log into the mobile devices prior to clocking in. After clocking out for their shifts, Plaintiff and Class members returned their work mobile device/phone and key, and attended evening briefing by their managers for approximately 10-15 minutes, while off the clock. As a result, and because they improperly treated such pre- and post-shift activities as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

Plaintiff and Class members suffered damages in an amount, subject to proof, to the extent they were not paid for their off the clock work.

B. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE

(Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 9)

Under California law, non-exempt employees as defined by Wage Order No. 9, are entitled to premium wages for overtime worked. Defendant required Plaintiff and the Class to regularly perform compensable tasks post-shift off-the-clock for which they did not receive any compensation.

As a result, during this period, it was the practice and policy of Defendant to not pay employees at appropriate overtime rates. Monies for unpaid overtime remain due and owing.

Throughout Plaintiff's employment, Defendant failed and refused to pay compensation to Plaintiff and Class Members as required by law. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class Members suffered damages in an amount to be proven at trial.

C. FAILURE TO PAY MINIMUM WAGES

(Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 9)

Defendant failed to satisfy minimum wage requirements. As a result of Defendant requiring Plaintiff and Class members to work off the clock and not affording proper meal/rest breaks, Plaintiff and members of the Class were paid less than minimum wage. This resulted in Defendant's failure to compensate Plaintiff properly for "all hours worked" and consequently underpaid Plaintiff and Class members for the actual hours Plaintiff and Class members worked in violation of *Labor Code* §§ 1197, 1198 and IWC Wage Order No. 9.

D. FAILURE TO PROVIDE REST PERIODS

(Cal. Labor Code § 226.7; IWC Wage Order No. 9)

Defendant failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No. 9. Plaintiff and Class members' rest breaks were routinely interrupted. Plaintiff routinely worked 10-12 hours per day. On days when Plaintiff and Class members worked more than 10 hours, they were not afforded third rest breaks.

By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff and Class members, Plaintiff and Class members have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and Class members, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

E. FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §226.7; IWC Wage Order No. 9)

Defendant intentionally and improperly denied proper meal periods to Plaintiff and Class members. Meal periods were interrupted, afforded late and/or not afforded. On days when Plaintiff and Class members worked more than 10 hours, they were not afforded a second meal break.

By virtue of Defendant's unlawful failure to provide meal periods to Plaintiff and Class members, Plaintiff has suffered, and will continue to suffer, damages in amounts

which are presently unknown to them, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

F. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Cal. Labor Code §226; IWC Wage Order No. 9)

Defendant intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation, minimum wages, meal and rest breaks not properly afforded, vested PTO/sick pay, all hours worked, were not included in gross wages earned by Plaintiff and members of the Class.

Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation and minimum wages, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

G. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION

(Cal. Labor Code §§201-203; IWC Wage Order No. 9)

Plaintiff and the Class were discharged and/or resigned from Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

Plaintiff was not paid for all the wages he was owed when he ended his employment with Defendant on September 13, 2023. He is still owed overtime, minimum wages, premium pay for meal/rest breaks not afforded, vested PTO/sick pay, wages for all hours worked and other wages.

H. FAILURE TO REIMBURSE BUSINESS EXPENSES

(Cal. Labor Code §2802)

Defendant was aware that Plaintiff and Class members were using their personal cell phones and purchasing chargers/battery packs for business, but failed to indemnify Plaintiff and Class members for all their business-related expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their personal cell phones and purchasing chargers/battery packs for work-related purposes.

Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties. An employer may never impose a financial burden on

employees, with respect to business-related expenses, which would reduce the employees' wage rate below the minimum wage.

I. FAILURE TO PAY FOR UNIFORMS AND PROVIDE A MAINTENANCE ALLOWANCE

(Cal. Labor Code §2802 and IWC Wage Order No. 9)

Defendant required Plaintiff and Class members to wear uniforms such as company shirts, pants, hats and steel toe boots. Plaintiff was promised reimbursement for his steel toe boots by Defendant, however, Defendant failed to do so. Further, Defendant does not maintain the uniforms. Plaintiff and members of the Class pay for the maintenance and cleaning themselves.

Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for necessary business expenses and not provided a weekly maintenance allowance. An employer may never impose a financial burden on employees, with respect to maintaining uniforms, which would reduce the employees' wage rate below the minimum wage.

J. FAILURE TO PAY VESTED PTO/SICK PAY ON SEPARATION OF EMPLOYMENT

(Cal. Labor Code §227.3)

Defendant failed to pay Plaintiff and Class members all vested, but unused PTO/sick pay upon separation from employment, thereby receiving an economic benefit.

By virtue of Defendant's unlawful failure to pay vested PTO/sick pay on separation of employment to Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

K. FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT

(Cal. Labor Code §6720 and Wage Order 9)

Defendant failed to comply with California *Labor Code* § 6720 and Wage Order 9, by maintaining an excessively hot working environment. Defendant's warehouse did not have proper ventilation and/or air conditioning and the temperature inside the warehouse was excessively hot. As a result, Defendant has failed to maintain a safe indoor working environment.

Plaintiff and Class Members seek damages and a declaratory judgment that they were not provided with proper ventilation and/or air conditioning in violation of California *Labor Code* § 6720.

L. FAILURE TO PAY FOR ALL HOURS WORKED
(Cal. Labor Code § 204)

Defendant required Plaintiff and Class members to attend required training by for 24 hours while off the clock. Plaintiff and Class members were not paid for any training time.

Plaintiff and Class members suffered damages in an amount, subject to proof, to the extent they were not paid for all hours worked.

M. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS
(Cal. Labor Code §1198.5)

On or about August 22, 2024, Plaintiff's counsel issued a written request to you for copies of his personnel records. You have failed and refused to permit Plaintiff to have access to copies of his records.

As a result of your failure and refusal to permit Plaintiff to have full access to his records, Plaintiff will seek injunctive relief and recovery of statutory penalties.

N. UNFAIR COMPETITION
(Cal. Bus. & Prof. Code §§17200 et seq.)

Defendant, through the unfair and unlawful business practices as described herein, has obtained valuable property, money and services from the Plaintiff and the Class and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of Plaintiff and the Class. All the acts described are violations of, among other things, the Labor Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

Plaintiff and the Class are entitled to, and are, seeking such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

Moreover, Plaintiff, and all other similarly aggrieved California employees, intend to seek all penalties for the violations described above. Moreover, Plaintiff also intends to recover the actual wages owed to employees under the Labor Code sections that authorize such recovery, including but not limited to Labor Code §558.

III. CONCLUSION

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code, §§2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of §2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within 33 calendar days regarding whether it intends to investigate the alleged violation. (Labor Code, §2699.3(a)(2)(B).) If the LWDA advises that it will not investigate, or if no notice is provided within 33 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code, §2699. (Labor Code, §2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code, §2699, should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Sincerely,

LIPELES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read 'K. Lipeles'.

Kevin A. Lipeles, Esq.