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August 21, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Lesia Andrade v. Yanchewski & Wardell Enterprises, Inc., dba EcoWater of SoCal, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Lesia Andrade (“Ms. Andrade”) in claims arising from her employment with Yanchewski & Wardell Enterprises, Inc. dba EcoWater of SoCal and Does 1 through 100 (collectively, “EcoWater”). Ms. Andrade is an “aggrieved employee” as defined by Labor Code section 2698, *et seq.* due to EcoWater’s violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the provisions of the Labor Code allegedly violated.

For purposes of this letter, “aggrieved employees” are all current and former non-exempt employees of EcoWater who have worked for EcoWater in California at any time from one year immediately preceding the date of this letter through the date that judgment is entered in Ms. Andrade’s contemplated PAGA action or any alternative date agreed upon by the parties and/or approved by the court.

Ms. Andrade worked for EcoWater as a non-exempt employee from approximately June 2021 until approximately October 2023.

During Ms. Andrade’s employment with EcoWater, Ms. Andrade and other aggrieved employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but EcoWater failed to pay them overtime compensation at one-and-one-half times (or two times in the case of double-time) their “regular rate” of pay as required under Labor Code § 510. Specifically, Ms. Andrade and other aggrieved employees earned commissions and/or other forms of compensation not excludable from the “regular rate” of pay (these forms of pay are hereinafter referred to collectively as “Incentive Pay”). However, EcoWater has failed to incorporate Incentive Pay into Ms. Andrade’s and other aggrieved employees’ “regular rate” when paying overtime. For example, in the pay period of August 21, 2023 – September 3, 2023, Ms. Andrade’s wage statement reflects that she earned \$141.90 in commissions and worked 0.92 overtime hours; however, Ms. Andrade’s overtime wage was paid at \$34.50 per hour which is one-and-one-half times her *base* rate

of pay of \$23.00 per hour, instead of one-and-a-half times her “regular rate of pay”. As another example, in the pay period of April 3, 2023 – April 16, 2023, Ms. Andrade’s wage statement reflects that she earned \$100.00 in commissions and worked 7.41 overtime hours; however, Ms. Andrade’s overtime wage was paid at \$34.50 per hour, which is one-and-a-half times her *base* rate of pay of \$23.00 per hour, instead of one-and-a-half times her “regular rate” of pay. As a further example, in the pay period of February 20, 2023 – March 5, 2023, Ms. Andrade’s wage statement reflects that she earned \$684.50 in commissions and worked 1.25 overtime hours; however, Ms. Andrade’s overtime wage was paid at \$28.50 per hour, which is one-and-a-half times her *base* rate of pay of \$19.00 per hour, instead of one-and-a-half times her “regular rate” of pay. As a further example, in the pay period of January 23, 2023 – February 5, 2023, Ms. Andrade’s wage statement reflects that she earned a \$300.00 bonus and worked 1.25 overtime hours; however, Ms. Andrade’s overtime wage was paid at \$28.50 per hour, which is one-and-a-half times her *base* rate of pay of \$19.00 per hour, instead of one-and-a-half times her “regular rate” of pay.

EcoWater has also failed to provide Ms. Andrade and other aggrieved employees with all statutorily mandated meal periods due to EcoWater’s meal period policies/practices. Specifically, the workload imposed on Ms. Andrade and other aggrieved employees often made it impracticable for Ms. Andrade and other aggrieved employees to take an uninterrupted 30-minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts over 10.0 hours. Ms. Andrade and other aggrieved employees frequently had their meal periods interrupted, delayed, missed, and/or cut short due to the workload placed on Ms. Andrade and other aggrieved employees. Despite these violations, EcoWater failed to pay meal period premium wages pursuant to Labor Code § 226.7. On information and belief, for at least a portion of the relevant time period, EcoWater maintained no payroll code or mechanism to pay meal period premiums to Ms. Andrade or other aggrieved employees on those occasions when legally compliant meal periods were not provided.

EcoWater has also failed to authorize and permit rest periods to Ms. Andrade and other aggrieved employees. Specifically, EcoWater has failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Ms. Andrade and other aggrieved employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by EcoWater. In those instances that EcoWater failed to authorize and permit Ms. Andrade and other aggrieved employees to take a legally compliant rest period, EcoWater failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, EcoWater maintained no payroll code or other mechanism for paying rest period premiums when EcoWater failed to authorize and permit a legally compliant rest period.

EcoWater has also failed to reimburse Ms. Andrade and other aggrieved employees for expenses they have incurred in the course of their employment. Specifically, EcoWater required Ms. Andrade and other employees to use their personal cell phones to download and use cell phone applications called “TimeSheet Mobile,”

“Paycom,” and “ADP” to clock in and out of their shifts. Despite requiring that Ms. Andrade and other employees use their personal cell phones for work-related purposes, EcoWater failed to reimburse them for any portion of her personal expenses, including any portion of her monthly cell phone bill. As a result of the foregoing, Ms. Andrade and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding that employer must reimburse employees for “reasonable percentage” of their cell phone bills if employees are required to use their cell phones for work purposes, even if the employees did not incur any specific out-of-pocket expense in doing so).

As a result of EcoWater’s failure to pay meal and rest period premium wages, as well as its failure to pay overtime and/or double-time compensation at one-and-one-half (or two times) the regular rate of pay, EcoWater has failed to pay all wages to Ms. Andrade and other formerly employed aggrieved employees at the separation of their employment.

As a further result of EcoWater’s failure to pay meal and rest period premium wages, as well as its failure to pay overtime and/or double-time compensation at one-and-one-half (or two times) the regular rate of pay, EcoWater has maintained inaccurate payroll records, and issued inaccurate wage statements, to Ms. Andrade and other aggrieved employees. These failures have resulted in employees’ wage statements including inaccurate information regarding, *inter alia*, gross wages earned, net wages earned, and the rates of pay in effect in each pay period.

As described above, EcoWater committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 (“Wage Order 4”):

Failure to Pay Overtime Wages

EcoWater was, and is, required to properly compensate non-exempt employees, including Ms. Andrade and other aggrieved employees, for all overtime hours worked pursuant to Labor Code §§ 510 and 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday or over 40 hours in a workweek and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 4, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday or in excess of eight hours on the seventh consecutive day of work in the workweek. As alleged herein, EcoWater has failed to pay overtime and/or double-time wages to Ms. Andrade and other aggrieved employees, by, *inter alia*, failing to include Incentive Pay in the “regular rate of pay” when calculating overtime and/or double-time compensation, in violation of California law.

Meal Period Violations

As alleged herein, EcoWater has failed in its affirmative obligation to provide its employees in California, including Ms. Andrade and other aggrieved employees, with all legally-compliant meal periods in accordance with the mandates of the California Labor

Code and Wage Order 4. Despite EcoWater's violations, EcoWater has not paid an additional hour of pay to Ms. Andrade and other aggrieved employees at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, 512, and 1198, for all such meal period violations.

Rest Period Violations

As alleged herein, EcoWater has failed in its affirmative obligation to authorize and permit all its employees in California, including Ms. Andrade and other aggrieved employees, all legally-compliant rest periods in accordance with the mandates of the California Labor Code and Wage Order 4. Despite EcoWater's violations, EcoWater has not paid an additional hour of pay to Ms. Andrade and other aggrieved employees at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, 516, and 1198.

Failure to Reimburse Business Expenses

As alleged above, Ms. Andrade and other aggrieved employees have been required to use their personal cell phones for work purposes. Although Ms. Andrade and other aggrieved employees incurred these expenses in direct discharge of their job duties and/or as a result of directives from EcoWater, EcoWater has not reimbursed them for their necessary work expenditures during the relevant time period. EcoWater's policy of not providing reimbursement for necessary work expenditures violates Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Ms. Andrade and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses, with interest.

Failure to Pay All Wages Owed at Termination

As alleged herein, EcoWater has failed to pay Ms. Andrade and other aggrieved former employees all wages owed to them at the time of termination of employment, including but not limited to all meal and rest period premium wages, overtime wages and sick time wages owed. This violates Labor Code §§ 201-202, which require prompt payment of all wages due at the end of employment when an employee is terminated or quits.

Wage Statement Violations

As alleged above, EcoWater has, as a matter of uniform policy and practice, failed to furnish Ms. Andrade and other aggrieved employees with complete and accurate wage statements with respect to, *inter alia*, gross wages earned, net wages earned, and all hourly rates in effect during the pay period, in violation of Labor Code § 226(a).

Ms. Andrade is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present and are ongoing. As an "aggrieved employee," Ms. Andrade will initiate a civil action on behalf of herself, the State of California, and

other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. As described herein, Ms. Andrade alleges that EcoWater has committed the following Labor Code violations:

- a. EcoWater has violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to compensate Ms. Andrade and other aggrieved employees their overtime and/or double-time wages at one-and-one-half (or two times) their regular rates of pay;
- b. EcoWater has violated Labor Code §§ 226.7, 512, 516, 558, and 1198 by failing to provide all legally required meal periods and by failing to pay meal period premiums to Ms. Andrade and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations;
- c. EcoWater has violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to provide all legally required rest periods and by failing to pay rest period premiums to Ms. Andrade and other aggrieved employees at the employees' respective regular rates of compensation for rest period violations;
- d. EcoWater has violated Labor Code 2802, 2804, and 1198 by failing to reimburse Ms. Andrade and other aggrieved employees for all work related expenses;
- e. EcoWater has violated Labor Code §§ 201-203 by failing to pay all wages owed to Ms. Andrade and other aggrieved former employees at their separation of employment; and
- f. EcoWater has violated Labor Code §§ 226 and 1198 by failing to furnish Ms. Andrade and other aggrieved employees with accurate and complete itemized wage statements.

Pursuant to Labor Code section 2699.3, please notify our office and EcoWater if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
ABRAMSON LABOR GROUP

Neil M. Larsen

cc: Yanchewski & Wardell Enterprises, Inc., dba EcoWater of SoCal, 2241 La Mirada Drive Vista, California 92081 (via certified mail);

Yanchewski & Wardell Enterprises, Inc., dba EcoWater of SoCal, c/o Ian McDaniel, P.C. (agent for service of process), 550 Laguna Drive, Suite A, Carlsbad, California 92008 (via certified mail)