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10 Attorney for Plaintiff, COLE MILTON

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
10/25/2024 2:31 PM
By: Blanca Delabra , Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – COOK DIVISION

COLE MILTON,

Plaintiff,

vs.

MARCOS LIMON dba FUSION COLORS
AUTO BODY REPAIR; and DOES 1 through
25, inclusive,

Defendants.

CASE NO: 24CV04678

*Assigned for All Purposes to:
Hon. Jed Beebe – Dept. SM4*

FIRST AMENDED COMPLAINT

[Unlimited Civil Case – Exceeds \$35,000]

Trial Date: None set

Complaint filed:

JURY TRIAL DEMANDED

Comes now COLE MILTON (“Plaintiff”), who asserts claims against MARCOS LIMON dba FUSION COLORS AUTO BODY REPAIR and Does 1 through 25, inclusive, (collectively “Defendants”) as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in this Court because the unlawful conduct alleged to have been committed occurred in Santa Barbara County.

2. The amount in controversy in this matter exceeds the sum of \$35,000.00, exclusive of interest and costs.

///

PARTIES

3. Plaintiff COLE MILTON is and at all times relevant to this action was an individual residing in the State of California.

4. Defendant MARCOS LIMON dba FUSION COLORS AUTO BODY REPAIR (“VEI”) is and at all times relevant to this action was an individual doing business in California.

5. Whenever in this complaint reference is made to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendant.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will amend this complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants have been ascertained.

7. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendant, and of each other; that Defendant and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

8. Plaintiff is further informed and believes, and thereon alleges, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals at

1 all relevant times acted on behalf of Defendants named in this complaint within the scope of their
2 respective employments.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 9. For all causes of action subject to exhaustion requirements, prior to the initiation of
5 this lawsuit, Plaintiff filed a complaint against Defendant with the California Civil Rights
6 Department pursuant to section 12900 et seq. of the California Government Code alleging the
7 claims described in this Complaint. The CRD issued a "right to sue" letter. True and correct copies
8 of the administrative complaint and the "right to sue" letter are attached hereto collectively as
9 Exhibit 1. All conditions precedent to the institution of this lawsuit have been fulfilled. This
10 action is filed within one year of the date that the CRD issued its right to sue letter.

11 10. For Plaintiff's cause of action pursuant to the PAGA, Plaintiff filed a claim with the
12 LWDA (a true and correct copy of which is attached hereto as Exhibit 2), and the LWDA did not
13 investigate or issue any notice within the time provided by law, thereby exhausting administrative
14 remedies and granting PAGA standing to Plaintiff.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 11. Cole Milton began working for Mr. Marcos Limon at Fusion Colors on or about
17 September 15, 2021. He was hired as the Body man/front man for the body shop. In this position
18 Mr. Milton washed cars, assembled cars, did repair work, and did the final wash and details on
19 cars. Mr. Milton's position was later changed to Auto Detail.

20 12. Unfortunately, Mr. Milton was treated unequally by Mr. Limon during his
21 employment. Mr. Milton was the only white non-Hispanic man employed. Mr. Milton was given
22 specific rules that did not apply to other employees. The rules were as stated: You are not allowed
23 to talk about anything other than work at work; you can only take one 15-minute break per 8-hour
24 shift; you are not allowed to listen to your headphones while working; you are required not to
25 speak with or make friends with the vendors, customers, other tradesmen, or any and all outside
26 persons while at work; if you start a car, you're required to finish it. Mr. Milton was required to
27 provide his own tools and equipment but was not paid the California "tool wage" which is double
28 the minimum wage. The employer here paid Mr. Milton at a nominal hourly rate of \$17 an hour

1 for most of his employment, leaving Mr. Milton significantly short of the required tool wage.

2 13. Mr. Milton's starting pay was \$17.50, and after a probationary period of 60 days,
3 the employer promised Mr. Milton a pay raise. Mr. Milton complained to Mr. Limon several
4 times that he had not given a pay raise as promised.

5 14. Towards the end of Mr. Milton's employment, he frequently was not given work.
6 On August 4, 2023, Mr. Limon told Mr. Milton to take the day off because it was slow. On at least
7 two occasions, September 22, 2023, and December 26, 2023, Mr. Limon told Mr. Milton to take
8 the day off when notified he would be late to work. During the week of January 7, 2024, Mr.
9 Milton had two days off due to "no work." Mr. Milton was the only employee that was not
10 provided work. At least three employees that started working after Mr. Milton still received work.
11 The week of January 15, 2024, Mr. Milton had 2 ½ days off due to "no work", again being the
12 only employee to lose work. The week of January 22, 2024, Mr. Milton only worked 10 hours for
13 the entire week due to "not having work", again being the only employee to lose work out of the
14 nine employees who worked full weeks. Mr. Milton was unfairly targeted and singled out as the
15 only white person working in the shop.

16 15. On August 5, 2023, Mr. Milton was sent out to work on a trailer in the summer heat
17 with no covering. Mr. Milton was the only employee sent outside of the shop to work in this
18 condition. Mr. Milton was required to sand and prepare a metal trailer for a customer. At 10:15
19 a.m., the surface temperature of the asphalt and metal trailer were over 100 degrees.

20 16. There were times when Mr. Limon asked Mr. Milton to purchase two of the same
21 tools so he could have one at the body shop. Mr. Milton was not reimbursed for this. Additionally,
22 Mr. Limon did not provide any of the employees' afternoon rest breaks, requiring the employer to
23 pay an extra hour of wages to all of these employees including Mr. Milton.

24 17. Mr. Milton continued to complain about the shortage in the wage increase promised
25 by Limon. Approximately two weeks before termination, Mr. Limon provided a \$1-an-hour pay
26 rate increase. But the increase was illusory. Once Mr. Milton received his "raise," Mr. Limon
27 stopped giving him hours. Shortly thereafter, the owner terminated Mr. Milton and a reasonable
28 inference arises that the wage-related complaint was a substantial factor in that decision, giving

1 rise to a claim for wrongful termination in violation of statute and public policy favoring full
2 payment of promised wages. Mr. Milton's race/color (White) was also a substantial motivating
3 factor in Defendant's decisions and adverse employment actions against him.

4 18. On February 13, 2024, Mr. Milton went into Mr. Limon's office to get answers for
5 the lack of work he was receiving. When questioned, Mr. Limon said, "You're just different." Mr.
6 Milton asked how he was different from any other employee and Mr. Limon answered again that
7 he was "different." Mr. Milton told Mr. Limon that he wanted to learn how to do other work and
8 asked why he was never trained like the other employees were. Mr. Limon did not have an answer
9 and told Mr. Milton to go and work "somewhere else where the owner knows what he is doing."
10 Taking this to mean he was dismissed, Mr. Milton grabbed his tools and left.

11 19. Defendants caused Mr. Milton to sustain significant damages as a result of all of
12 the foregoing. Plaintiff now proceeds with this suit to recover all legal remedies available under
13 California law.

14 **FIRST CAUSE OF ACTION**

15 **(Discrimination – Against All Defendants)**

16 20. Plaintiff realleges the foregoing allegations and hereby incorporates them by
17 reference as though fully set forth.

18 21. Plaintiff is a white man who was employed by Defendant and was a member of a
19 protected class as such under the Fair Employment and Housing Act (FEHA).

20 22. Defendant discriminated against Plaintiff based on his race and/or color, because he
21 is a white man, in violation of the FEHA through numerous illegal acts, including, without
22 limitation, those set forth above.

23 23. As a proximate result of Defendant's conduct, Plaintiff suffered and continues to
24 suffer damages in terms of lost wages, lost benefits, and other pecuniary loss according to proof.
25 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
26 humiliation, depression, anguish, embarrassment, shock, pain, discomfort, fatigue, and anxiety.
27 The amount of Plaintiff's damages will be ascertained at trial.

28 24. In committing the foregoing, acts as set forth above, Defendant willfully

disregarded Plaintiff's right to be free from unlawful discrimination at the workplace.

25. Defendants engaged in malicious, fraudulent, and oppressive conduct that justifies an award of punitive damages. In committing the foregoing acts as set forth above, Defendant acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for his rights under California law. Defendant's conduct demonstrates a callous indifference for the law and Plaintiff's rights.

26. Defendant engaged in the aforementioned conduct without regard for the consequences on Plaintiff's career, livelihood, and his emotional well-being.

27. The FEHA provides for an award of reasonable attorneys' fees and costs incurred by a prevailing plaintiff in an action brought under its provisions. Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an award of attorneys' fees and costs.

28. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

SECOND CAUSE OF ACTION

(Violation of Whistleblower Retaliation in Violation of Labor Code § 98.6 – Against All Defendants)

29. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

30. Defendant was Plaintiff's employer.

31. Plaintiff engaged in protected activities by exercising his rights under the Labor Code to complain about Defendant's failure to pay him promised wages.

32. Defendant terminated Plaintiff's employment.

33. Plaintiff's protected activities alleged above were a contributing factor and substantial moving factor in Defendant's decision to alter its terms and conditions and terminate Plaintiff's employment.

34. Plaintiff was harmed. Plaintiff suffered and continues to suffer damages in terms

1 of lost wages, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered
2 and will continue to suffer physical and emotional injuries, including humiliation, depression,
3 anguish, embarrassment, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
4 damages will be ascertained at trial.

5 35. Defendant's conduct alleged above was a substantial factor in causing Plaintiff's
6 harm.

7 36. In committing the foregoing, Defendants willfully disregarded Plaintiff's right to be
8 free from unlawful retaliation at the workplace.

9 37. Defendants engaged in malicious, fraudulent, and oppressive conduct that justifies
10 an award of punitive damages. In committing the foregoing acts, Defendants acted despicably and
11 subjected Plaintiff to cruel and unjust hardship in conscious disregard for his rights under
12 California law. Defendants' conduct demonstrates a callous indifference for the law and Plaintiff's
13 rights.

14 38. Defendants engaged in the aforementioned conduct without regard for the
15 consequences on Plaintiff's career, livelihood, and his emotional well-being.

16 **THIRD CAUSE OF ACTION**

17 **(Wrongful Termination – Against All Defendants)**

18 39. Plaintiff realleges the foregoing allegations and hereby incorporates them by
19 reference as though fully set forth.

20 40. Defendants' wrongful termination of Plaintiff as described above occurred in
21 violation of the fundamental public policies of the State of California, as set forth in various state
22 statutes and constitutional provisions including, but not limited to, those reflected in the FEHA,
23 California Labor Code, and Article I, § 8, of the California Constitution.

24 41. These public policies inure to the benefit of the public, not just the private interests
25 of the employer and employee, because all individuals within the State are afforded these rights.

26 42. Defendants' termination of Plaintiff violated the aforementioned fundamental
27 principles of public policy in that there is a substantial and fundamental policy against
28 discrimination and retaliation.

43. As a direct, foreseeable, and proximate result of the wrongful conduct of Defendants, Plaintiff has sustained and continues to sustain, economic damages in earnings and other employment benefits in an amount according to proof.

44. As a direct, foreseeable, and proximate result of the wrongful conduct of Defendants, Plaintiff has sustained, and continues to sustain, non-economic damages and emotional distress.

45. Plaintiff has sustained general and special damages.

46. The acts and conduct of Defendants constituted “malice,” “oppression,” and/or “fraud” (as those terms are defined in California Civil Code Section 3294(c)), in that these acts were intended by Defendants to cause injury to Plaintiff and/or constituted despicable conduct carried on by the Defendants with willful and conscious disregard of the rights of Plaintiff.

47. The acts of Defendants were done fraudulently, maliciously and oppressively and with the advance knowledge, conscious disregard, authorization, ratification or act of oppression, within the meaning of Civil Code Section 3294 on the part of Defendants. The actions and conduct of the Defendants were intended to cause injury to Plaintiff and constituted deceit and concealment of material facts known to Defendants with the intention of the Defendants to deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive damages in an amount according to proof.

FOURTH CAUSE OF ACTION

(Failure to Pay Tool Wage— Against All Defendants)

48. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

49. "When 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." Cal. Code Regs., tit. 8, § 11040(9)(B).

50. In violation of the foregoing, Defendant required Plaintiff to provide and maintain

1 hand tools and equipment customarily required by the trade or craft without paying the required
2 double minimum wage amount and without reimbursing Plaintiff's expenses in violation of Labor
3 Code section 2802.

4 51. As a result, Plaintiff has sustained damages in an amount according to proof.

5 **FIFTH CAUSE OF ACTION**

6 **(Failure to Provide Compliant Rest Breaks – Against All Defendants)**

7 52. Plaintiff realleges the foregoing allegations and hereby incorporates them by
8 reference as though fully set forth.

9 53. Employers must, within the timeframe provided by law, provide non-exempt
10 employees a ten (10) minute duty-free rest period for every four (4) hours worked or major
11 fraction thereof. Duty-free rest periods must be paid. An employer who fails to provide a duty-
12 free rest period must pay the employee an additional one (1) hour of regular pay for each day in
13 which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

14 54. "If an employer fails to provide an employee a meal or rest or recovery period in
15 accordance with a state law, including, but not limited to, an applicable statute or applicable
16 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
17 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
18 pay the employee one additional hour of pay at the employee's regular rate of compensation for
19 each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7,
20 subd. (c).

21 55. Throughout Plaintiff's employment, Defendants maintained an illegal practice of
22 not providing employees, including Plaintiff, with compliant afternoon 10-minute rest periods
23 where he was free of all duties.

24 56. Plaintiff is entitled to all premium wages and interest as provided by law.

25 **SIXTH CAUSE OF ACTION**

26 **(Inaccurate Wage Statements – Against All Defendants)**

27 57. Plaintiff realleges the foregoing allegations and hereby incorporates them by
28 reference as though fully set forth.

1 58. “An employer, semimonthly or at the time of each payment of wages, shall furnish
2 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
3 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
4 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
5 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
6 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
8 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
12 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
13 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
15 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
16 and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd.
17 (a).

18 59. “The deductions made from payment of wages shall be recorded in ink or other
19 indelible form, properly dated, showing the month, day, and year, and a copy of the statement and
20 the record of the deductions shall be kept on file by the employer for at least three years at the
21 place of employment or at a central location within the State of California. For purposes of this
22 subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a
23 computer-generated record that accurately shows all of the information required by this
24 subdivision.” Cal. Lab. Code, § 226, subd. (a).

25 60. Throughout Plaintiff’s employment, Defendants knowingly and intentionally failed
26 to furnish Plaintiff with accurate itemized statements at the time of each payment of wages
27 showing the correct gross and net wages earned as a result of their failure to pay all premium
28 wages owed.

61. Plaintiff suffered a presumptive injury as a result of the foregoing violations.

62. Plaintiff is entitled to all statutory penalties provided by law, attorneys' fees, injunctive relief for issuance of accurate wage statements and records, and all other relief provided by § 226(e).

SEVENTH CAUSE OF ACTION

(Waiting Time Penalties – Against All Defendants)

63. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

64. “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

65. Upon Defendants' separation of Plaintiff, Defendants knowingly and intentionally failed to issue payment for the foregoing earned wages to Plaintiff at the times required by law.

66. Plaintiff is entitled to all statutory penalties available under the law.

EIGHTH CAUSE OF ACTION

(PAGA Penalties – Against All Defendants)

67. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

68. PAGA permits an “aggrieved employee” to bring a lawsuit for civil penalties to address an employer’s violations of the California Labor Code committed against them and other current and former employees.

69. Plaintiff filed an exhaustion letter with the California Labor and Workforce

1 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
2 general action for recovery of penalties under the California Labor Code Private Attorneys
3 General Action of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff brings this
4 cause of action on behalf of himself, approximately 10 similarly situated current and former
5 aggrieved employees employed by Marcos Limon dba Fusion Colors Auto Body Repair between
6 August 19, 2023, and the conclusion of the forthcoming action (“Statutory Period”), and the
7 People of the State of California (hereinafter collectively “Employees”). Plaintiff incorporates the
8 exhaustion letter as if set forth herein.

9 70. Upon the conclusion of the PAGA exhaustion period, Plaintiff is filing this First
10 Amended Complaint, as permitted by law, to seek penalties as a private attorney general for the
11 California Labor Code violations committed against the Employees.

12 71. The government agencies to whom the violations were addressed did not
13 investigate and the time for them to do so has expired. With respect to any and all violations that
14 were curable under the PAGA, Defendants failed to cure the violations. Plaintiff exhausted all
15 administrative procedures under the PAGA and has standing to seek civil penalties in this action.

16 72. Defendants are liable for all civil penalties available under the PAGA.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

19 1. For general damages, including emotional distress damages, according to proof on
20 each cause of action for which such damages are available.

21 2. For special damages, according to proof on each cause of action for which such
22 damages are available.

23 3. For compensatory damages, including emotional distress damages, according to
24 proof on each cause of action for which such damages are available.

25 4. For punitive damages.

26 5. For statutory and civil penalties.

27 5. For declaratory and injunctive relief in accordance with terms to be determined at
28 the time of trial.

6. For prejudgment interest and post-judgment interest according to law.

7. For reasonable attorneys' fees incurred in this action pursuant to Government Code §§ 12900 et seq., California Code of Civil Procedure § 1021.5, Labor Code §§ 218.5 and 226, and the PAGA.

8. For costs of suit incurred in this action.

9. For such other and further relief that the Court deems proper and just.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all causes of action in this matter.

DATED: October 25, 2024

WORKWORLD LAW CORP.

A Professional Corporation

By:

RUBEN ESCOBEDO

Attorney for Plaintiff, COLE MILTON

EXHIBIT 1



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

August 19, 2024

Ruben Escobedo
6907 El Camino Real, Ste. A
Atascadero, CA 93422

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202408-25871419
Right to Sue: Milton / Limon dba Fusion Colors

Dear Ruben Escobedo:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

August 19, 2024

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202408-25871419
Right to Sue: Milton / Limon dba Fusion Colors

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

August 19, 2024

Cole Milton

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202408-25871419
Right to Sue: Milton / Limon dba Fusion Colors

Dear Cole Milton:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective August 19, 2024 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Cole Milton

CRD No. 202408-25871419

Complainant,

vs.

Marcos Limon dba Fusion Colors

Respondents

1. Respondent **Marcos Limon dba Fusion Colors** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Cole Milton**, resides in the City of , State of .

3. Complainant alleges that on or about **February 13, 2024**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's color, other, race (includes hairstyle and hair texture) and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, other, denied work opportunities or assignments.

Additional Complaint Details: Cole Milton began working for Mr. Marcos Limon at Fusion Colors on or about September 15, 2021. He was hired as the Body man/front man for the body shop. In this position Mr. Milton washed cars, assembled cars, did repair work, and did the final wash and details on cars. Mr. Milton's position was later changed to Auto Detail. Unfortunately, Mr. Milton was treated unequally by Mr. Limon during his employment. Mr. Milton was the only white non-Hispanic man employed. Mr. Milton was given specific rules that did not apply to other employees. The rules were as stated: You are not allowed to talk about anything other than work at work; you can only take one 15-minute break per 8-hour shift; you are not allowed to listen to your headphones while working; you are required not to

1 speak with or make friends with the vendors, customers, other tradesmen, or any and all
2 outside persons while at work; if you start a car, you're required to finish it. Mr. Milton was
3 required to provide his own tools and equipment but was not paid the California "tool wage"
4 which is double the minimum wage. The employer here paid Mr. Milton at a nominal hourly
5 rate of \$17 an hour for most of his employment, leaving Mr. Milton significantly short of the
6 required tool wage.
7 Mr. Milton's starting pay was \$17.50, and after a probationary period of 60 days, the
8 employer promised Mr. Milton a pay raise. Mr. Milton complained to Mr. Limon several
9 times that he had not given a pay raise as promised.
10 Towards the end of Mr. Milton's employment, he frequently was not given work. On August
11 4, 2023, Mr. Limon told Mr. Milton to take the day off because it was slow. On at least two
12 occasions, September 22, 2023, and December 26, 2023, Mr. Limon told Mr. Milton to take
13 the day off when notified he would be late to work. During the week of January 7, 2024, Mr.
14 Milton had two days off due to "no work." Mr. Milton was the only employee that was not
15 provided work. At least three employees that started working after Mr. Milton still received
16 work. The week of January 15, 2024, Mr. Milton had 2 ½ days off due to "no work", again
17 being the only employee to lose work. The week of January 22, 2024, Mr. Milton only
18 worked 10 hours for the entire week due to "not having work", again being the only
19 employee to lose work out of the nine employees who worked full weeks. Mr. Milton was
20 unfairly targeted and singled out as the only white person working in the shop.
21 On August 5, 2023, Mr. Milton was sent out to work on a trailer in the summer heat with no
22 covering. Mr. Milton was the only employee sent outside of the shop to work in this
23 condition. Mr. Milton was required to sand and prepare a metal trailer for a customer. At
24 10:15 a.m., the surface temperature of the asphalt and metal trailer were over 100 degrees.
25 There were times when Mr. Limon asked Mr. Milton to purchase two of the same tools so he
26 could have one at the body shop. Mr. Milton was not reimbursed for this. Additionally, Mr.
27 Limon did not provide any of the employees' afternoon rest breaks, requiring the employer
28 to pay an extra hour of wages to all of these employees including Mr. Milton.
Mr. Milton continued to complain about the shortage in the wage increase promised by
Limon. Approximately two weeks before termination, Mr. Limon provided a \$1-an-hour pay
rate increase. But the increase was illusory. Once Mr. Milton received his "raise," Mr. Limon
stopped giving him hours. Shortly thereafter, the owner terminated Mr. Milton and a
reasonable inference arises that the wage-related complaint was a substantial factor in that
decision, giving rise to a claim for wrongful termination in violation of statute and public
policy favoring full payment of promised wages. Mr. Milton's race/color (White) was also a
substantial motivating factor in Defendant's decisions and adverse employment actions
against him.
On February 13, 2024, Mr. Milton went into Mr. Limon's office to get answers for the lack of
work he was receiving. When questioned, Mr. Limon said, "You're just different." Mr. Milton
asked how he was different from any other employee and Mr. Limon answered again that he
was "different." Mr. Milton told Mr. Limon that he wanted to learn how to do other work and
asked why he was never trained like the other employees were. Mr. Limon did not have an
answer and told Mr. Milton to go and work "somewhere else where the owner knows what
he is doing." Taking this to mean he was dismissed, Mr. Milton grabbed his tools and left.

1 Defendants caused Mr. Milton to sustain significant damages as a result of all of the
2 foregoing. Plaintiff now proceeds with this suit to recover all legal remedies available under
3 California law.
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1 VERIFICATION

2 I, **Ruben Escobedo**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On August 19, 2024, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Paso Robles, CA**
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EXHIBIT 2



WORKWORLD LAW

6907 El Camino Real, Suite A
Atascadero, CA 93422
support@workworldlaw.com
(805) 335-2476
(805) 892-6213 (Fax)

August 19, 2024

VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

Marcos Limon
dba Fusion Colors Auto Body Repair
504 W Boone St
Santa Maria, CA 93458

Re: Cole Milton's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Labor & Workforce Development Agency and Marcos Limon
dba Fusion Colors Auto Body Repair:

WorkWorld Law Corp. represents Cole Milton, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately 10 similarly situated current and former aggrieved employees employed by Marcos Limon dba Fusion Colors Auto Body Repair between August 19, 2023, and the conclusion of the forthcoming action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees intend to bring a civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as these civil penalties specifically set forth within the text of the California Labor Code. Those penalties are sought for violations committed against Employees of Marcos Limon dba Fusion Colors Auto Body Repair.

* * *

Cole Milton began working for Mr. Marcos Limon at Fusion Colors on or about September 15, 2021. He was hired as the Body man/front man for the body shop. In this position Mr. Milton washed cars, assembled cars, did repair work, and did the final wash and details on cars. Mr. Milton's position was later changed to Auto Detail.

Unfortunately, Mr. Milton was treated unequally by Mr. Limon during his employment. Mr. Milton was the only white non-Hispanic man employed. Mr. Milton was given specific rules that did not apply to other employees. The rules were as stated: You are not allowed to talk about anything other than work at work; you can only take one 15-minute break per 8-hour shift; you are not allowed to listen to your headphones while working; you are required not to speak with or make friends with the vendors, customers, other tradesmen, or any and all outside persons while at work; if you start a car, you're required to finish it. Mr. Milton was required to provide his own tools and equipment but was not paid the California "tool wage" which is double the minimum wage. The employer here paid Mr. Milton at a nominal hourly rate of \$17 an hour for most of his employment, leaving Mr. Milton significantly short of the required tool wage.

Mr. Milton's starting pay was \$17.50, and after a probationary period of 60 days, the employer promised Mr. Milton a pay raise. Mr. Milton complained to Mr. Limon several times that he had not given a pay raise as promised.

Towards the end of Mr. Milton's employment, he frequently was not given work. On August 4, 2023, Mr. Limon told Mr. Milton to take the day off because it was slow. On at least two occasions, September 22, 2023, and December 26, 2023, Mr. Limon told Mr. Milton to take the day off when notified he would be late to work. During the week of January 7, 2024, Mr. Milton had two days off due to "no work." Mr. Milton was the only employee that was not provided work. At least three employees that started working after Mr. Milton still received work. The week of January 15, 2024, Mr. Milton had 2 ½ days off due to "no work", again being the only employee to lose work. The week of January 22, 2024, Mr. Milton only worked 10 hours for the entire week due to "not having work", again being the only employee to lose work out of the nine employees who worked full weeks. Mr. Milton was unfairly targeted and singled out as the only white person working in the shop.

On August 5, 2023, Mr. Milton was sent out to work on a trailer in the summer heat with no covering. Mr. Milton was the only employee sent outside of the shop to work in this condition. Mr. Milton was required to sand and prepare a metal trailer for a customer. At 10:15 a.m., the surface temperature of the asphalt and metal trailer were over 100 degrees.

There were times when Mr. Limon asked Mr. Milton to purchase two of the same tools so he could have one at the body shop. Mr. Milton was not reimbursed for this. Additionally, Mr. Limon did not provide any of the employees' afternoon rest breaks, requiring the employer to pay an extra hour of wages to all of these employees including Mr. Milton.

Mr. Milton continued to complain about the shortage in the wage increase promised by Limon. Approximately two weeks before termination, Mr. Limon provided a \$1-an-hour pay rate increase. But the increase was illusory. Once Mr. Milton received his "raise," Mr. Limon stopped giving him hours. Shortly thereafter, the owner terminated Mr. Milton and a reasonable

inference arises that the wage-related complaint was a substantial factor in that decision, giving rise to a claim for wrongful termination in violation of statute and public policy favoring full payment of promised wages. Mr. Milton's race/color (White) was also a substantial motivating factor in Defendant's decisions and adverse employment actions against him.

On February 13, 2024, Mr. Milton went into Mr. Limon's office to get answers for the lack of work he was receiving. When questioned, Mr. Limon said, "You're just different." Mr. Milton asked how he was different from any other employee and Mr. Limon answered again that he was "different." Mr. Milton told Mr. Limon that he wanted to learn how to do other work and asked why he was never trained like the other employees were. Mr. Limon did not have an answer and told Mr. Milton to go and work "somewhere else where the owner knows what he is doing." Taking this to mean he was dismissed, Mr. Milton grabbed his tools and left.

In addition to violating Mr. Milton's rights, Limon also subjected other Employees to working conditions in violation of the Labor Code, as described below.

* * *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Tool Wage

"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." Lab. Code, § 1198.

"When 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." Cal. Code Regs., tit. 8, § 11040(9)(B).

In violation of the foregoing, Marcos Limon dba Fusion Colors Auto Body Repair required Employees to provide and maintain hand tools and equipment customarily required by the trade or craft without paying the required double minimum wage amount and without reimbursing Employees' expenses in violation of Labor Code section 2802.

B. Failure to Provide Compliant Rest Periods or Pay Rest Premiums

Pursuant to the applicable Industrial Welfare Commission Wage Order, employers must, within the timeframe provided by law, provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid.

An employer who fails to provide a compliant rest period must pay the employee an additional one (1) hour of regular pay for each day in which a compliant rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c). Moreover, “[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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

Throughout the Statutory Period, Marcos Limon dba Fusion Colors Auto Body Repair maintained an illegal practice of not providing Employees with timely afternoon rest periods. Marcos Limon dba Fusion Colors Auto Body Repair also failed to pay premium wages as required by Section 226.7 for these non-compliant rest periods. For these reasons, Marcos Limon dba Fusion Colors Auto Body Repair violated Section 226.7.

C. Inaccurate Wage Statements

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd. (a).

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3.

Throughout the Statutory Period, Marcos Limon dba Fusion Colors Auto Body Repair failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, total hours worked, and correct net wages earned for each pay period. Rather than providing statements with a correct payment of wages based thereon, Marcos Limon dba Fusion Colors Auto Body Repair failed to capture and pay Employees for wages owed and premium wages for noncompliant meal-and-rest periods.

D. Untimely Payment of Wages

Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

Generally, “[l]abor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Cal. Lab. Code, § 210, subd. (a).

Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Marcos Limon dba Fusion Colors Auto Body Repair failed to timely pay Employees for all wages owed and premium wages.

E. Failure to Pay Wages at Separation

“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, subd. (a). “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Lab. Code, § 202, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5,

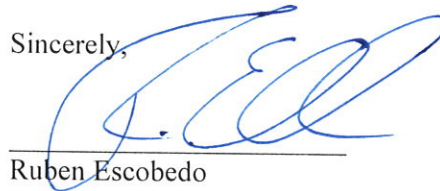
201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment." Cal. Lab. Code, § 203, subd. (a).

Throughout the Statutory Period, Marcos Limon dba Fusion Colors Auto Body Repair failed to pay Employees all wages owed and all premium wages for all time worked. These wages were owed and due to Employees at the time of their separation or 72 hours after resignation. Marcos Limon dba Fusion Colors Auto Body Repair did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. Marcos Limon dba Fusion Colors Auto Body Repair's failure to timely pay these wages at the time of termination, and failure to pay Employees' continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,



Ruben Escobedo