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September 30, 2024

Via Certified Mail

California Fire Stop, Inc
106 Copperwood Way
Suite F
Oceanside, CA 92058

Re: Richard Garcia v. California Fire Stop, Inc

To whom it may concern:

Enclosed herein is an official notice being sent to you and the Labor and Workforce Development Agency pursuant to Labor Code section 2699 (the "Private Attorneys General Act" or "PAGA"). This notice is being sent on behalf of our client, Richard Anthony Garcia, the State of California, and all other similarly aggrieved employees employed by California Fire Stop, Inc.

This letter is a required step before filing a lawsuit to impose civil penalties against California Fire Stop, Inc for violations of the California Labor Code. We intend to file the lawsuit at the expiration of the statutory 65-day notice period, which expires on **December 4, 2024**.

California Fire Stop, Inc is encouraged to contact our office and engage in good faith discussions regarding the claims in this letter. PAGA provides opportunities to significantly reduce potential civil penalties imposed on an employer if that employer takes "all reasonable steps" to address the alleged violations. Additionally, PAGA provides opportunities to further reduce or even completely eliminate penalties imposed on an employer if that employer "cures" certain Labor Code violations. Engaging in meet-and-confer discussions with our office is a crucial step in demonstrating efforts to reduce penalties consistent with these provisions. Conversely, failure to take reasonable steps or engage in these discussions could lead to substantially increased penalties pursuant to Labor Code section 2699(f)(2)(B).

If you would like to discuss the enclosed, please have your legal department or outside counsel contact us. Given the time-sensitive nature of these matters, we strongly recommend initiating contact within **14 days of receiving this notice**. This will ensure sufficient time to address the alleged violations, attempt any cures, or demonstrate compliance efforts within the statutory timeframes.

Sincerely,

/s/

Manny Starr



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Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

California Fire Stop, Inc
106 Copperwood Way
Suite F
Oceanside, CA 92058

Subject: *Richard Garcia v. California Fire Stop, Inc*

Dear Representative:

This office represents Richard Anthony Garcia (“Plaintiff”) in connection with Labor Code violation claims related to their employment with California Fire Stop, Inc (“Employer”). Employer can be contacted at:

California Fire Stop, Inc
106 Copperwood Way
Suite F
Oceanside, CA 92058

Plaintiff has personally suffered each of the Labor Code violations alleged in this letter while employed by Employer within the applicable one-year statute of limitations period. As such, Plaintiff intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period (together with Plaintiff, “Aggrieved Employees”). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

In response to Labor Code violations alleged below, PAGA provides Employer with specific options to mitigate potential penalties:

Taking All Reasonable Steps to Be in Compliance:

Employer can reduce potential penalties to 15% of the maximum by demonstrating it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice prior to receiving it. If Employer believes it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to contact our office to set forth all reasonable steps taken.

If all reasonable steps are taken to be in compliance with all Labor Code provisions identified in this notice within 60 days after receiving it, penalties may be reduced to 30% of the maximum. If Employer intends to take all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to engage in good faith meet-and-confer discussions with our office regarding the alleged violations. Failure to do so may support a finding that all reasonable steps were not taken to comply with the Labor Code provisions identified herein.

Curing Violations:

For certain violations, Employer has the opportunity to fully cure the alleged violations to further reduce penalties or even avoid penalties altogether. Once again, we strongly encourage Employer to promptly initiate meet-and-confer discussions with our office as part of any compliance or cure efforts. Failure to do so may result in a cure that is insufficient.

Employer must notify both our office and the Labor and Workforce Development Agency (LWDA) of any steps taken towards compliance or any attempts to cure. Not only does this approach demonstrate a good faith attempt to come into compliance, but failure to do so could potentially support a finding that Employer's conduct was malicious, fraudulent, or oppressive, thereby leading to increased penalties pursuant to Labor Code section 2699(f)(2)(B).

All communications regarding this matter should be directed to:

Frontier Law Center
23901 Calabasas Road, Suite 1084
Calabasas, CA 91302

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

Minimum Wage Violations

Labor Code section 1197 and the applicable Wage Order requires an employer to pay an employee no less than the minimum wage for all hours worked.

Employer failed to pay the Aggrieved Employees the minimum wage for all hours worked because the Aggrieved Employees were required to perform work while off the clock. Specifically, the Aggrieved Employees were paid using a biased and unlawful rounding policy or practice which caused them to not receive wages in an amount commensurate with the number of hours worked. This constituted an underpayment of minimum

Civil Penalties Applicable to Minimum Wage Violations

As a result of the above minimum wage violations, Employer is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699.

Overtime Violations

Labor Code section 510 and the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

The Aggrieved Employees regularly worked in excess of eight hours in a day and 40 hours in a workweek. Since the Aggrieved Employees were required to perform work off the clock, it follows that this time was often overtime. Thus, the Aggrieved Employees were not paid all overtime wages owed.

Civil Penalties Applicable to Overtime Violations

As a result of the above overtime violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

The Aggrieved Employees' meal breaks were regularly missed, but Employer failed to remit premium pay pursuant to Labor Code section 226.7(c) for each missed meal break,

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

Here, the Aggrieved Employees' rest breaks were regularly missed, but they were never provided premium pay for those missed rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Unlawful Time Rounding

Employer failed to pay the Aggrieved Employees for all hours worked because it implemented an unlawful time rounding policy. As a result of Employer's unlawful time rounding policy, the Aggrieved Employees were generally paid for less time than they worked, subjecting Employer to the civil penalties listed in Labor Code sections 1197.1 and 2699.

Additionally, Employer illegally rounded the Aggrieved Employees' meal break punches, resulting in late or short meal breaks that falsely appeared compliant. As a result of Employers' illegal meal break punch time rounding scheme, the Aggrieved Employees were not paid premium pay for these non-compliant meal breaks, subjecting Employer to the civil penalties listed in Labor Code sections 558 and 2699.

Finally, although Employer recorded the *actual* number of hours worked by the Aggrieved Employees, it chose to only display the *rounded* number of hours worked on the Aggrieved Employees' wage statements. As a result, the Aggrieved Employees were unable to determine from their wage statements alone whether they were being paid correctly, or whether the rounding scheme resulted in their being underpaid. Indeed, in order to determine this information for themselves, the Aggrieved Employees would have needed to reference their unrounded time, which was located elsewhere.

Case law makes it clear that the wage statements issued to the Aggrieved Employees were not compliant.

For purposes of section 226(e), a plaintiff is "injured" "if the accuracy of any of the items enumerated in § 226(a) [...] cannot be ascertained from the four corners of the wage statement." (*Ovieda v. Sodexo Operations, LLC* (C.D.Cal., Oct. 9, 2013, No. CV 12-1750-GHK) 2013 WL 12122413, p. *3.) An actual injury is shown where "there is a need for both additional documentation and additional mathematical calculations in order to determine whether Plaintiffs were correctly paid and what they may be owed." (*Reinhardt v. Gemini Motor Transport* (E.D.Cal. 2012) 879 F.Supp.2d 1138, 1142.) In contrast, where the deficiency in the wage statement could be corrected by "simple math," there is no actual injury. (*Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1143 [122 Cal. Rptr. 3d 174].)

Raines v. Coastal Pac. Food Distribs., Inc., 23 Cal. App. 5th 667, 676 (2018)

Thus, as a result of Employer's failure to provide the Aggrieved Employees with wage statements which accurately listed the total hours worked, it violated Labor Code section 226, subjecting Employer to the civil penalties listed in Labor Code sections 226.3 and 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned / total hours worked / the number of piece-rate units earned and any applicable piece rate / all deductions / the inclusive dates of the period for which the

employee is paid / the name of the employee and only the last four digits of his or her social security number or an employee identification number / the name and address of the legal entity that is the employer / all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203). Employer failed to pay all wages owed at the conclusion of the Aggrieved Employees' employment.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Manny Starr