MESSRELIAN LAW
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VIA ELECTRONIC FILING **September 11, 2024**

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

MI RANCHO SUPERMARKET
MI RANCHO SUPERMARKET (SAN JOSE), INC.
MI RANCHO SUPERMARKET (SAN JOSE 2), INC.
c/o J JESUS LOPEZ-CHAVEZ
137 ROOSEVELT AVE.
REDWOOD CITY, CA 94063

MATEO LOPEZ v. MI RANCHO SUPERMARKET; MI RANCHO SUPERMARKET (SAN JOSE), INC.; MI RANCHO SUPERMARKET (SAN JOSE 2), INC. et al

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Mateo Lopez (hereinafter "Mr. Lopez" or "our client") seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees ("aggrieved employees") who worked for MI RANCHO SUPERMARKET (SAN JOSE), INC. and MI RANCHO SUPERMARKET (SAN JOSE 2), INC., **at all of their locations in the State of California**, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

MI RANCHO SUPERMARKET (REDWOOD CITY STORE 2), INC.; MI RANCHO SUPERMARKET (REDWOOD CITY), INC.; MI RANCHO SUPERMARKET (SAN JOSE 2), INC. ; MI RANCHO SUPERMARKET (SAN JOSE), INC.; MI RANCHO SUPERMARKET (SAN LEANDRO), INC.; MI RANCHO SUPERMARKET (SAN MATEO), INC.; and MI RANCHO SUPERMARKET (SF), INC. are all considered "joint employers" in that they each controlled the wages, hours, and/or working conditions of Mr. Lopez and others. The above entities are all collectively referred to herein as "MI RANCHO". Furthermore, the above entities are also considered an integrated enterprise under the law. The integrated enterprise test sets forth four factors for assessing whether two or more entities are considered a single entity for purposes of liability: (1) interrelation of operations; (2) common management; (3)centralized

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control of labor relations; and (4) common ownership or financial control. Even though one does not have to show proof of all factors to prevail on an integrated enterprise claim, here the factors are unequivocally met as all companies and entities have the exact same ownership and management, including J Jesus Lopez-Chavez. Furthermore, there is centralized control of labor relations and there is interrelation of operations in running the different supermarkets in terms of utilizing employees from one location to work or cover other locations.

Mr. Lopez started working for MI RANCHO on or around May 2023 in the produce section. Mr. Lopez was classified as an hourly, non-exempt employee. Mr. Lopez's pay rate was approximately $17.55 per hour and he generally worked 5 days per week. Mr. Lopez's employment ended on or around August 19, 2024.

<u>It is our position that due to personally suffering the below violations, Mr. Lopez can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for MI RANCHO anywhere in the state of California (at all different supermarket locations) during the relevant PAGA period.</u>

It is our position that MI RANCHO has violated the following Labor Code Sections against Mr. Lopez and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for MI RANCHO at their various locations in the State of California during the relevant PAGA period.

MI RANCHO violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because MI RANCHO had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Moreover, MI RANCHO failed to provide its employees with proper and accurate reporting time pay. In addition, and to the extent that Mr. Lopez and others' meal breaks were interrupted while "off the clock", the latter would also be a minimum wage violation.

Due to the above "off the clock" violations, MI RANCHO also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Lopez's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, MI RANCHO did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. Furthermore, MI RANCHO failed to include bonuses/incentive payments/shift differential payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the <u>Ferra v. Loews</u> case.

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MI RANCHO also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide our client and other similarly situated aggrieved employees with uninterrupted 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MI RANCHO did not completely relieve our client and others of all duty during said rest periods. MI RANCHO did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided or was interrupted. If Mr. Lopez was able to take a rest break, it would often be taken in the storage room, which allowed supervisors to consistently interrupt Mr. Lopez's rest breaks by asking him work-related questions. As such, the culture as well as the policies and procedures of MI RANCHO did not lend itself to the employees receiving any statutory rest breaks wherein they were relieved of all work duties. The environment at MI RANCHO was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

MI RANCHO violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt employees, including Mr. Lopez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. MI RANCHO did not completely relieve Mr. Lopez and other employees of all duty during said meal periods. MI RANCHO did not pay to Mr. Lopez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Mr. Lopez did not always receive timely meal periods before the 5th hour that were uninterrupted. Moreover, if Mr. Lopez ever ate in the storage room, he would be interrupted by supervisors.

If Mr. Lopez signed a meal period waiver, it would not be valid and enforceable. Under California law, however, employees must make an affirmative decision **<u>every day</u>** regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written or oral, will not be considered valid."). Moreover, Mr. Lopez's shifts were approximately 7.5-8.5 hours long, if not longer. As such, there would be no waiver since his shifts were always over 6 hours long. If MI RANCHO had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Mr. Lopez of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not consistently receive statutory, timely meal periods during their employment. To the extent that MI RANCHO argues that employees receive meal break premium pay for missed meal periods, <u>that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period.</u> In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,

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"section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at MI RANCHO was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, MI RANCHO failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Furthermore, since Mr. Lopez was not compensated for his "off the clock" work and since Mr. Lopez did not receive proper meal and rest break premiums, Mr. Lopez would still be owed wages pursuant to Labor Code Section 204. MI RANCHO was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, tips, and reimbursement for business expenses, among others. As such, MI RANCHO did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, MI RANCHO also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Lopez and others pursuant to California Labor Code sections 1174(d).

MI RANCHO also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Mr. Lopez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by MI RANCHO. These costs include but are not limited to, use of personal cell phone for work purposes to communicate with management, and uniforms. Accordingly, MI RANCHO was in violation of California Labor Code sections 2800 and 2802.

Furthermore, MI RANCHO did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-2001/7-2001 as a storage room certainly does not qualify.

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Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Lopez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by MI RANCHO.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.