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September 9, 2024

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Jessica Smith
Agent for Service of Process for:
CHAMPION SCAFFOLD SERVICES, INC.
112 Railroad Avenue
Richmond, CA 94801
(Via Certified Mail, Return Receipt Requested)

Re: ***Miguel Herrera Garcia v. Champion Scaffold Services, Inc.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Miguel Herrera Garcia ("Mr. Herrera") ("Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employee's former Employer Champion Scaffold Services, Inc. ("Employer").

The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations, which we allege Employer engaged in with respect to Employee and potentially all of Employer's Aggrieved Employees.

Employee wishes to pursue this action on behalf of Employee as an Aggrieved Employee, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Employer in California as a non-exempt or hourly-paid Employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Employer owns and operates an industry, business, and establishment within the State of California and are, therefore, subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

During Employee's employment, Employer paid Employee an hourly wage and classified them as non-exempt from overtime. Employer typically scheduled Employee to work at least five days in a workweek and at least eight hours per day, but Employee also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employee's employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employee with legally compliant meal periods, failed to authorize and permit Employee to take rest periods, failed to reimburse

them for business expenses, failed to furnish accurate wage statements to Employee, failed to timely produce Employee's requested employment records, and failed to timely pay all final wages to Employee when Employer terminated Employee's employment. Employer further failed to provide suitable seating and heat recovery periods to their Employees or adequate toilet facilities. Employer's managers engaged in systematic and wide-spread falsification of time records and forced Employees to write down wrong start and end times. As discussed below, Employee's experience working for Employer was typical and illustrative.

Employee's Employment with Employer

Employer is a scaffolding contractor. Employee was an hourly, non-exempt worker of Employer. Mr. Herrera worked for Employer as a journeyman driver from approximately March 2023 to August 2024. His primary job functions were driving between job sites and installing scaffolding.

In performing Employee's duties, Employee were regularly required to perform work off-the-clock, without compensation, including starting work before clocking in, monitoring for, and responding to work-related calls and text messages, and driving to and from Employer's yard to job sites.

Due to understaffing and high workloads, Employee were also frequently deprived of an opportunity to take legally compliant meal and rest breaks, and Employer failed to provide Employee and other Aggrieved Employees with the meal and rest break premiums required by the Labor Code. Employees frequently missed their meal breaks, or took them late, or had to cut them short, especially when materials arrived during their meal break.

Employee and the Aggrieved Employees also incurred significant unreimbursed business expenses that included, but were not limited to, having to use personal cell phones to perform work duties, buying steel-toed boots required on job sites, and tools necessary to do their jobs.

Further, Employer failed to provide adequate seating for Employees, instead having them sit on the ground. Employer also failed to provide adequate heat recovery periods as well. Employer also failed to provide adequate toilet facilities, resulting in Employee having to walk for over a mile to use a restroom.

Employer further failed to pay final wages timely. Employer further failed to produce Employee's personnel and payroll files, when requested, and failed to provide Code-compliant wage theft notices.

Further, Employee and the Aggrieved Employees' paystubs were noncompliant and did not list all of the required information.

These are just non-exhaustive examples of the facts and theories the Employee assert, which are described in more detail below.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an Employer must pay for all hours worked by an Employee. "Hours worked" is the time during which an Employee is subject to the control of an Employer and includes all the time the Employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that Employee in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional

compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that Employee in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an Employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employer, at times, required Employee and the Aggrieved Employees, or some of them, to work “off-the-clock,” uncompensated, by, for example, requiring Employee and the Aggrieved Employees perform work during uncompensated meal periods and rest periods and requiring Employee and the Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that Employer compensate Employee 1.5 times their regular rate of pay when Employee work over eight hours per day, 40 hours per week, or when Employee work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee’s regular rate of pay when paying overtime, by failing to include all compensation in Employee’s overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated the time records in order to pay them less.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, Employer have an affirmative obligation to relieve Employee of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow Employee to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, Employee are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employer, at times, wrongfully failed to provide Employee and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including, but not limited to, failing, at times, to provide Employee and the Aggrieved Employees, or some of them, an opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Employee and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employee and the Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Employee and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. Employer also did not inform Employee of Employee’s right to, nor permitted Employee to take, all of Employee’s second meal periods when Employee worked at least ten hours of work in a workday and otherwise unlawfully pressured Employee to waive such breaks. Employer also prevented Employee from clocking out unless they confirmed that they took compliant meal periods even when they did not. Accordingly, Employer, at times, failed to provide meal periods to Employee and the Aggrieved Employees, or some of them, in compliance with California law.

Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of

additional wages for each workday they were not provided with all required meal period(s). Employer, however,, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employer are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an Employee's work time is six hours and ten minutes, the Employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer, at times, have wrongfully failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take legally compliant rest periods in a manner required by law (and also including, but not limited to, failing, at times, to authorize and permit Employee and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take rest periods). Employer, at times, required Employee and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day without Employer's authorizing and permitting Employee to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employee and the Aggrieved Employees, or some of them, for rest periods that were not authorized or permitted.

Instead, Employer, at times, continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or, at times, by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employer, at times, failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law. Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however,, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employer's failure, at times, to pay Employee and the Aggrieved Employees, or some of them, for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires Employer to pay Employee all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, Employee were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employer failed and refused to pay the Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all meal periods not provided

by Employer, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. As a result, Employer owe Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employee seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor, who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every Employer shall keep time records showing when the Employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however,, at times, failed to maintain accurate records of hours worked and all meal periods taken or missed by Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated these records.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Employee and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every Employer shall, semimonthly or at the time of each payment of wages, furnish each of his or his Employee an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the Employee, (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 the last four digits of his or his 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 (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. An Employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An Employee suffering injury as a result of a knowing and intentional failure by an Employer to comply with subdivision (a) is entitled to recover the greater

of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per Employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

In addition, California Labor Code § 246(i) required Employer to provide an Employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an Employer provides in lieu of sick leave, for use on either the Employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the Employee's payment of wages. If an Employer provides unlimited paid sick leave or unlimited paid time off to an Employee, the Employer may satisfy this section by indicating on the notice or the Employee's itemized wage statement "unlimited."

Throughout the statutory period, Employer, at times, failed to, and continue, at times, to fail, to timely furnish Employee and the Aggrieved Employees, or some of them, with accurate, itemized wage statements complying with all of the above requirements.

Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per Employee. Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Produce Requested Employment Records

Labor Code § 226 provides that current and former Employee have the right to inspect or receive a copy of their payroll records pertaining to their employment, upon reasonable request to their Employer. Under this statute, an Employer that receives a request to inspect or receive a copy of the payroll records pertaining to a current or former Employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.

Labor Code § 1198.5(a) also provides that every current and former Employee, or his or his representative, has the right to inspect and receive a copy of the personnel records that the Employer maintains relating to the Employee's performance or to any grievance concerning the Employee. Under this statute, upon written request from a current or former Employee or his or his representative, an Employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former Employee, or his or his representative, not later than thirty (30) calendar days from the date the Employer receives the written request, subject to some limited exceptions.

In addition, Labor Code § 432 provides that if an Employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request.

On information and belief, Employee and the Aggrieved Employees, or some of them, submitted written request(s) to Employer for their payroll records, timecards, and personnel records but did not timely receive them as required by the Labor Code.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires Employer to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by Employee and Aggrieved Employees. All applicable IWC Wage Orders, section 7 similarly requires Employer to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employer, at times, failed, and continue, at times, to fail, to keep accurate and complete payroll records as required by law, including, but not limited to, the following records: total daily hours worked, applicable rates of pay, time records showing when Employee and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employer further failed at times, and continue, at times, to fail, to record the true start and end times of some of Employee’s and Aggrieved Employees’s shifts and meal periods.

Employer’s failure to keep “accurate and complete” payroll records for Employee and Aggrieved Employees, or some of them, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employees (or some of them), results in a separate civil penalty.¹

Refusal to Make Payment

Labor Code section 216 declares unlawful an Employer’s refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employer, at times, violated and continue, at times, to violate Labor Code section 216 by failing to pay Employee and Aggrieved Employees, or some of them, for all hours worked at the proper wage rate and by failing to pay Employee and Aggrieved Employees, or some of them, an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employees (or some of them) so affected, for each pay period (or some of them) during which the statute’s provisions were violated.²

Statutory Wage Violations

Labor Code section 223 makes it unlawful for an Employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

As described above, Employer, at times, willfully and systematically denied Employee and other Aggrieved Employees, or some of them, of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employer, at times, acted with the intent to deprive some or all of them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employer, at times, paid Employee and other Aggrieved Employees, or some of them, lower wages than those to which they were entitled, while purporting that Employee and all Aggrieved Employees were properly paid. As such, Employee and Aggrieved Employees, or some of them, are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that Employer shall indemnify their Employee for all necessary business expenditures or losses that have been incurred by the Employee in direct discharge of their duties. Throughout the statute of limitations period applicable to this cause of action, Employer, at times, wrongfully required Employee and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employer. Employee and the Aggrieved Employees, or some of them,, at times, paid out-of-pocket for necessary employment-related expenses. Employee and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Employee and the Aggrieved Employees, or some of them, for these employment-related expenses.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees, or some of them, for necessary business expenditures.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that, if an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an Employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the Employee has given seventy-two (72) hours previous notice of their intention to quit, in which case the Employee is entitled to their wages at the time of quitting. Direct deposits of wages to an Employee's bank, saving and loan, or credit union account that were previously authorized by the Employee are immediately terminated when an Employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the Employee has voluntarily authorized that deposit and provided that the Employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer, at times, failed, and continue, at times, to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), and missed meal and rest period premium wages. Employer also violated, and continue to violate, Labor Code section 213(d) by

paying final wages (if any are paid at all) via direct deposit without the Employee's voluntary authorization.

Falsifying Records

During the relevant time period, Employer engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Employee and the Aggrieved Employees, in violation of section 1198.

Additionally, on information and belief, Employer's management would alter and/or falsify time records to make it look like compliant meal breaks were taken whereas they were not, among other things. These non-compliant meal breaks could have been recorded by Employer, but their refused to do so to avoid payment of meal break penalties to Employee and the Aggrieved Employees. Thus, Employer failed to track the time employees spent working off the clock, and Employee and the Aggrieved Employees received no compensation for this time.

Due to Employer's practices of management altering and/or falsifying time records, Employee and the Aggrieved Employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

Violation of Wage Theft Protection Act of 2011

Based on information and belief, Employer failed at times, and continue, at times, to fail, to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and Aggrieved Employees, or some of them, with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay Aggrieved Employees, or some of them, at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, Aggrieved Employees, or some of them, may collect from Employer in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Seating Violations

Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats

when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, Employer, at times, failed to provide Aggrieved Employees, or some of them, with suitable seating, and when such employees, or some of them, were not engaged in duties which required them to stand, at times, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that Aggrieved Employees were working. Lastly, based on information and belief, Aggrieved Employees, at times, were not engaged in active duties of their employment, yet, at times, there were no suitable seats in reasonable proximity to the work area, and use of seats would not have interfered with the performance of their duties.

However, Employer, at times, failed to provide suitable seating in reasonable proximity to Aggrieved Employees' work areas, or some of them, in violation of section 14(A-B) of applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting Employer to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved Employees, or some of them, results in a separate civil penalty.³

Violation of California Labor Code §§ 226.7 and 1198 & Cal. Code of Regs Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employee shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, Employer violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Employer failed to provide Employee and the Aggrieved Employees with recovery periods.

Employer have also engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Alternatively, to the

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

extent that Employer did pay recovery period premium wages to other aggrieved employees, they did so at the incorrect rates. Because Employer did not properly calculate Aggrieved Employee's regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for recovery period violations were also paid at an incorrect rate and resulted in an underpayment of recovery period premium wages.

Accordingly, Employer failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7 and 1198. Employee and the Aggrieved Employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2350 – Failure to Provide Sufficient Toilet Facilities in the Workplace

California Labor Code section 2350 provides that all employers must provide "a sufficient number of toilet facilities for the use of the employees." During the relevant time period, Employer failed to provide Employee and the Aggrieved Employees with sufficient toilet facilities. In fact, there was no restroom facility at several jobsites where they worked at all.

Because Employer did not provide employees with toilet facilities at its locations or jobsites, Employee and the Aggrieved Employees were forced to relieve themselves at facilities located over a mile away. Employer's failure to provide Employee and the Aggrieved Employees a toilet facility to use at the workplace is in violation of Labor Code section 2350 and the standards adopted by the Occupational Safety and Health Standards Board.

Employee and the Aggrieved Employees are thus entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Action for Civil Penalties Under PAGA

In light of the above, Employee alleges that Employer violated the foregoing provisions of the Labor Code with respect to Employee and the Aggrieved Employees, or some of them:

Therefore, on behalf of potentially Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "m. desario". The signature is written in a cursive, lowercase style.

Molly DeSario, Esq.