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October 25, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Melvin Williams, Jr. v. Ancon Marine*

Dear PAGA Administrator:

This office represents Melvin Williams, Jr. in connection with his claims under the California Labor Code. Mr. Williams was an employee of ANCON MARINE ("ANCON").

The employer may be contacted directly at the address below:

ANCON MARINE
10571 LOS ALAMITOS BLVD.
LOS ALAMITOS, CA 90720

Mr. Williams intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Williams seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ANCON as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ANCON employed Mr. Williams as an hourly paid, non-exempt employee at its location in Benicia, California. Mr. Williams worked as a Technician from approximately March 2023 to December 2023, and as a Driver from December 2023 to April 2024. During his employment, Mr. Williams typically worked ten (10) to twelve (12) hours per day and five (5) days per week. At the time his employment ended, Mr. Williams was compensated approximately $22.00 per hour. His primary job duties included, without limitation, transferring oil and gas from tanks, cleaning heavy industrial equipment, inspecting equipment and the general work area, and transporting tanks around the refinery plant.

ANCON has committed each of the following Labor Code violations against Mr. Williams, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

ANCON's Company-Wide and Uniform Payroll and HR Practices

ANCON MARINE is a California corporation. ANCON offers a variety of industrial cleaning, hazardous waste, spill response, confined space rescue and environmental services. Upon information and belief, ANCON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Los Alamitos, California, for all non-exempt, hourly paid employees working for ANCON in California, including Mr. Williams and other aggrieved employees. At all relevant times, ANCON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Williams and other aggrieved employees, regardless of their location or position.

Upon information and belief, ANCON maintains a centralized Payroll department at its corporate headquarters in Los Alamitos, California, which processes payroll for all non-exempt, hourly paid employees working for ANCON in California, including Mr. Williams and other aggrieved employees. Further, ANCON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Williams and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, ANCON utilized the same methods and formulas when calculating wages due to Mr. Williams and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ANCON willfully failed to pay all overtime wages owed to Mr. Williams and other aggrieved employees. During the relevant time period, Mr. Williams and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

[1] These facts, theories, and claims are based on Mr. Williams's experience and counsel's review of those records currently available relating to Mr. Williams's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Williams reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, ANCON had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Williams and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. As stated in ANCON's Overtime policy, "[a] non-exempt employee must have prior, written approval from his or her supervisor before any overtime can be worked. Non-approved overtime will be paid, but it *may result in discipline, up to and including termination*." (Emphasis added.) ANCON's company-wide policy and/or practice is to require employees to fill out handwritten timesheets each day and to submit them to management for review and approval. When completing these handwritten timesheets, ANCON's management instructed Mr. Williams and other aggrieved employees to record only their scheduled shift start- and end-times, instead of their actual hours worked. Alternatively, on information and belief, ANCON's supervisors rounded clock-in and clock-out times to the nearest hour, half hour, or quarter hour to limit the time employees were eligible to be compensated for. ANCON's rounding policy resulted in the failure to compensate Mr. Williams and other aggrieved employees fully for all hours worked, causing Mr. Williams and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. To the extent ANCON's timekeeping practices took away time worked that was eligible for overtime, Mr. Williams and other aggrieved employees were denied overtime pay for all hours worked.

Second, ANCON had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads. ANCON's policies and/or practices resulted in a failure to provide Mr. Williams and other aggrieved employees with adequate meal period coverage, and thus, Mr. Williams and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. ANCON also had a practice of failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Williams and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, due to lack of coverage and heavy workload, Mr. Williams often worked straight through his meal periods. Additionally, his meal periods were interrupted and/or cut short about 2-3 times per month when supervisors required him to complete work-related tasks. Thus, Mr. Williams and other aggrieved employees worked through their meal periods in order to complete their assigned workloads.

Additionally, in conjunction with understaffing its locations, ANCON had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Williams and other aggrieved employees respond to their personal mobile devices at all times, including during meal periods. As a result, ANCON's management regularly contacted Mr. Williams and other aggrieved employees on their personal cellular phones during meal periods to discuss work-related matters. ANCON did not pay Mr. Williams and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, during the relevant time period, on information and belief, ANCON implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Williams's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods on their handwritten timesheets. As a result of this policy, ANCON falsified and deducted meal periods from Mr. Williams's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Alternatively, on information and belief, because ANCON frowned upon employees accruing meal period premiums, ANCON's management pressured Mr. Williams and other aggrieved employees to swipe their badges at the front of the refinery, presumably to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal period premiums that would need to be paid by ANCON. Thus, ANCON did not record all hours worked during meal periods, and Mr. Williams and other aggrieved employees performed work during meal periods for which they were not paid.

ANCON knew or should have known that as a result of these company-wide practices and/or policies, Mr. Williams and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Williams and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Williams and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ANCON did not pay Mr. Williams other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, INSIGHT paid Mr. Williams other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ANCON failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Williams other aggrieved employees worked overtime and received these other forms of pay, ANCON failed to pay all overtime wages by paying a lower overtime rate than required.

ANCON's failure to pay Mr. Williams and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "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." Cal. Code Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as set forth above, during the relevant time period, ANCON maintained company-wide policies and/or practicse of limiting overtime accrual and pressuring employees to record only their scheduled hours instead of hours actually worked, thereby shorting Mr. Williams and other aggrieved employees for work performed outside their scheduled shifts. Moreover, due to ANCON's policy of rounding Mr. Williams's and other aggrieved employees' clock-in and clock-out times in its timekeeping system to the nearest hour, half hour, or quarter hour, ANCON failed to compensate Mr. Williams and other aggrieved employees fully for all hours worked.

Second, due to ANCON's policies and/or practices of understaffing its jobsites while assigning heavy workloads, failing to adhere to a schedule for meal periods, and requiring employees to respond to phone calls during meal periods, Mr. Williams and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Third, as stated above, on information and belief, during the relevant time period, ANCON implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Williams's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Alternatively, as stated, because ANCON frowned upon employees accruing meal period premiums, ANCON's management pressured employees to record compliant meal periods by swiping their badges at the front of the refinery regardless of whether they had received a compliant meal period or not. Thus, ANCON did not record all hours worked during meal periods, and Mr. Williams and other aggrieved employees performed work during meal periods for which they were not paid.

ANCON did not pay at least minimum wages for all hours worked by Mr. Williams and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, ANCON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ANCON regularly failed to pay at least minimum wages to Mr. Williams and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, ANCON had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Williams and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, ANCON had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Williams and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Second, as stated, ANCON had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Williams and other aggrieved employees respond to their personal mobile devices at all times, including during meal periods. As a result, ANCON's management regularly contacted Mr. Williams and other aggrieved employees on their personal cellular phones during meal periods to discuss work-related matters.

ANCON's practices and policies prevented Mr. Williams and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Williams and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Williams would often work straight through his meal periods and had his meal periods interrupted and/or cut short about 23 times per month when supervisors required him to complete work-related tasks. Additionally, Mr. Williams frequently took his meal periods late, after the fifth hour of work, due to the lack of coverage and failure to adhere to a schedule for meal periods.

Third, as also stated, on information and belief, ANCON implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Williams's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods on their handwritten timesheets. As a result of this policy, ANCON deducted 30 minutes from Mr. Williams's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late. Alternatively, as stated, because ANCON frowned upon employees accruing meal period premiums, ANCON's managers pressured employees to record compliant meal periods by swiping their badges at the front of the refinery regardless of whether they had received a compliant meal period or not. For example, Mr. Williams's supervisors told him to always swipe his badge presumably to record his scheduled meal period time, even when he could not take them at that time. Thus, ANCON systematically failed to accurately record meal periods.

Fourth, ANCON did not always provide Mr. Williams and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During his employment, Mr. Williams often worked shifts in excess of ten (10) or more hours per day but was not always provided a second 30-minute meal period. Mr. Williams and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, ANCON had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. ANCON took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, ANCON's "Meal Period Waiver Agreement" form requires employees to provide advance written notice should they wish to revoke the waiver. ANCON's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in advance and in writing, discouraged and impeded Mr. Williams and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." Brinker, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That ANCON required Mr. Williams and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because ANCON's obligation to provide Mr. Williams and other aggrieved employees with meal periods did not arise until ANCON had employed them for a full five (5) hours.

ANCON knew or should have known that as a result of its company-wide policies and/or practices, Mr. Williams and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ANCON further knew or should have known that it did not pay Mr. Williams and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, to the extent that ANCON's rounding policy reported that Mr. Williams and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Williams and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Moreover, ANCON engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Williams and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that ANCON did pay Mr. Williams and other aggrieved employees for missed, late, and interrupted meal periods, ANCON did not pay Mr. Williams and other aggrieved employees at the correct rate of pay for premiums because ANCON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ANCON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods</u>

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, ANCON regularly failed to authorize and permit Mr. Williams and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ANCON's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Williams and other aggrieved employees from being relieved of all duties to take rest periods. Additionally, ANCON failed to adhere to a schedule for rest periods, which, coupled with ANCON's failure to provide adequate rest period coverage, further led to Mr. Williams and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, Mr. Williams and other aggrieved employees were required to respond to communications from ANCON's management on their personal mobile devices at all times, including during rest periods.

Furthermore, ANCON maintained a company-wide on-premises rest period policy, which mandated that Mr. Williams and other aggrieved employees remain on the work premises during their rest periods. Specifically, ANCON's non- compliant policy states: "All paid breaks must be taken at the work site." Because Mr. Williams and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ANCON effectively maintained control over Mr. Williams and other aggrieved employees during rest periods.

As a result of ANCON's practices and policies, Mr. Williams and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Williams regularly missed his third rest periods when working over ten hours, and sometimes missed his first and/or second rest periods, because of the lack of rest period coverage and ANCON's failure to adhere to a schedule for rest periods for employees. When Mr. Williams was able to take rest periods, they would frequently be interrupted by supervisors to discuss work-related issues.

ANCON also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Williams and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ANCON did pay Mr. Williams and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ANCON did not pay Mr. Williams and other aggrieved employees at the correct rate of pay for premiums because ANCON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ANCON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ANCON has not provided Mr. Williams and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ANCON has knowingly and intentionally provided Mr. Williams and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ANCON issued uniform wage statements to Mr. Williams and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, ANCON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because ANCON did not record the time Mr. Williams and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ANCON did not list the correct amount of gross wages and net wages earned by Mr. Williams and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ANCON failed to accurately list the total number of hours worked by Mr. Williams and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because ANCON did not calculate Mr. Williams's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, ANCON did not list the correct amount of gross wages in compliance with section

226(a)(1). For the same reason, ANCON failed to list the correct amount of net wages in violation of section 226(a)(5). ANCON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ANCON willfully failed to maintain accurate payroll records for Mr. Williams and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Williams's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ANCON 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 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 Mr. Williams and other aggrieved employees, in violation of section 1198. Furthermore, in light of ANCON's failure to provide Mr. Williams and other aggrieved employees with second 30-minute meal periods to which they were entitled, ANCON kept no records of meal start and end times for second meal periods.

Because ANCON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Williams and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Williams and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ANCON failed to pay Mr. Williams and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code sections 204.

Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 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 his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, ANCON has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Williams resigned from his employment on or around April 30, 2024 and received his final paycheck about two weeks later. Thus, ANCON failed to pay Mr. Williams his final wages within the requisite time limit, in violation of California Labor Code section 202.

Additionally, during the relevant time period, ANCON willfully failed to pay Mr. Williams and other aggrieved employees who are no longer employed by ANCON all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ANCON's employ.

Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that ". . . 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."

California Code of Regulations, Title 8, section 11040(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, ANCON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because ANCON failed to pay Mr. Williams and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

ANCON had a company-wide practice of sending Mr. Williams and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Williams and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work at least a ten (10) hour shift, ANCON's managers sent Mr. Williams home within the first two (2) hours of the start of his shift. Although Mr. Williams and other aggrieved employees reported to work based on the schedule that ANCON provided to them, ANCON would send them home before they had worked at least half of their scheduled shifts. When this occurred, ANCON uniformly paid Mr. Williams and other aggrieved employees no more than two (2) hours of "show up" pay instead of paying at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Mr. Williams and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A).

Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen 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."

First, during the relevant time period, Mr. Williams and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but ANCON failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Williams was required to use his personal cellular phone to respond to calls from his manager to discuss work-related matters, such as instructions and questions about job duties. Although ANCON required Mr. Williams and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, ANCON failed to reimburse them for these costs.

Second, during the relevant time period, ANCON required Mr. Williams and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Williams spent approximately $380 on safety boots and a hard hat because ANCON failed to provide him with the necessary safety equipment which they had to wear while completing their assigned duties. Although ANCON required Mr. Williams and other aggrieved employees to wear protective boots and a hard hat, ANCON failed to reimburse them for these costs.

ANCON could have provided Mr. Williams and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies and equipment; or, ANCON could have reimbursed employees for the costs of their mobile device usage, and supply and equipment expenses. Instead, ANCON passed these operating costs onto Mr. Williams and other aggrieved employees. At all relevant times, Mr. Williams did not earn at least two (2) times the minimum wage.

Thus, ANCON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Williams and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ANCON into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[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 . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." ANCON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Williams's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Williams seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Williams, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ANCON for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Williams seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Williams's reasonable attempt to settle his dispute with ANCON prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform ANCON of Mr. Williams's aforementioned grievances and the proposed remedies as detailed below, while affording ANCON a reasonable opportunity to satisfy Mr. Williams's demands.

Demand is hereby made that ANCON shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. ANCON shall pay Mr. Williams and all other aggrieved employees employed by ANCON at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. ANCON shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods.

3. ANCON shall conduct a survey or interview all current and former aggrieved employees in California who worked for ANCON in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided and the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay for mobile device

expenses and supply and equipment expenses, with the investigation to be completed within 60 days.

4. ANCON shall pay Mr. Williams and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. ANCON also shall pay Mr. Williams and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. ANCON shall properly calculate aggrieved employees' rates of pay for overtime and/or meal and rest period premiumse based on all remuneration paid, pursuant to Labor Code sections 226.7 and 510.

6. ANCON shall provide all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.

7. ANCON shall pay accrued legal interest to Mr. Williams and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

8. ANCON shall provide Mr. Williams and all aggrieved employees employed by ANCON at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

9. ANCON shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

10. ANCON shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for ANCON's benefit, including, but not limited to, costs of mobile device usage, supply and equipment expenses, or other expenditures, as required by Labor Code section 2802.

11. ANCON shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Sairah Budhwani

Copy: ANCON MARINE (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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