

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Ping Shen (SBN: 349254)
pshen@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814,
Long Beach, CA 90802
Telephone: (562) 590-5550,
Facsimile: (562) 590-8400

Shafiel A. Karim (SBN: 291725)
shafiel@skarimlaw.com
LAW OFFICE OF SHAFIEL A. KARIM, P.C.
1154 E. Wardlow Rd.,
Long Beach, CA 90807
Telephone: (562) 653-6850

Attorneys for Plaintiff HUGO PONS and Plaintiff BLANCA DELAO as designated Private Attorneys General, pursuant to the Private Attorney General Act (2004) ("PAGA")

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HUGO PONS and BLANCA DELAO, as
designated Private Attorneys General,
pursuant to PAGA,

Plaintiffs,

v.

THE FLOWER PARROT CO., INC.,
CHRISTOPHER STANLEY, and DOES 1
through 50, inclusive,

Defendants.

Case No.: **25STCV00946**

**COMPLAINT FOR CIVIL PENALTIES
AND FINES**

1. Violation of PAGA for Willful Misclassification of Employees as Independent Contractors;
2. Violation of PAGA for Recovery of Unpaid Minimum Wages and Overtime Compensation;
3. Violation of PAGA for Failure to Provide Meal Periods;
4. Violation of PAGA for Failure to Provide Rest Periods;
5. Violation of PAGA for Failure to Provide Accurate Itemized Wage Statements;
6. Violation of PAGA for Failure to Maintain and Produce Accurate Payroll Records;
7. Violation of PAGA for Failure to Reimburse Necessary Business Expenses; and
8. Violation of PAGA for Failure to Pay Wages Due Upon Separation of Employment.

Electronically FILED by
Superior Court of California,
County of Los Angeles
1/14/2025 5:11 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By G. Cordon, Deputy Clerk

1 Plaintiff HUGO PONS (hereinafter "Plaintiff Pons") and Plaintiff BLANCA DELAO
2 (hereinafter "Plaintiff Delao") (individually "Plaintiff" and collectively "Plaintiffs"), as
3 designated representatives/Private Attorneys General pursuant to the Private Attorney General
4 Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA"), complain and allege as follows:

5 **INTRODUCTION**

6 1. This is an action brought on behalf of Plaintiffs, the aggrieved employees, and the
7 State of California under PAGA as a result of one or more California Labor Code violations
8 alleged herein by Defendant THE FLOWER PARROT CO., INC. ("FPC") and Defendant
9 CHRISTOPHER STANLEY, sole stockholder, director, officer, and managing agent of FPC,
10 (individually or collectively "Defendant"). The term "RELEVANT TIME PERIOD", "TIME
11 PERIOD" or "PAGA PERIOD" is defined as the period from August 28, 2023 to the date of filing
12 of this complaint. Plaintiffs, as representatives and deputized attorneys general under PAGA,
13 reserve the right to amend this complaint to reflect a different "RELEVANT TIME PERIOD",
14 "TIME PERIOD", and/or "PAGA PERIOD" as further discovery in this action is conducted.

15 2. As aggrieved employees and deputized attorneys general under PAGA, Plaintiffs
16 seek relief against Defendant for: (1) willful misclassification of employees as independent
17 contractors; (2) failure to pay all wages due, including minimum and overtime wage; (3) failure
18 to provide meal periods or compensation in lieu thereof, (4) failure to provide rest periods or
19 compensation in lieu thereof; (5) failure to provide accurate itemized wage statements; (6) failure
20 to maintain accurate payrolls records; (7) failure to reimburse necessary business expenses; and
21 (8) failure to pay wages due upon separation of employment.

22 3. During the RELEVANT TIME PERIOD, Defendant has consistently maintained
23 and enforced the following unlawful policies and practices against its workforce by:

- 24 (a) Willfully misclassifying employees as independent contractors;
25 (b) Willfully refusing to pay all hours worked including both minimum and overtime
26 wages;
27 (c) Willfully refusing to provide timely uninterrupted meal and rest periods or
28 compensation in lieu thereof;

- 1 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
2 wages and to maintain payroll records;
3 (e) Willfully refusing to reimburse necessary business expenses; and
4 (f) Willfully refusing to pay all wages due upon separation of employment.

5 **JURISDICTION AND VENUE**

6 4. This Court has subject matter jurisdiction over the causes of action alleged in this
7 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
8 excluded from exercising subject matter jurisdiction over said causes of action.

9 5. Venue is proper in the County of Los Angeles, State of California because
10 Defendant transacts business in this county and its obligations and liability arise in this county.

11 6. The California Superior Court has jurisdiction in the matter because Plaintiffs'
12 individual claims are less than the seventy-five thousand dollars (\$75,000.00) jurisdictional
13 amount in controversy threshold required for federal court subject matter jurisdiction. (See
14 *Urbino v. Orkin Servs. of Cal.* (9th Cir. 2013) 726 F. 3d 1118.) Moreover, Plaintiffs are residents
15 domiciled in the County of Los Angeles, State of California.

16 7. Further, there is no federal question at issue as the issues herein are based solely
17 on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
18 Professions Code, and California Rules of Court.

19 **THE PARTIES**

20 **Plaintiffs**

21 8. Plaintiff Pons was employed by Defendant from in or around October 2010 to on
22 or around April 7, 2024.

23 9. Plaintiff Delao was employed by Defendant from in or around November 2012 to
24 on or around April 7, 2024.

25 10. During the Relevant Time Period herein, Plaintiffs were employed by Defendant
26 as Flower Merchandisers and were assigned to work as outside sales at several different Home
27 Depot stores ("Stores") throughout South California.

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1 12. Plaintiffs are informed believe, and thereon alleges, that each Defendant acted in
2 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
3 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
4 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
5 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
6 joint employers and conspire with one another to increase profits by engaging in the conduct
7 described in this complaint.

8 13. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
9 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
10 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
11 below was acting, at least in part, within the course and scope of that authority as such agent,
12 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
13 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
14 are legally attributable to the other Defendants.

15 **PAGA ADMINISTRATIVE PREREQUISITE**

16 13. Plaintiffs bring this case as Private Attorneys General pursuant to the Private
17 Attorney General Act (2004), and mores specifically, Labor Code sections 2698 et seq. seeking
18 civil penalties, as provided by the Private Attorney General Act, Labor Code sections 2698 et seq.

19 14. Prior to filing this complaint, on August 28, 2024, Plaintiff Delao electronically
20 filed a written notice letter of the specified provisions alleged to have been violated, including the
21 facts and theories to support the alleged violation as required by Labor Code section 2699.3 to
22 the Labor and Workforce Development Agency (“LWDA”), and served Defendant the written
23 notice letter by Certified Mail. A true and correct copy of Plaintiff Delao’s written notice letter is
24 attached hereto as “Exhibit A.”

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1 business (i.e., they each worked as Flower Merchandisers at the Stores which was in the usual
2 course of Defendant's business of selling flowers). Neither Plaintiffs nor the Aggrieved
3 Employees are customarily engaged independently established trade, occupation or trade before
4 or during Relevant Time Period. Thus, Defendant fails the ABC test formulated by the California
5 Supreme Court in *Dynamex Operations West Inc. v. Superior Court* (2018), 4 Cal. 5th 903 and
6 codified in Labor Code sections 2750, et seq. Instead, Plaintiffs and the Aggrieved Employees
7 should have been classified as employees under Labor Code section 3353. As a direct and
8 proximate result, Defendant is subject to civil penalties and fines pursuant to Labor Code sections
9 226.8(b), 226.8(c), and 1199.

10 21. Plaintiffs are informed and believe, and based thereon allege, that Defendant
11 knowingly failed or refused to pay Plaintiffs minimum wage and overtime compensation for all
12 of their work hours during the Relevant Time Period in violation of Labor Code section 1182.12,
13 1197, 510(a) and applicable IWC Wage Orders. Defendant required Plaintiffs to work eight (8)
14 hours per day and forty (40) hours per week and also required Plaintiff to work more than forty
15 (40) hours per week regularly and during holiday seasons. Defendant paid each Plaintiff a
16 commission based on business sales results in the Stores, which did not ensure Plaintiffs earned
17 at least minimum wages for all of their work hours. Thus, Defendant is subject to civil penalties
18 and fines pursuant to Labor Code sections 1197.1(a) and 1199.

19 22. Plaintiffs are informed and believe that during the Relevant Time Period,
20 Defendants required the Aggrieved Employees to work eight (8) hours per day and forty (40)
21 hours per week and also required the Aggrieved Employees to work more than forty (40) hours
22 per week regularly and during holiday seasons. Upon information and belief, Defendant paid each
23 of the Aggrieved Employees a commission based on business sales results in the Stores, which
24 did not ensure the Aggrieved Employees earned minimum wages at least minimum wages for all
25 of their work hours. Thus, Defendant is subject to civil penalties and fines pursuant to Labor Code
26 sections 1197.1(a) and 1199.

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1 23. Plaintiffs are informed and believe, and based thereon allege, that Defendant
2 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
3 meal periods or payment of one (1) additional hour of pay at Plaintiffs' and Aggrieved
4 Employees' respective regular rates of pay when they did not receive a timely, uninterrupted off-
5 duty meal period. Defendant's pattern, practice and policy of not providing any uninterrupted 30-
6 minute meal periods and not paying meal period wages on those occasions violated Labor Code
7 sections 512, 1198, 226.7 and applicable IWC Wage Orders. Defendant is subject to civil
8 penalties and fines pursuant to Labor Code sections 1199 and 2699(f)(2).

9 24. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
10 or should have known that Plaintiffs and Aggrieved Employees were entitled to receive all
11 required rest periods or payment of one (1) additional hour of pay at regular rate of pay when they
12 did not receive a timely, uninterrupted off-duty rest periods. Defendant's pattern, practice and
13 policy of not providing any uninterrupted 10-minute rest periods and not paying rest period wages
14 on those occasions violated Labor Code sections 1198 and 226.7, and applicable IWC Wage
15 Orders. Defendant is subject to civil penalties and fines pursuant to Labor Code sections 1199
16 and 2699(f)(2).

17 25. Plaintiffs are informed and believe, and based thereon allege, that that Defendant
18 knew or should have known that Plaintiffs and Aggrieved Employees were entitled to receive
19 itemized wage statements that accurately showed their respective actual hours worked, total hours
20 worked, number of hours worked at each hourly rate, gross and net wages earned, and premium
21 wages earned per pay period. Defendant's pattern, practice, and policy of not providing Plaintiffs
22 and Aggrieved Employees with accurate and itemized wage statements violated Labor Code
23 section 226(a) and applicable IWC Wage Orders. Defendant is subject to civil penalties and fines
24 pursuant to Labor Code sections 226(e)(1), 218.5, 1199, and 2699(f)(2).

25 26. Plaintiffs allege that Defendant also willfully failed to keep and provide accurate
26 payroll records and work hour records for Plaintiffs and the Aggrieved Employees during the
27 Relevant Time Period in violation of Labor Code section 1174(d). Thus, Defendant is subject to
28 civil penalty of \$500 pursuant to Labor Code section 1174.5.

27. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or should have known that Plaintiffs and the Aggrieved Employees were entitled to reimbursement of necessary business expenditure as a direct result of discharge of their work duties during the Relevant Time Period. Defendant failed and/or refused to reimburse Plaintiffs and the Aggrieved Employees for their respective personal cell phone expenses, vehicle expenses, and purchase of gloves and decoration materials in violation of Labor Code section 2802. Defendant is subject to civil penalties and fines pursuant to Labor Code section 1199 and 2699(f)(2).

28. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and certain Aggrieved Employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code sections 201(a), Defendant did not pay all wages due within the time periods prescribed by Labor Code sections 201 or 202 upon separation of employment by Plaintiffs and/or the Aggrieved Employees. Defendant is subject to civil penalties and fines pursuant to Labor Code section 1199 and 2699(f)(2).

29. Plaintiffs are informed and believe, and based thereon allege, that during the Relevant Time Period, Defendants failed and/or refused to produce Plaintiffs' and/or the Aggrieved Employees' respective payroll records and personnel file timely upon valid requests in violation of Labor Code sections 226(c) and 1198.5(b). Defendant is subject to civil penalties and fines pursuant to Labor Code section 1199 and 2699(f)(2).

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS

(Plaintiffs As Private Attorneys General Against All Defendants)

30. Plaintiffs reallege and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

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1 31. Labor Code 226.8(a)(1) provides that it is unlawful for an employ to willfully
2 misclassify a worker as an independent contractor. Labor Code section 226.8(b) provides civil
3 penalty of not less than \$5,000 and no more than \$15,000 for each violation of Labor Code
4 226.8(a)(1). And Labor Code section 226.8(c) provides civil penalty of not less than \$10,000 and
5 not more than \$25,000 for each violation if an employer engages in “a pattern or practice” of
6 willfully misclassifying a worker as an independent contractor.

7 32. Defendant’s course of business is to sell flowers at the Stores in South California.
8 Defendant employed Plaintiffs and, upon information and belief, the Aggrieved Employees to sell
9 flowers at the Stores. Defendant provided Plaintiffs and, upon information and belief, the
10 Aggrieved Employees training for skills required for their work, set their daily work schedules
11 and routine work duties, controlled and supervised their daily work, and regularly and completely
12 provided flowers to them for sales. Neither Plaintiffs nor—upon information and belief, the
13 Aggrieved Employees—have never engaged in independently established trade, occupation or
14 business before or during their employment. Thus, Plaintiffs and the Aggrieved Employees
15 were/are employees instead of independent contractors pursuant to Labor Code section 3353 and
16 the three-prong ABC test formulated by the California Supreme Court in *Dynamex Operations*
17 *West Inc. v. Superior Court* (2018) 4 Cal. 5th 903.

18 33. However, Defendant required Plaintiffs and, upon information and belief, the
19 Aggrieved Employees to sign the independent contractor agreements as conditions of
20 employment; Defendant also required Plaintiffs, and upon information and belief, the Aggrieved
21 Employees to renew their respective independent contractor agreements periodically throughout
22 Relevant Time Period. Then, Defendant denied Plaintiffs, and upon information and belief, the
23 Aggrieved Employees, benefits as employees regulated under the Labor Code, including
24 minimum wages, overtime compensation, meal periods, rest periods, reimbursement of necessary
25 business expenses, payment wages due upon separation of employment. Furthermore, for over
26 the past ten years, Defendant misclassified Plaintiffs and, upon information and belief, the
27 Aggrieved Employees as independent contractors and assigned them to work at different Stores
28 in South California for flowers sales.

1 34. Pursuant to Labor Code section 226.8(a)(1), during the Relevant Time Period,
2 Defendant engaged in a pattern or practice of willfully misclassifying its workers as independent
3 contractor. Thus, Defendant is subject to civil penalty pursuant to Labor Code section 226.8(c).

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
6 **OVERTIME**

7 **(Plaintiffs As Private Attorneys General Against All Defendants)**

8 35. Labor Code section 1197 provides that it is unlawful for an employer to pay lower
9 than minimum wage to its employees. For violation of Labor Code section 1197, an employer is
10 liable for civil penalties of \$100 for initial violation and \$250 for each subsequent pay periods for
11 each unpaid employee pursuant to Labor Code section 1197.1(a).

12 36. Under Defendant's scheme of willfully misclassifying Plaintiffs, and upon
13 information and belief, the Aggrieved Employees, as independent contractors, Defendant paid
14 Plaintiffs, and upon information and belief, the Aggrieved Employees, a commission completely
15 based on Defendant's flowers sales amount, which did not ensure that they earned at least
16 minimum wages for their work hours.

17 37. Plaintiffs, and upon information and belief, the Aggrieved Employees, regularly
18 worked over forty (40) hours per week and worked over eight (8) hours per day during holiday
19 seasons. However, Defendant refused to pay Plaintiffs and, upon information and belief, the
20 Aggrieved Employees, at minimum wage rates in violation of California Labor Code section 1197
21 and 1182.12, as well as Industrial Welfare Commission (IWC) Wage Orders. Defendant
22 contractually agreed to pay each Plaintiff, and upon information and belief, the Aggrieved
23 Employees, a commission based on flowers sales in their working Stores. However, Defendant's
24 commission did not contain any safeguards to ensure Plaintiffs and, upon information and belief,
25 the Aggrieved Employees, earned at least minimum wages.

26 38. Any work in excess of eight (8) hours in any workday and any work in excess of
27 forty (40) hours in a workweek shall be compensated at a rate of no less than one and one-half
28 times the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 7-2001,

1 Sect. 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the
2 rate of twice the regular rate of pay for an employee. (*Ibid.*) Defendant failed to pay its employees
3 overtime premium for hours worked in excess of over eight (8) hours per day and/or forty (40)
4 hours per week for work performed for the Defendant. Defendant failed to compensate

5 39. Since the LWDA has not indicated that it will be investigating more than sixty-
6 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to
7 remedy the allegations set forth above, Plaintiffs, as Private Attorneys General, will seek any and
8 all penalties otherwise capable of being collected by the Labor Commissioner, the LWDA and/or
9 the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following,
10 as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a),
11 applies to any alleged violation of the following provisions: 510 and 1194.

12 40. Plaintiffs, as Private Attorneys General, will and do seek to recover fine and any
13 and all penalties for each and every violation shown to exist or to have occurred during the
14 Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
15 only available to public agency enforcement actions.

16 41. Additionally, Plaintiffs as Privates Attorney General are entitled to attorney’s fees
17 and costs pursuant to Labor Code sections 2699, subdivision (g)(1) and prejudgment interest.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
20 **COMPENSATION IN LIEU THEREOF**

21 **(Plaintiffs As Private Attorneys General Against All Defendants)**

22 42. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this
23 complaint as if fully set forth herein.

24 43. Labor Code sections 226.7 and 512 and IWC Wage Order 7-2001, sect. 11
25 provides that no employer shall employ any person for a work period of more than five (5) hours
26 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes.

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1 44. Labor Code section 226.7 provides that if an employer fails to provide an
2 employee with a meal period in accordance with this section, the employer shall pay the employee
3 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
4 period is not provided in accordance with this section. Under Defendant's scheme of willfully
5 misclassifying Plaintiffs as independent contractors, Defendant failed to provide legally
6 compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving
7 employees from all work duties during meal periods thereby preventing employees from taking
8 legally compliant meal periods.

9 45. At all times relevant hereto, Plaintiffs and other non-exempt hourly employees
10 have worked shifts more than five (5) hours in a workday.

11 46. Plaintiffs and other non-exempt hourly employees did not voluntarily or willfully
12 waive meal periods.

13 47. Pursuant to Labor Code section 226.7, Plaintiffs and other non-exempt hourly
14 employees are entitled to damages in the amount equal to one (1) hour of wages at their regular
15 rate of pay for each missed meal break, in an amount to be proven at trial.

16 48. Plaintiffs, as Private Attorneys General, will and do seek to recover fine and all
17 penalties for each and every violation shown to exist or to have occurred during the Relevant
18 Time Period, in an amount according to proof, as to those penalties that are otherwise only
19 available to public agency enforcement actions.

20 49. Additionally, Plaintiffs as Private Attorneys General are entitled to attorney's fees
21 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), and prejudgment interest.

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
24 **COMPENSATION IN LIEU THEREOF**

25 **(Plaintiffs As Private Attorneys General Against All Defendants)**

26 50. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this
27 complaint as if fully set forth herein.

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1 (3) the number of piece-rate units earned...; (4) all deductions...; (5) net wages; (6) the inclusive
2 dates of the period for which the employee is paid; (7) the name of the employee and only the last
3 four digits of his or her social security number or an employee identification number other than a
4 social security number; (8) the name and address of the legal entity that is the employer...; and
5 (9) all applicable hourly rates in effect during the pay period and corresponding number of hours
6 worked at each hourly rate by the employee...” (Lab. Code, § 226.)

7 58. Under Defendant’s scheme of willfully misclassifying Plaintiffs, and upon
8 information and belief, the Aggrieved Employees, as independent contractors, Defendant
9 provided Plaintiffs, and upon information and belief, the Aggrieved Employees, with commission
10 statements which only contained sales amount and commission earned. Defendant knowingly and
11 intentionally failed to provide timely and accurate itemized wage statements to its employees in
12 accordance with Labor Code section 226, subdivision (a), by failing to record the accurate number
13 of hours worked, the accurate rate of pay for each hour worked, the accurate amount of premiums
14 wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to its
15 employees in violation of the Labor Code.

16 59. Plaintiffs, as Private Attorneys General pursuant to the Private Attorney General
17 Act (2004), and more specifically, Labor Code section 2698, will and do seek to recover fines
18 and all penalties for each and every violation shown to exist or to have occurred during the
19 Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
20 only available to public agency enforcement actions; funds recovered will be distributed in
21 accordance with the PAGA.

22 60. Additionally, Plaintiffs are entitled to attorneys’ fees and costs pursuant to Labor
23 Code section 2699, subdivision (g)(1), and prejudgment interest.

24 **SIXTH CAUSE OF ACTION**

25 **VIOLATION OF PAGA FOR FAILURE TO MAINTAIN AND PRODUCE ACCURATE**
26 **PAYROLL RECORDS**

27 **(Plaintiffs As Private Attorneys General Against All Defendants)**

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1 61. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this
2 complaint as if fully set forth herein.

3 62. Labor Code section 1174(c) provides that employers must maintain accurate
4 payroll records, including total hours worked, applicable rate of pay and meal periods. An
5 employer's failure to maintain accurate payroll records is punishable by \$500 civil penalty
6 pursuant to Labor Code sections 1174.5 and 1175(d).

7 63. Labor Code section 226(c) requires an employer to produce payroll records no
8 later than twenty-one (21) days from the date of an employee's written or oral request to inspect
9 his/her payroll records. An employer's failure or refusal to provide copy of payroll record is liable
10 for \$750 statutory penalty pursuant to Labor Code section 226(f).

11 64. Labor Code section 1198.5(b) requires an employer to produce personnel files no
12 later than 30-days from the date of an employer's receipt of an employee's request for his/her
13 personnel file. An employer's failure or refusal to provide copy of payroll record is liable for \$750
14 statutory penalty pursuant to Labor Code section 1198.5(k).

15 65. Under Defendant's scheme of willfully misclassifying Plaintiffs as independent
16 contractors, Defendant did not maintain payroll records for Plaintiffs and other non-exempt
17 employees. Furthermore, Defendant failed to timely produce payroll records and/or personnel
18 files to Plaintiffs upon their respective written requests.

19 66. Plaintiffs, as Private Attorneys General pursuant to the Private Attorney General
20 Act (2004), and more specifically, Labor Code section 2698, will and do seek to recover fine and
21 all penalties for each and every violation shown to exist or to have occurred during the Relevant
22 Time Period, in an amount according to proof, as to those penalties that are otherwise only
23 available to public agency enforcement actions. Funds recovered will be distributed in accordance
24 with the PAGA.

25 67. Additionally, Plaintiffs are entitled to attorneys' fees and costs pursuant to Labor
26 Code section 2699, subdivision (g)(1), and prejudgment interest.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE NECESSARY**

3 **BUSINESS EXPENDITURES**

4 **(Plaintiffs As Private Attorneys General Against All Defendants)**

5 68. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
6 complaint as if fully set forth herein.

7 69. Labor Code section 2802 provides that an employer shall indemnify its
8 employees all necessary expenditures or costs incurred by employees as a direct consequence of
9 his or her duties or in obedience of the directions of employer.

10 70. Defendant required Plaintiffs, and upon information and belief, the Aggrieved
11 Employees, to use their personal cell phones, vehicles and purchase of gloves and decoration
12 materials for sales during their daily work without any reimbursement. Furthermore, Defendant
13 required Plaintiffs, and upon information and belief, the Aggrieved Employees, to pay substitute
14 workers' compensation during their sick leave periods and deducted it from their respective
15 wages.

16 71. Plaintiffs, as Private Attorneys General pursuant to the Private Attorney General
17 Act (2004), and more specifically, Labor Code section 2698, will and do seek to recover fines
18 and all penalties for each and every violation shown to exist or to have occurred during the
19 Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
20 only available to public agency enforcement actions; funds recovered will be distributed in
21 accordance with the PAGA.

22 72. Additionally, Plaintiffs are entitled to attorneys' fees and costs pursuant to Labor
23 Code section 2699, subdivision (g)(1), and prejudgment interest.

24 **EIGHTH CAUSE OF ACTION**

25 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

26 **SEPERATION OF EMPLOYMENT**

27 **(Plaintiffs As Private Attorneys General Against All Defendants)**

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1 73. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this
2 complaint as if fully set forth herein.

3 74. Employees who ended their employment with Defendant during the Relevant
4 Time Period, were entitled to be promptly paid all wages owed, including both minimum wage
5 and lawful overtime compensation and other premiums, as required by Labor Code sections 201
6 and 203.

7 75. Defendant refused and/or failed to promptly compensate its employees for wages
8 owed as a result of Defendant's failure to pay statutory minimum wages and overtime
9 compensation, meal and rest break premiums which were owed for work performed for
10 Defendant.

11 76. Plaintiffs, as Private Attorneys General pursuant to the Private Attorney General
12 Act (2004, and more specifically, Labor Code §2698 et seq, will seek any and all penalties
13 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
14 each of the following, as set forth in Labor Code section 2699.5, which provides that section
15 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203,
16 226, 226.7, 510, 512, 1174, and 1194.

17 77. Plaintiffs, as personal representatives of the general public, will and do seek to
18 recover fines and any and all penalties for each and every violation shown to exist or to have
19 occurred during the Relevant Time Period, in an amount according to proof, as to those penalties
20 that are otherwise only available to public agency enforcement actions; funds recovered will be
21 distributed in accordance with the PAGA.

22 78. Additionally, Plaintiffs as Private Attorneys General is entitled to attorneys' fees
23 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1. For fine and civil penalties for each violation as provided by law, including, but not limited to, those fine and civil penalties provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

**MAHONEY LAW GROUP, APC
LAW OFFICE OF SHAFIEL A. KARIM, P.C.**

Kevin Mahoney, Esq.
Shafiel A. Karim, Esq.
Attorneys for Plaintiff HUGO PONS and
Plaintiff BLANCA DELAO, as
individuals and on behalf of all employees
similarly situated

EXHIBIT A

LAW OFFICE OF
SHAFIEL A. KARIM, P.C.

SHAFIEL A. KARIM*
D (562) 653-6850

August 28, 2024

Labor & Workforce Development Agency
Attention: PAGA Administrator
151 Clay Street, Suite 801
Oakland, California 94612

VIA ELECTRONIC SUBMISSION

Re: Blanca Delao's Claims Against The Flower Parrot Co., Inc., et al. Under
Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.)

Dear Sir or Madam:

This office and Mahoney Law Group, A.P.C. represents Blanca Delao in connection with her employment law claims against The Flower Parrot Co., Inc. and Christopher D. Stanley (collectively, "FPC") from in or around in or around November 2012 to on or around April 7, 2024 ("Employment Period"). This letter is notice to Labor Workforce Development Agency ("LWDA") of Ms. Delao's claims—on behalf of herself, the aggrieved employees, and the State of California—under Labor Code section 2699.3(a). This letter is also notice to FPC so that it may cure¹ its Labor Code violations.

FPC blatantly disregarded the Labor Code and IWC Wage Orders MW-2024 and 7-2001. As a direct and proximate result, FPC is liable to Ms. Delao, the aggrieved employees, and the State of California, under the Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA"), for civil penalties unless California's Labor Code is enforced by LWDA.

If LWDA declines to investigate Ms. Delao's claims, she will seek civil penalties against FPC pursuant to Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233,

¹ Effective October 1, 2024, the term "cure" means that (1) FPC "corrects" all violations enumerated in this letter, (2) FPC is "in compliance with the underlying statutes specified in th[is] notice," and (3) "each aggrieved employee is made whole." See 2023 Bill Text CA A.B. 2288. The term "aggrieved employee" means "any person who was employed by" FPC during the relevant time period. *Id.* Moreover, "[a]n employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney's fees and costs to be determined by the agency or the court." *Id.*

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234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 on behalf of herself, the aggrieved employees, and the State of California.

1. Statement of Facts

a. FPC

The Flower Parrot Co., Inc. is a California corporation with a principal place of business located at 2521 Oceanside Boulevard, Suite 8, Oceanside, California 92054. According to its State of Information filed with the Secretary of State on April 29, 2024, the corporation's Chief Executive Officer, Secretary, Chief Financial Officer, and sole Director is Christopher D. Stanley. Ms. Delao is informed and believes that Mr. Stanley is also the corporation's controlling stockholder. Ms. Delao is further informed and believes that FPC employed at least 30 employees at any given time during the Employment Period.

FPC is a "provider of fresh floral bouquets" and sells its arranged flowers in the "greater southern [sic] California area."² For example, FPC sells its arranged flowers at various Home Depot stores throughout Southern California. Moreover, FPC instructs its employees to visit the various Home Depot stores where its flowers are sold to provide on-site floral arrangement support for end-user customers.

b. Individual Allegations

From in or around November 2012 to on or around April 7, 2024 ("Employment Period"), FPC employed Ms. Delao as a Flower Merchandiser and most recently assigned her to work at three Home Depot stores in Southern California (i.e., Rialto, San Bernardino, and South San Bernardino). She was classified as an independent contractor. But FPC set her daily work schedule and supplied the flowers, price labels and signs used in her flower arrangement; in 2023 and 2024, she was required to service the Rialto, San Bernardino, and South San Bernardino Home Depot stores at least three times each day

² The Flower Parrot Company, Our mission, available at <https://www.flowerparrot.com/FlowerTipsTFPC.htm> (last visited Aug. 14, 2024)

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(i.e., morning, noon, and night), *seven* consecutive days each workweek. FPC's supervisors directed, controlled, and supervised Ms. Delao's work.

Unlike FPC, Ms. Delao was not—and is not—personally engaged in the independent business of selling flowers during the Employment Period. Ms. Delao did not market, advertise or promote the sale of arranged flowers in-person or in a print or digital medium. She maintained no offices, warehouses or flower inventories. Ms. Delao also had no employees or no actual or prospective customers. Instead, Ms. Delao arranged flowers *exclusively* for FPC during the Employment Period. Ms. Delao also entered inventory data on FPC's website and ordered supplies for FPC, as needed, before 9:30 a.m. each day during the Employment Period.

As a condition of employment, FPC required Ms. Delao execute various express instruments during the Employment Period, including independent contractor agreements every six months. Most recently, Ms. Delao was forced to execute a written contract titled Independent Merchandiser Agreement (“IMA”) on or around October 11, 2023. Under the IMA, Ms. Delao was entitled to receive a \$625 “weekly draw...against commissions” plus “commissions” of seven percent (7%) to nine percent (9%) of “total retail value of sales.” But beginning in or around January 2024, FPC ceased paying Ms. Delao any commissions. In fact, FPC issued an invoice for \$800 to Ms. Delao, demanding that *she pay* FPC monies. Thus, Ms. Delao was not only effectively working without any pay like an indentured servant, FPC demanded money from her for her servitude

Specifically, Ms. Delao worked eight to 10 hours each workday each workweek during the Employment Period. Ms. Delao also worked seven consecutive days each workweek. However, FPC did not pay Ms. Delao at least minimum wage during those workdays let alone applicable overtime wages.

Similarly, FPC did not authorize or permit Ms. Delao to take 30-minute uninterrupted duty-free meal periods after each five hours of work during the Employment Period. FPC did not pay Ms. Delao a meal period wage for those workdays. Ms. Delao was also not authorized or permitted to take a second meal period when she worked 10 hours each workday.

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During the Employment Period, FPC did not authorize or permit Ms. Delao to take a 10-minute uninterrupted rest period after each four hours of work or major fraction thereof. FPC did not pay Ms. Delao a rest period wage for those workdays.

FPC required Ms. Delao to use her personal cell phone and car for work during the Employment Period. For example, FPC would send text messages to Ms. Delao's personal cell phone with her work schedule. She was also required to take pictures of the flowers that she arranged using her personal cell phone camera. Ms. Delao was then instructed to send those pictures to FPC via text message using her personal cellphone. FPC not only refused to pay Ms. Delao for the time that she spent sending and receiving text messages and taking photographs of the flowers that she arranged, but FPC also failed and/or refused to reimburse her cell phone expenses, which were necessary business expenses.

FPC required Ms. Delao to use her personal car for work during the Employment Period as well. As a condition of employment, most recently, FPC required Ms. Delao to drive to-and-from the Rialto, San Bernardino, and South San Bernardino Home Depot stores each workday during the Employment Period. But FPC not only did not pay Ms. Delao for her travel time, but FPC also failed and/or refused to reimburse Ms. Delao for mileage, which was a necessary business expense.

FPC did not authorize or permit Ms. Delao to take any paid sick leave during the Employment Period. In fact, on the occasions that Ms. Delao was unable to report to work during the Employment Period, she was required to find a substitute worker and pay for that worker's wages out of her own personal pocket. FPC failed and/or refused to reimburse Ms. Delao for those substitute workers' wages, which were necessary business expenses.

Moreover, FPC did not furnish Ms. Delao with *any* wage statements. Instead, FPC furnished Ms. Delao with arbitrary calculations of flowers sold and commissions earned, which did not reflect the true and correct number of piece rate work actually performed let alone the actual number of compensable hours actually worked. Accordingly, Ms. Delao was regularly confused about how FPC was computed her wages and why she was not being paid for her all of her compensable work during the Employment Period.

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On April 7, 2024, FPC terminated Ms. Delao's employment. FPC did not pay Ms. Delao all of her earned but unpaid wages immediately upon termination. To date, FPC has not paid Ms. Delao all of her earned but unpaid wages.

On June 11, 2024, this office served a records request letter via to FPC demanding to inspect Ms. Delao's payroll records and personnel file. To-date, FPC failed and/or refused to produce Ms. Delao's payroll records or personnel file.

c. Aggrieved Employee Allegations

Ms. Delao is informed and believes that FPC employed approximately 30 aggrieved employees from August 16, 2024 to the present ("PAGA Period"). Ms. Delao is further informed and believes that FPC misclassified the aggrieved employees as independent contractors, set their daily work schedules, supplied them with flowers, price labels, and signs, and generally directed, controlled and supervised their work.

Ms. Delao is informed and believes that the aggrieved employees were not and are not in the independent business of selling flowers during the PAGA Period. Moreover, Ms. Delao is informed and believes that the aggrieved employees arranged flowers *exclusively* for FPC.

Ms. Delao is informed and believes FPC required the aggrieved employees to execute independent contractor agreements as a condition of employment and contractually agreed to pay a "weekly draw...against commissions" plus "commissions" instead of paying for their compensable time. Ms. Delao is further informed and believes that FPC ceased paying the aggrieved employees any and all remuneration in or around January 2024.

Ms. Delao is informed and believes FPC required the aggrieved employees to work eight to 10 hours each workday. Ms. Delao is informed and believes that FPC required the aggrieved employees to work seven consecutive days each workweek during the PAGA Period. Ms. Delao is further informed and believes that FPC did not pay the aggrieved employees at least minimum wage during those workdays let alone applicable overtime wages.

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Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant meal period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant rest period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC required the aggrieved employees to incur necessary business expenses (e.g., personal cell phone, personal vehicle mileage expenses, and substitute worker wages) without reimbursement during the PAGA Period.

Ms. Delao is informed and believes FPC did not authorize or permit the aggrieved employees to take any paid sick leave during the PAGA Period.

Ms. Delao is informed and believes that FPC did not furnish the aggrieved employees with any wage statements during the PAGA Period. Accordingly, Ms. Delao is informed and believes that the aggrieved employees were confused about how FPC computed their wages and why they were not being paid any wages during the PAGA Period.

Ms. Delao is informed and believes a subset of the aggrieved employees voluntarily quit or were terminated. Ms. Delao is further informed and believes that FPC did not pay those aggrieved employees all of their earned but unpaid wages immediately upon termination or within 72-hours of resignation.

Ms. Delao is informed and believes that a subset of the aggrieved employees requested their payroll records and personnel files during the PAGA Period and that FPC failed and/or refused to produce those records.

2. Joint Employer Liability

An “employer” includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any employee.” 8 CCR 11070(2)(H). The term “employer” is broadly construed under federal law and allows for multiple persons to be liable for

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unpaid wages and penalties. Cal. DLSE Man. § 37.1.2; *Real v. Driscoll Strawberry Assoc.* (9th Cir. 1979) 603 F.2d 748, 754 (wage claim against joint employer decided under federal wage and hour laws).

In California, the term “employer” is even more broadly construed because the Labor Code is more protective than federal wage and hour laws. That is because “[t]he language of the IWC’s ‘employer’ definition has the obvious utility of reaching situation in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work.” *Martinez v. Coombs* (2010) 49 Cal. 4th 35, 59; see, also *Guerrero v. Superior Court* (2013) 213 Cal. App. 4th 912, 945-47 (employer includes person who merely controls the “power of the purse” and exercises “quality control authority.”) A person is an “employer” if it exercises “control” over the worker. *Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 126.

Moreover, Labor Code section 558.1 imposes liability for the employer and “any other person acting on behalf of an employer who violates, or causes to be violated, a section of...[the Labor Code]...” In fact, Labor Code section 558.1(b) makes “a natural person who is an owner, director, officer, or managing agent” of a corporation or limited liability company an “employer” purposes of the Labor Code compliant. As a result, “[s]uch a person is personally liable for overtime, meal period, rest period, and reporting time wages.” Cal. DLSE Man. § 37.1.4. Additionally, he or she would also be liable to the employee for minimum wage restitution, liquidated damages, and waiting time penalties. Cal. Lab. Code § 1197.1.

Here, Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole corporate officer and director. Ms. Delao is also informed and believes that Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole stockholder. Mr. Stanley also controls/controlled The Flower Parrot Co., Inc.’s “purse” and “exercise[d]” control over Ms. Delao and the aggrieved employees during the PAGA Period. Accordingly, Mr. Stanley is/was a “managing agent” of The Flower Parrot Co., Inc. during the PAGA Period. For these reasons, both The Flower Parrot Co., Inc. *and* Mr. Stanley are jointly and severally liable as “employers” to Ms. Delao and the aggrieved employees for the myriad Labor Code violations enumerated in this letter.

3. Labor Code Violations

a. Misclassification in Violation of Cal. Lab. Code § 226.8

Willfully misclassifying workers as independent contractors is unlawful. Cal. Lab. Code § 226.8(a)(1). An employer that willfully misclassifies a worker as an independent contractor “shall be subject to a civil penalty of not less than...\$5,000...and not more than...\$15,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(b). If an employer engages in a “pattern or practice” of willfully misclassifying a worker as an independent contractor, the employer “shall be subject to a civil penalty of not less than...\$10,000...and not more than...\$25,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).

In California, there is rebuttable presumption that most workers are employees rather than independent contractors. Cal. Lab. Code § 2750.5. That is because an independent contractor is “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” Cal. Lab. Code § 3353. A worker is an independent contractor *only if all three* of the following factors are satisfied:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order.

Dynamex Ops. W. v. Superior Court (2018) 4 Cal. 5th 903, 964.

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Here, FPC willfully misclassified Ms. Delao and the aggrieved employees as independent contractors during the PAGA Period. Ms. Delao and the aggrieved employees were subject to FPC's control and direction during the PAGA Period. Ms. Delao and the aggrieved employees arranged flowers, which is part of FPC's core business of selling "fresh floral bouquets" in Southern California. Ms. Delao and the aggrieved employees are/were *not* engaged in an independent business of selling flowers during the PAGA Period. Moreover, FPC's practice of classifying *all* of the aggrieved employees as independent contractors is evidence of its "pattern" and "practice" of willful misclassification. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 226.8(c).

b. Failure to Pay at Least Minimum Wages in Violation of Cal. Lab. Code §§ 1182.12 and IWC Wage Order MW-2001

"The minimum wage for employees...is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Cal. Lab. Code § 1197. If an employer pays an employee less than the applicable minimum wage, it is liable for civil penalties of \$100 "for each underpaid employee for each pay period for which the employee is underpaid" and \$250 "for each underpaid employee for each [subsequent] pay period for which the employee is underpaid." Cal. Lab. Code § 1197.1(a).

The minimum wage for employers was \$13 to \$14 per hour in 2021 and \$14 to \$15 per hour beginning January 1, 2022. Cal. Lab. Code § 1182.12(b)(1). An employer that pays an employee less than the applicable statutory minimum wage is liable for "the full amount of...minimum wage or overtime compensation, including interest...reasonable attorney's fees, and costs of suit." Cal. Lab. Code § 1194. Such employees are also entitled to recover liquidated damages "in an amount equal to the wages unlawfully unpaid and interest thereon." Cal. Lab. Code § 1194.2(a).

Here, FPC failed and/or refused to pay Ms. Delao and the aggrieved employees at least minimum wage during the PAGA. FPC contractually agreed to pay Ms. Delao and the aggrieved employees a "commission" on flower sales. But FPC's "commission" policy did not contain any safeguards to ensure that Ms. Delao and the aggrieved employees earned at least the prevailing minimum wage during the PAGA Period. Moreover, FPC ceased paying all "commissions" in or around January 2024. Thus, Ms.

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Delao and the aggrieved employees worked without *any* compensation in or around January 2024 let alone the prevailing minimum wage.

c. Failure to Pay Overtime Pay in Violation of Cal. Lab. Code § 510 and IWC Wage Order No. 7-2001

If an employee works more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek, the employee is entitled to overtime compensation in the form of one and one-half times his or his regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(a). If an employee works more than twelve hours in a workday, that employee is entitled to twice their regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(b).

Here, Ms. Delao and the aggrieved employees worked more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in a workweek during the PAGA Period. But FPC did not pay them applicable overtime wages on those occasions. In fact, beginning in or around January 2024, FPC ceased paying Ms. Delao and/or the aggrieved employees *any* wages let alone applicable overtime wages.

d. Failure to Authorize or Permit Meal Breaks in Violation of Cal. Lab. Code §§ 226.7, 512 And 1198, And IWC Wage Order No. 7-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes....” Cal. Lab. Code § 512(a). During a meal break, employers must relieve employees of all work. Cal. Lab. Code § 226.7(b); 8 CCR 11070(11); *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal. 4th 1004, 1035-36; *In re Dear Mr. Rosenberg*, 1988 Cal. DLSE LEXIS 21 (Cal. DLSE, Jan. 5, 1988). If an employee works during a meal period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.” Cal. Lab. Code § 226.7(c); *Brinker Restaurant Corp.*, 53 Cal. 4th at 1039-40.

Here, Ms. Delao and the aggrieved employees worked more than five hours and 10-hours in a workday during the PAGA Period. But FPC did not authorize or permit

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them to take 30-minute uninterrupted duty-free meal periods after each five hours of work. FPC also did not pay Ms. Delao and the aggrieved employees a meal period wage on those occasions.

e. Failure to Authorize or Permit Rest Breaks in Violation of Cal. Lab. Code §§ 226.7, 1198 And 1199, And IWC Wage Order No. 7-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. Employers must authorize and permit employees a 10-minute uninterrupted paid rest break after four hours of work. 8 CCR 11070(12)(A). Specifically, employers must “relieve employees of all work-related duties and employer control” during an employee’s rest break. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 270. If an employer fails to authorize or permit an employee from taking their mandatory rest period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.” Cal. Lab. Code § 226.7(c).

Here, Ms. Delao and the aggrieved employees worked more than four hours or major fraction thereof during the PAGA Period. But FPC did not authorize or permit them to take 10-minute uninterrupted duty-free rest periods after each four hours of work or major fraction thereof. FPC also did not pay Ms. Delao and the aggrieved employees a rest period wage on those occasions.

f. Failure to Furnish Accurate or Itemized Wage Statements in Violation Of Cal. Lab. Code § 226 And IWC Wage Order No. 7-2001

Employers must furnish accurate and itemized wage statements to employees semimonthly or at the time of payment of wages. Cal. Lab. Code § 226(a); 8 CCR 11070(7). A proper wage statement must enumerate, *inter alia*, gross wages earned and total hours worked. *Id.* Failure to furnish accurate and itemized wage statements entitles an employee to recover \$50 for the first violation, \$100 for each subsequent violation, up to a maximum penalty of \$4,000 plus attorney’s fees and costs. Cal. Lab. Code §§ 226(e)(1) and 218.5; 8 CCR 11070(7); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. Aug. 13, 2008)(Labor Code section 226 is intended to prevent employee confusion about wages).

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Here, FPC did not furnish Ms. Delao and the aggrieved employees with any wage statements let alone wage statements that were accurate and sufficiently itemized. Ms. Delao and the aggrieved employees were confused about how FPC computed their wages as a result.

g. Failure to Reimburse Necessary Business Expenses in Violation Of Cal. Lab. Code § 2802 And IWC Wage Order No. 7-2001

Employers are required to indemnify employees for all necessary business expenses incurred on behalf of the employer. Cal. Lab. Code § 2802. For example, employers are required to reimburse an employee's use of his or cell phone for work. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140. An employer must even reimburse an employee for using his or cell phone for work even if the employee has unlimited cell phone minutes or data. *Tehrani v. Macy's W. Stores, Inc.*, 2016 U.S. Dist. LEXIS 51713 at *24-25 (C.D. Cal. Apr. 18, 2016).]

Similarly, If an employer requires an employee to use the employee's personal vehicle for work, the employer is obligated to reimburse the employee for "all reasonable operating costs." DLSE O.L. 1993.02.22. In particular, employers are obligated to reimburse employees who use their personal vehicles for "fuel, maintenance, repair, depreciation, and insurance...." *Gatusso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569. "DLSE has opined that use of the IRS mileage allowance will satisfy the expenses incurred in use of an employee's car in the absence of evidence to the contrary." Cal. DLSE Man. § 29.2.4. In 2015, the IRS mileage rate was \$0.575 per mile; in 2016 it was \$0.54 per mile. See New Standard Mileage Rates Now Available; Business Rate to Rise in 2015 (Dec. 10, 2014), <https://www.irs.gov/newsroom/new-standard-mileage-rates-now-available-business-rate-to-rise-in-2015> (last visited Jan. 30, 2019); 2016 Standard Mileage Rates for Business, Medical and Moving Announced (Dec. 17, 2015), <https://www.irs.gov/newsroom/2016-standard-mileage-rates-for-business-medical-and-moving-announced> (last visited Jan. 30, 2019).]

Here, FPC required Ms. Delao and the aggrieved employees to incur necessary business expenses without any reimbursement. For example, FPC required that Ms. Delao and the aggrieved employees use their personal cell phones and cars for work and were also required to pay substitute workers their wages during sick days. But FPC failed

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and/or refused to reimburse Ms. Delao and the aggrieved employees for those necessary business expenses.

h. Failure to Pay All Earned But Unpaid Wages Upon Separation of Employment in Violation of Cal. Lab. Code §§ 201 and 203

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Failure to pay all wages earned and unpaid at the time of discharge will “continue” for 30 days. Cal. Lab. Code § 203(a). Specifically, the continued unpaid wages or waiting time penalties “accrue not only on the days that the employee might have worked, but also on nonworkdays.” *Mamika v. Barca* (1998) 69 Cal. App. 4th 487, 492-493. Waiting time penalties are computed by calculating the daily rate of pay “multiplied by the number of days of nonpayment, up to 30 days.” *Id.*

The purpose and intent of Labor Code sections 201 and 203 “is to compel the prompt payment of earned wages.” *Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal. App. 2d Supp. 897, 898-99. More specifically, “The object of the statutory plan is to encourage employers to pay amounts concededly owed by him to his discharged or terminated employee without undue delay and to hasten settlement of disputed amounts.” *Triad Data Services, Inc. v. Jackson* (1984) 153 Cal. App. Supp. 1, 11.

Here, Ms. Delao and a subset of the aggrieved employees were separated from their employment with FPC during the PAGA Period. But FPC did not pay Ms. Delao and those aggrieved employees all of their earned but unpaid wages immediately upon termination and/or within 72-hours of their resignation. FPC has yet to pay all of Ms. Delao’s earned but unpaid wages and she is informed and believes that FPC has not yet paid the affected aggrieved employees all of their respectively earned but unpaid wages.

i. Failure to Maintain Accurate Payroll Records in Violation of Cal. Lab. Code § 1174 and IWC Wage Order No. 7-2001

Employers must keep accurate payroll records of, *inter alia*, total hours worked and applicable rates of pay, and meal periods. Cal. Lab. Code § 1174(c); 8 CCR 11070(7)(A). Accurate payroll records “facilitates...information-gathering” and is “necessary for the employees’ welfare.” *Tidewater Marine Western, Inc. v. Bradshaw*

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(1996) 14 Cal. 4th 557, 577; *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App. 3d 95, 112. An employer's failure to maintain accurate payroll is a misdemeanor punishable by a \$500 civil penalty. Cal. Lab. Code §§ 1175(d) and 1174.5. This is so because an employer's failure to maintain accurate payroll records "affects a broad public interest." *Gould v. Maryland South Industries, Inc.* (1995) 31 Cal. App. 4th 1137, 1148-49.

Here, FPC's scheme of willfully misclassifying Ms. Delao and the aggrieved employees as independent contractors is evidence of FPC's willful failure to maintain accurate payroll records for them during the PAGA Period. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 1174.

j. Failure to Produce Payroll Records in Violation of Cal. Lab. Code § 226

"An employer who receives a written or oral request to inspect or receive a copy of records...shall comply...no later than 21 calendar days from the date of the request." Cal. Lab. Code § 226(c). An employer that fails or refuses to comply with a payroll records request is liable for a \$750 statutory penalty to the requesting employee. Cal. Lab. Code § 226(f).

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their payroll records during the PAGA Period and that FPC failed and/or refused to comply with the requests.

k. Failure to Produce Personnel File in Violation of Cal. Lab. Code § 1198.5

Employers are required to make an employee's "personnel records available for inspection...not later than 30 calendar days from the date the employer receives a written request..." Cal. Lab. Code § 1198.5(b); 1998 Cal. DLSE LEXIS 8. Personnel records include but are not limited to "the employee's performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5(a). Moreover, the term "personnel

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record” should be construed “broadly.” *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal. App. 4th 110, 124.

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their personnel file during the PAGA Period and that FPC failed and/or refused to comply with the requests.

I. PAGA Civil Penalties

An employer that violates a provision of the Labor Code is guilty of a misdemeanor punishable by a \$100 fine. Cal. Lab. Code § 1199. PAGA imputes a civil penalty of \$100 for each aggrieved employee per pay period for the initial Labor Code violation and \$200 per each aggrieved employee for each subsequent violation. Cal. Lab. Code § 2699(f)(2). Moreover, an employee who asserts PAGA claims in a representative capacity is entitled to recover reasonable attorney’s fees and costs. Cal. Lab. Code § 2699(g); *see, also* Cal. Lab. Code § 218.5.

In 2024, PAGA was reformed. An employer with one or more employees is still liable for \$100 civil penalties “for each aggrieved employee per pay period.” 2023 Bill Text CA A.B. 2288. The \$200 civil penalty is triggered “for each aggrieved employee per pay period if...[t]he court determines that the employer’s conduct giving rise to the violation was malicious, fraudulent, or oppressive.” *Id.* Moreover, a prevailing aggrieved employee is also entitled to “injunctive relief” and “an award of reasonable attorney’s fees and costs, including any filing fees” paid. *Id.*

Here, for the reasons set forth above, FPC violated Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233, 234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 during the PAGA Period. FPC is liable to Ms. Delao, the aggrieved employees, and the State of California for civil penalties and attorney’s fees and costs.

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Please investigate Ms. Delao's claims and act against FPC as soon as possible. However, if LWDA declines to take enforcement action against FPC, please notify me and my co-counsel, Kevin Mahoney, Esq. of Mahoney Law Group, A.P.C. (copied below) so that we may commence a civil action against FPC on behalf of Ms. Delao, the aggrieved employees, and the State of California.

Sincerely,

LAW OFFICE OF SHAFIEL A. KARIM,
P.C.



Shafiel A. Karim
Attorney at Law

cc: The Flower Parrot Co., Inc. (via Certified Mail, Return Receipt Requested)
c/o Christopher D. Stanley
2521 Oceanside Boulevard, Suite B
Oceanside, California 92054

Client (via email only)

Kevin Mahoney, Esq. (kmahoney@mahoney-law.net)
Kevin Mahoney, Jr. (kjmahoney@mahoney-law.net)
Alicia Chavez (achavez@mahoney-law.net)
Nicole Pierson (npierson@mahoney-law.net)
File No. 2902.00001

September 3, 2024

Labor & Workforce Development Agency
Attention: PAGA Administrator
151 Clay Street, Suite 801
Oakland, California 94612

VIA ELECTRONIC SUBMISSION

Re: Blanca Delao's First Amended Claims Against The Flower Parrot Co.,
Inc., et al. Under Private Attorney General Act of 2004 (Cal. Lab. Code §§
2698, et seq.)

Dear Sir or Madam:

This office and Mahoney Law Group, A.P.C. represents Blanca Delao in connection with her employment law claims against The Flower Parrot Co., Inc. and Christopher D. Stanley (collectively, "FPC") from in or around in or around November 2012 to on or around April 7, 2024 ("Employment Period"). This letter is notice to Labor Workforce Development Agency ("LWDA") of Ms. Delao's claims—on behalf of herself, the aggrieved employees, and the State of California—under Labor Code section 2699.3(a). This letter is also notice to FPC so that it may cure¹ its Labor Code violations.

FPC blatantly disregarded the Labor Code and IWC Wage Orders MW-2024 and 7-2001. As a direct and proximate result, FPC is liable to Ms. Delao, the aggrieved employees, and the State of California, under the Private Attorney General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA"), for civil penalties unless California's Labor Code is enforced by LWDA.

¹ Effective October 1, 2024, the term "cure" means that (1) FPC "corrects" all violations enumerated in this letter, (2) FPC is "in compliance with the underlying statutes specified in th[is] notice," and (3) "each aggrieved employee is made whole." See 2023 Bill Text CA A.B. 2288. The term "aggrieved employee" means "any person who was employed by" FPC during the relevant time period. *Id.* Moreover, "[a]n employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney's fees and costs to be determined by the agency or the court." *Id.*

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If LWDA declines to investigate Ms. Delao's claims, she will seek civil penalties against FPC pursuant to Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233, 234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 on behalf of herself, the aggrieved employees, and the State of California.

1. Statement of Facts

a. FPC

The Flower Parrot Co., Inc. is a California corporation with a principal place of business located at 2521 Oceanside Boulevard, Suite 8, Oceanside, California 92054. According to its State of Information filed with the Secretary of State on April 29, 2024, the corporation's Chief Executive Officer, Secretary, Chief Financial Officer, and sole Director is Christopher D. Stanley. Ms. Delao is informed and believes that Mr. Stanley is also the corporation's controlling stockholder. Ms. Delao is further informed and believes that FPC employed at least 30 employees at any given time during the Employment Period.

FPC is a "provider of fresh floral bouquets" and sells its arranged flowers in the "greater southern [sic] California area."² For example, FPC sells its arranged flowers at various Home Depot stores throughout Southern California. Moreover, FPC instructs its employees to visit the various Home Depot stores where its flowers are sold to provide on-site floral arrangement support for end-user customers.

b. Individual Allegations

From in or around November 2012 to on or around April 7, 2024 ("Employment Period"), FPC employed Ms. Delao as a Flower Merchandiser and most recently assigned her to work at three Home Depot stores in Southern California (i.e., Rialto, San Bernardino, and South San Bernardino). She was classified as an independent contractor. But FPC set her daily work schedule and supplied the flowers, price labels and signs used in her flower arrangement; in 2023 and 2024, she was required to service the Rialto, San

² The Flower Parrot Company, Our mission, available at <https://www.flowerparrot.com/FlowerTipsTFPC.htm> (last visited Aug. 14, 2024)

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Bernardino, and South San Bernardino Home Depot stores at least three times each day (i.e., morning, noon, and night), *seven* consecutive days each workweek. FPC's supervisors directed, controlled, and supervised Ms. Delao's work.

Unlike FPC, Ms. Delao was not—and is not—personally engaged in the independent business of selling flowers during the Employment Period. Ms. Delao did not market, advertise or promote the sale of arranged flowers in-person or in a print or digital medium. She maintained no offices, warehouses or flower inventories. Ms. Delao also had no employees or no actual or prospective customers. Instead, Ms. Delao arranged flowers *exclusively* for FPC during the Employment Period. Ms. Delao also entered inventory data on FPC's website and ordered supplies for FPC, as needed, before 9:30 a.m. each day during the Employment Period.

As a condition of employment, FPC required Ms. Delao execute various express instruments during the Employment Period, including independent contractor agreements every six months. Most recently, Ms. Delao was forced to execute a written contract titled Independent Merchandiser Agreement (“IMA”) on or around October 11, 2023. Under the IMA, Ms. Delao was entitled to receive a \$625 “weekly draw...against commissions” plus “commissions” of seven percent (7%) to nine percent (9%) of “total retail value of sales.” But beginning in or around January 2024, FPC ceased paying Ms. Delao any commissions. In fact, FPC issued an invoice for \$800 to Ms. Delao, demanding that *she* pay FPC monies. Thus, Ms. Delao was not only effectively working without any pay like an indentured servant, FPC demanded money from her for her servitude

Specifically, Ms. Delao worked eight to 10 hours each workday each workweek during the Employment Period. Ms. Delao also worked seven consecutive days each workweek. However, FPC did not pay Ms. Delao at least minimum wage during those workdays let alone applicable overtime wages.

Similarly, FPC did not authorize or permit Ms. Delao to take 30-minute uninterrupted duty-free meal periods after each five hours of work during the Employment Period. FPC did not pay Ms. Delao a meal period wage for those workdays. Ms. Delao was also not authorized or permitted to take a second meal period when she worked 10 hours each workday.

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During the Employment Period, FPC did not authorize or permit Ms. Delao to take a 10-minute uninterrupted rest period after each four hours of work or major fraction thereof. FPC did not pay Ms. Delao a rest period wage for those workdays.

FPC required Ms. Delao to use her personal cell phone and car for work during the Employment Period. For example, FPC would send text messages to Ms. Delao's personal cell phone with her work schedule. She was also required to take pictures of the flowers that she arranged using her personal cell phone camera. Ms. Delao was then instructed to send those pictures to FPC via text message using her personal cellphone. FPC not only refused to pay Ms. Delao for the time that she spent sending and receiving text messages and taking photographs of the flowers that she arranged, but FPC also failed and/or refused to reimburse her cell phone expenses, which were necessary business expenses.

FPC required Ms. Delao to use her personal car for work during the Employment Period as well. As a condition of employment, most recently, FPC required Ms. Delao to drive to-and-from the Rialto, San Bernardino, and South San Bernardino Home Depot stores each workday during the Employment Period. But FPC not only did not pay Ms. Delao for her travel time, but FPC also failed and/or refused to reimburse Ms. Delao for mileage, which was a necessary business expense.

FPC did not authorize or permit Ms. Delao to take any paid sick leave during the Employment Period. In fact, on the occasions that Ms. Delao was unable to report to work during the Employment Period, she was required to find a substitute worker and pay for that worker's wages out of her own personal pocket. FPC failed and/or refused to reimburse Ms. Delao for those substitute workers' wages, which were necessary business expenses.

Moreover, FPC did not furnish Ms. Delao with *any* wage statements. Instead, FPC furnished Ms. Delao with arbitrary calculations of flowers sold and commissions earned, which did not reflect the true and correct number of piece rate work actually performed let alone the actual number of compensable hours actually worked. Accordingly, Ms. Delao was regularly confused about how FPC was computed her wages and why she was not being paid for her all of her compensable work during the Employment Period.

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On April 7, 2024, FPC terminated Ms. Delao's employment. FPC did not pay Ms. Delao all of her earned but unpaid wages immediately upon termination. To date, FPC has not paid Ms. Delao all of her earned but unpaid wages.

On June 11, 2024, this office served a records request letter via to FPC demanding to inspect Ms. Delao's payroll records and personnel file. To-date, FPC failed and/or refused to produce Ms. Delao's payroll records or personnel file.

c. Aggrieved Employee Allegations

Ms. Delao is informed and believes that FPC employed approximately 30 aggrieved employees from August 28, 2023 to the present ("PAGA Period"). Ms. Delao is further informed and believes that FPC misclassified the aggrieved employees as independent contractors, set their daily work schedules, supplied them with flowers, price labels, and signs, and generally directed, controlled and supervised their work.

Ms. Delao is informed and believes that the aggrieved employees were not and are not in the independent business of selling flowers during the PAGA Period. Moreover, Ms. Delao is informed and believes that the aggrieved employees arranged flowers *exclusively* for FPC.

Ms. Delao is informed and believes FPC required the aggrieved employees to execute independent contractor agreements as a condition of employment and contractually agreed to pay a "weekly draw...against commissions" plus "commissions" instead of paying for their compensable time. Ms. Delao is further informed and believes that FPC ceased paying the aggrieved employees any and all remuneration in or around January 2024.

Ms. Delao is informed and believes FPC required the aggrieved employees to work eight to 10 hours each workday. Ms. Delao is informed and believes that FPC required the aggrieved employees to work seven consecutive days each workweek during the PAGA Period. Ms. Delao is further informed and believes that FPC did not pay the aggrieved employees at least minimum wage during those workdays let alone applicable overtime wages.

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Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant meal period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC did not authorize or permit the aggrieved employees to take a compliant rest period or pay meal period wages during the PAGA Period.

Ms. Delao is informed and believes that FPC required the aggrieved employees to incur necessary business expenses (e.g., personal cell phone, personal vehicle mileage expenses, and substitute worker wages) without reimbursement during the PAGA Period.

Ms. Delao is informed and believes FPC did not authorize or permit the aggrieved employees to take any paid sick leave during the PAGA Period.

Ms. Delao is informed and believes that FPC did not furnish the aggrieved employees with any wage statements during the PAGA Period. Accordingly, Ms. Delao is informed and believes that the aggrieved employees were confused about how FPC computed their wages and why they were not being paid any wages during the PAGA Period.

Ms. Delao is informed and believes a subset of the aggrieved employees voluntarily quit or were terminated. Ms. Delao is further informed and believes that FPC did not pay those aggrieved employees all of their earned but unpaid wages immediately upon termination or within 72-hours of resignation.

Ms. Delao is informed and believes that a subset of the aggrieved employees requested their payroll records and personnel files during the PAGA Period and that FPC failed and/or refused to produce those records.

2. Joint Employer Liability

An “employer” includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any employee.” 8 CCR 11070(2)(H). The term “employer” is broadly construed under federal law and allows for multiple persons to be liable for

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unpaid wages and penalties. Cal. DLSE Man. § 37.1.2; *Real v. Driscoll Strawberry Assoc.* (9th Cir. 1979) 603 F.2d 748, 754 (wage claim against joint employer decided under federal wage and hour laws).

In California, the term “employer” is even more broadly construed because the Labor Code is more protective than federal wage and hour laws. That is because “[t]he language of the IWC’s ‘employer’ definition has the obvious utility of reaching situation in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work.” *Martinez v. Coombs* (2010) 49 Cal. 4th 35, 59; see, also *Guerrero v. Superior Court* (2013) 213 Cal. App. 4th 912, 945-47 (employer includes person who merely controls the “power of the purse” and exercises “quality control authority.”) A person is an “employer” if it exercises “control” over the worker. *Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 126.

Moreover, Labor Code section 558.1 imposes liability for the employer and “any other person acting on behalf of an employer who violates, or causes to be violated, a section of...[the Labor Code]...” In fact, Labor Code section 558.1(b) makes “a natural person who is an owner, director, officer, or managing agent” of a corporation or limited liability company an “employer” purposes of the Labor Code compliant. As a result, “[s]uch a person is personally liable for overtime, meal period, rest period, and reporting time wages.” Cal. DLSE Man. § 37.1.4. Additionally, he or she would also be liable to the employee for minimum wage restitution, liquidated damages, and waiting time penalties. Cal. Lab. Code § 1197.1.

Here, Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole corporate officer and director. Ms. Delao is also informed and believes that Mr. Stanley is/was The Flower Parrot Co., Inc.’s sole stockholder. Mr. Stanley also controls/controlled The Flower Parrot Co., Inc.’s “purse” and “exercise[d]” control over Ms. Delao and the aggrieved employees during the PAGA Period. Accordingly, Mr. Stanley is/was a “managing agent” of The Flower Parrot Co., Inc. during the PAGA Period. For these reasons, both The Flower Parrot Co., Inc. *and* Mr. Stanley are jointly and severally liable as “employers” to Ms. Delao and the aggrieved employees for the myriad Labor Code violations enumerated in this letter.

3. Labor Code Violations

a. Misclassification in Violation of Cal. Lab. Code § 226.8

Willfully misclassifying workers as independent contractors is unlawful. Cal. Lab. Code § 226.8(a)(1). An employer that willfully misclassifies a worker as an independent contractor “shall be subject to a civil penalty of not less than...\$5,000...and not more than...\$15,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(b). If an employer engages in a “pattern or practice” of willfully misclassifying a worker as an independent contractor, the employer “shall be subject to a civil penalty of not less than...\$10,000...and not more than...\$25,000...*for each violation*, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).

In California, there is rebuttable presumption that most workers are employees rather than independent contractors. Cal. Lab. Code § 2750.5. That is because an independent contractor is “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” Cal. Lab. Code § 3353. A worker is an independent contractor *only if all three* of the following factors are satisfied:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order.

Dynamex Ops. W. v. Superior Court (2018) 4 Cal. 5th 903, 964.

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Here, FPC willfully misclassified Ms. Delao and the aggrieved employees as independent contractors during the PAGA Period. Ms. Delao and the aggrieved employees were subject to FPC's control and direction during the PAGA Period. Ms. Delao and the aggrieved employees arranged flowers, which is part of FPC's core business of selling "fresh floral bouquets" in Southern California. Ms. Delao and the aggrieved employees are/were *not* engaged in an independent business of selling flowers during the PAGA Period. Moreover, FPC's practice of classifying *all* of the aggrieved employees as independent contractors is evidence of its "pattern" and "practice" of willful misclassification. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 226.8(c).

b. Failure to Pay at Least Minimum Wages in Violation of Cal. Lab. Code §§ 1182.12 and IWC Wage Order MW-2001

"The minimum wage for employees...is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Cal. Lab. Code § 1197. If an employer pays an employee less than the applicable minimum wage, it is liable for civil penalties of \$100 "for each underpaid employee for each pay period for which the employee is underpaid" and \$250 "for each underpaid employee for each [subsequent] pay period for which the employee is underpaid." Cal. Lab. Code § 1197.1(a).

The minimum wage for employers was \$13 to \$14 per hour in 2021 and \$14 to \$15 per hour beginning January 1, 2022. Cal. Lab. Code § 1182.12(b)(1). An employer that pays an employee less than the applicable statutory minimum wage is liable for "the full amount of...minimum wage or overtime compensation, including interest...reasonable attorney's fees, and costs of suit." Cal. Lab. Code § 1194. Such employees are also entitled to recover liquidated damages "in an amount equal to the wages unlawfully unpaid and interest thereon." Cal. Lab. Code § 1194.2(a).

Here, FPC failed and/or refused to pay Ms. Delao and the aggrieved employees at least minimum wage during the PAGA. FPC contractually agreed to pay Ms. Delao and the aggrieved employees a "commission" on flower sales. But FPC's "commission" policy did not contain any safeguards to ensure that Ms. Delao and the aggrieved employees earned at least the prevailing minimum wage during the PAGA Period. Moreover, FPC ceased paying all "commissions" in or around January 2024. Thus, Ms.

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Delao and the aggrieved employees worked without *any* compensation in or around January 2024 let alone the prevailing minimum wage.

c. Failure to Pay Overtime Pay in Violation of Cal. Lab. Code § 510 and IWC Wage Order No. 7-2001

If an employee works more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek, the employee is entitled to overtime compensation in the form of one and one-half times his or his regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(a). If an employee works more than twelve hours in a workday, that employee is entitled to twice their regular rate of pay. Cal. Lab. Code § 510(a); 8 CCR 11070(3)(A)(1)(b).

Here, Ms. Delao and the aggrieved employees worked more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in a workweek during the PAGA Period. But FPC did not pay them applicable overtime wages on those occasions. In fact, beginning in or around January 2024, FPC ceased paying Ms. Delao and/or the aggrieved employees *any* wages let alone applicable overtime wages.

d. Failure to Authorize or Permit Meal Breaks in Violation of Cal. Lab. Code §§ 226.7, 512 And 1198, And IWC Wage Order No. 7-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes....” Cal. Lab. Code § 512(a). During a meal break, employers must relieve employees of all work. Cal. Lab. Code § 226.7(b); 8 CCR 11070(11); *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal. 4th 1004, 1035-36; *In re Dear Mr. Rosenberg*, 1988 Cal. DLSE LEXIS 21 (Cal. DLSE, Jan. 5, 1988). If an employee works during a meal period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.” Cal. Lab. Code § 226.7(c); *Brinker Restaurant Corp.*, 53 Cal. 4th at 1039-40.

Here, Ms. Delao and the aggrieved employees worked more than five hours and 10-hours in a workday during the PAGA Period. But FPC did not authorize or permit

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them to take 30-minute uninterrupted duty-free meal periods after each five hours of work. FPC also did not pay Ms. Delao and the aggrieved employees a meal period wage on those occasions.

e. Failure to Authorize or Permit Rest Breaks in Violation of Cal. Lab. Code §§ 226.7, 1198 And 1199, And IWC Wage Order No. 7-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” Cal. Lab. Code § 1198. Employers must authorize and permit employees a 10-minute uninterrupted paid rest break after four hours of work. 8 CCR 11070(12)(A). Specifically, employers must “relieve employees of all work-related duties and employer control” during an employee’s rest break. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 270. If an employer fails to authorize or permit an employee from taking their mandatory rest period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.” Cal. Lab. Code § 226.7(c).

Here, Ms. Delao and the aggrieved employees worked more than four hours or major fraction thereof during the PAGA Period. But FPC did not authorize or permit them to take 10-minute uninterrupted duty-free rest periods after each four hours of work or major fraction thereof. FPC also did not pay Ms. Delao and the aggrieved employees a rest period wage on those occasions.

f. Failure to Furnish Accurate or Itemized Wage Statements in Violation Of Cal. Lab. Code § 226 And IWC Wage Order No. 7-2001

Employers must furnish accurate and itemized wage statements to employees semimonthly or at the time of payment of wages. Cal. Lab. Code § 226(a); 8 CCR 11070(7). A proper wage statement must enumerate, *inter alia*, gross wages earned and total hours worked. *Id.* Failure to furnish accurate and itemized wage statements entitles an employee to recover \$50 for the first violation, \$100 for each subsequent violation, up to a maximum penalty of \$4,000 plus attorney’s fees and costs. Cal. Lab. Code §§ 226(e)(1) and 218.5; 8 CCR 11070(7); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. Aug. 13, 2008)(Labor Code section 226 is intended to prevent employee confusion about wages).

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Here, FPC did not furnish Ms. Delao and the aggrieved employees with any wage statements let alone wage statements that were accurate and sufficiently itemized. Ms. Delao and the aggrieved employees were confused about how FPC computed their wages as a result.

g. Failure to Reimburse Necessary Business Expenses in Violation Of Cal. Lab. Code § 2802 And IWC Wage Order No. 7-2001

Employers are required to indemnify employees for all necessary business expenses incurred on behalf of the employer. Cal. Lab. Code § 2802. For example, employers are required to reimburse an employee's use of his or cell phone for work. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140. An employer must even reimburse an employee for using his or cell phone for work even if the employee has unlimited cell phone minutes or data. *Tehrani v. Macy's W. Stores, Inc.*, 2016 U.S. Dist. LEXIS 51713 at *24-25 (C.D. Cal. Apr. 18, 2016).]

Similarly, If an employer requires an employee to use the employee's personal vehicle for work, the employer is obligated to reimburse the employee for "all reasonable operating costs." DLSE O.L. 1993.02.22. In particular, employers are obligated to reimburse employees who use their personal vehicles for "fuel, maintenance, repair, depreciation, and insurance...." *Gatusso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569. "DLSE has opined that use of the IRS mileage allowance will satisfy the expenses incurred in use of an employee's car in the absence of evidence to the contrary." Cal. DLSE Man. § 29.2.4. In 2015, the IRS mileage rate was \$0.575 per mile; in 2016 it was \$0.54 per mile. See New Standard Mileage Rates Now Available; Business Rate to Rise in 2015 (Dec. 10, 2014), <https://www.irs.gov/newsroom/new-standard-mileage-rates-now-available-business-rate-to-rise-in-2015> (last visited Jan. 30, 2019); 2016 Standard Mileage Rates for Business, Medical and Moving Announced (Dec. 17, 2015), <https://www.irs.gov/newsroom/2016-standard-mileage-rates-for-business-medical-and-moving-announced> (last visited Jan. 30, 2019).]

Here, FPC required Ms. Delao and the aggrieved employees to incur necessary business expenses without any reimbursement. For example, FPC required that Ms. Delao and the aggrieved employees use their personal cell phones and cars for work and were also required to pay substitute workers their wages during sick days. But FPC failed

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and/or refused to reimburse Ms. Delao and the aggrieved employees for those necessary business expenses.

h. Failure to Pay All Earned But Unpaid Wages Upon Separation of Employment in Violation of Cal. Lab. Code §§ 201 and 203

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Failure to pay all wages earned and unpaid at the time of discharge will “continue” for 30 days. Cal. Lab. Code § 203(a). Specifically, the continued unpaid wages or waiting time penalties “accrue not only on the days that the employee might have worked, but also on nonworkdays.” *Mamika v. Barca* (1998) 69 Cal. App. 4th 487, 492-493. Waiting time penalties are computed by calculating the daily rate of pay “multiplied by the number of days of nonpayment, up to 30 days.” *Id.*

The purpose and intent of Labor Code sections 201 and 203 “is to compel the prompt payment of earned wages.” *Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal. App. 2d Supp. 897, 898-99. More specifically, “The object of the statutory plan is to encourage employers to pay amounts concededly owed by him to his discharged or terminated employee without undue delay and to hasten settlement of disputed amounts.” *Triad Data Services, Inc. v. Jackson* (1984) 153 Cal. App. Supp. 1, 11.

Here, Ms. Delao and a subset of the aggrieved employees were separated from their employment with FPC during the PAGA Period. But FPC did not pay Ms. Delao and those aggrieved employees all of their earned but unpaid wages immediately upon termination and/or within 72-hours of their resignation. FPC has yet to pay all of Ms. Delao’s earned but unpaid wages and she is informed and believes that FPC has not yet paid the affected aggrieved employees all of their respectively earned but unpaid wages.

i. Failure to Maintain Accurate Payroll Records in Violation of Cal. Lab. Code § 1174 and IWC Wage Order No. 7-2001

Employers must keep accurate payroll records of, *inter alia*, total hours worked and applicable rates of pay, and meal periods. Cal. Lab. Code § 1174(c); 8 CCR 11070(7)(A). Accurate payroll records “facilitates...information-gathering” and is “necessary for the employees’ welfare.” *Tidewater Marine Western, Inc. v. Bradshaw*

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(1996) 14 Cal. 4th 557, 577; *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App. 3d 95, 112. An employer's failure to maintain accurate payroll is a misdemeanor punishable by a \$500 civil penalty. Cal. Lab. Code §§ 1175(d) and 1174.5. This is so because an employer's failure to maintain accurate payroll records "affects a broad public interest." *Gould v. Maryland South Industries, Inc.* (1995) 31 Cal. App. 4th 1137, 1148-49.

Here, FPC's scheme of willfully misclassifying Ms. Delao and the aggrieved employees as independent contractors is evidence of FPC's willful failure to maintain accurate payroll records for them during the PAGA Period. Accordingly, FPC is liable for the maximum civil penalties permitted by Labor Code section 1174.

j. Failure to Produce Payroll Records in Violation of Cal. Lab. Code § 226

"An employer who receives a written or oral request to inspect or receive a copy of records...shall comply...no later than 21 calendar days from the date of the request." Cal. Lab. Code § 226(c). An employer that fails or refuses to comply with a payroll records request is liable for a \$750 statutory penalty to the requesting employee. Cal. Lab. Code § 226(f).

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their payroll records during the PAGA Period and that FPC failed and/or refused to comply with the requests.

k. Failure to Produce Personnel File in Violation of Cal. Lab. Code § 1198.5

Employers are required to make an employee's "personnel records available for inspection...not later than 30 calendar days from the date the employer receives a written request..." Cal. Lab. Code § 1198.5(b); 1998 Cal. DLSE LEXIS 8. Personnel records include but are not limited to "the employee's performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5(a). Moreover, the term "personnel

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record” should be construed “broadly.” *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal. App. 4th 110, 124.

Here, Ms. Delao requested her payroll records on June 11, 2024. But FPC failed and/or refused to timely produce or permit inspection of those records. Ms. Delao is informed and believes that a subset of the aggrieved employees also requested their personnel file during the PAGA Period and that FPC failed and/or refused to comply with the requests.

I. PAGA Civil Penalties

An employer that violates a provision of the Labor Code is guilty of a misdemeanor punishable by a \$100 fine. Cal. Lab. Code § 1199. PAGA imputes a civil penalty of \$100 for each aggrieved employee per pay period for the initial Labor Code violation and \$200 per each aggrieved employee for each subsequent violation. Cal. Lab. Code § 2699(f)(2). Moreover, an employee who asserts PAGA claims in a representative capacity is entitled to recover reasonable attorney’s fees and costs. Cal. Lab. Code § 2699(g); *see, also* Cal. Lab. Code § 218.5.

In 2024, PAGA was reformed. An employer with one or more employees is still liable for \$100 civil penalties “for each aggrieved employee per pay period.” 2023 Bill Text CA A.B. 2288. The \$200 civil penalty is triggered “for each aggrieved employee per pay period if...[t]he court determines that the employer’s conduct giving rise to the violation was malicious, fraudulent, or oppressive.” *Id.* Moreover, a prevailing aggrieved employee is also entitled to “injunctive relief” and “an award of reasonable attorney’s fees and costs, including any filing fees” paid. *Id.*

Here, for the reasons set forth above, FPC violated Labor Code sections 201-203, 208, 223, 226, 226.7, 226.8, 233, 234, 432.5, 510, 512, 1174, 1182.12, 1198, 1198.5, 1199, 2802, 2810.5, 2699, and Wage Orders MW-2024 and 7-2001 during the PAGA Period. FPC is liable to Ms. Delao, the aggrieved employees, and the State of California for civil penalties and attorney’s fees and costs.

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Please investigate Ms. Delao's claims and act against FPC as soon as possible. However, if LWDA declines to take enforcement action against FPC, please notify me and my co-counsel, Kevin Mahoney, Esq. of Mahoney Law Group, A.P.C. (copied below) so that we may commence a civil action against FPC on behalf of Ms. Delao, the aggrieved employees, and the State of California.

Sincerely,

LAW OFFICE OF SHAFIEL A. KARIM,
P.C.



Shafiel A. Karim
Attorney at Law

cc: The Flower Parrot Co., Inc. (via Certified Mail, Return Receipt Requested)
c/o Christopher D. Stanley
2521 Oceanside Boulevard, Suite B
Oceanside, California 92054

Client (via email only)

Kevin Mahoney, Esq. (kmahoney@mahoney-law.net)
Kevin Mahoney, Jr. (kjmahoney@mahoney-law.net)
Alicia Chavez (achavez@mahoney-law.net)
Nicole Pierson (npierson@mahoney-law.net)
File No. 2902.00001

EXHIBIT B



Kevin Mahoney, Esq.
~~562.590.5550 phone~~
562.590.8400 facsimile
kmahoney@mahoney-law.net

October 15, 2024

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/207>

VIA CERTIFIED MAIL# 7021095000098250798

Return Receipt Requested

The Flower Parrot Co., Inc.

c/o Christopher Stanley

2521 Oceanside Blvd., Suite B

Oceanside, CA 92054

Re: Hugo Pons v. The Flower Parrot Co., Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION SECTIONS 2698 *et seq.***

To: California Labor and Workforce Development Agency, The Flower Parrot Co., Inc.

From: Hugo Pons on behalf of himself and aggrieved employees who were subject to The Flower Parrot Co., Inc.'s violation of California Labor Code as set forth below.

Factual Statement

Please note that Mahoney Law Group, APC and Law Office of Shafiel A. Karim, P.C., represent the interests of Mr. Hugo Pons ("Employee" or "Mr. Pons") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1) and 2699.3, subdivision (c)(1) and may lead to action against The Flower Parrot Co., Inc. ("Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against its owner, director and officer, Christopher Stanley, and other officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Labor Code Violations and Remedies

Employee alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 233, 234, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802 by willfully misclassifying workers as independent contractors, failing to provide Employee and all other aggrieved employees all wages for all hours worked, including minimum wages and overtime wages, failing to provide meal periods or compensation in lieu thereof, failing to provide rest periods or compensation in lieu thereof, failing to provide paid sick leaves, failing to provide accurate and itemized wage statements, failing to maintain accurate records of hours worked and payrolls, and failing to pay all compensation due upon separation of employment. Employee and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the PAGA Period defined as one year prior to the submission of this letter to the Labor Workforce and Development Agency ("LWDA") and certified mailing to Employer until resolution of these claims.

Employer willfully misclassified Employee and aggrieved employees as independent contractors (collectively "Employees") for selling flowers during its normal course of business in violation of Labor Code section 226.8(a)(1). Pursuant to Labor Code section 3353 and 2750.5, Employees worked under Employer's control and direction as result of their performance. Employer engaged in a pattern or practice of misclassifying workers as independent contractors, thus is subject to civil penalty pursuant to Labor Code section 226.8(b) and 226.8(c).

Employer paid Employees a commission based on their sale results periodically which did not ensure the Employees were paid at least the prevailing minimum wage. Employees were regularly not compensated for all hours worked, including minimum and overtime wages, which violated Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5. Employer failed to pay Employee and other aggrieved employees the legally mandated wage rates for all hours Employee and other aggrieved employees worked. Employee alleges that Employer failed to include all remuneration when calculating his and other aggrieved employees' regular rate for purposes of compensating Employee and other aggrieved employees for his overtime under Labor Code Labor Code section 510. Further, Employees will also allege that Employer denied their paid sick leaves who were eligible to paid sick leave in violation of Labor Code section 246, 233 and 234. Furthermore, Employer required Employees to pay substitute workers compensation during their paid sick leaves and deducted it from their wage income.

Employer also failed to provide Employees with timely uninterrupted meal periods during their daily work. Employer had a practice of failing to arrange or allow Employees to be completely relieved of all of their work responsibilities while on their legally mandated meal break. Further,

Employer ordered that Employee and other aggrieved employees respond to managers, amongst other regardless of whether an employee was on their break. As a result of Employer's policy and practices, Employees did not receive timely uninterrupted meal periods and were not compensated with premium wages for non-compliant meal periods. Employer's conduct is in violation of Labor Code sections 226.7, 1198, and 512, is also actionable under PAGA.

Similarly, Employees did not receive any rest periods during daily work, even though they regularly worked eight (8) hours of work per day. Employer failed or refused to provide adequate premium compensation to Employees for missed, or interrupted rest periods. Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code section 226.7.

As a result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 201, 202, 203, 204, and 210 due to their uniform policy, practice, and procedure of failing to timely pay all of the above-mentioned wages earned during and after Employees' employment with Employer.

Employer also failed to reimburse Employee's necessary business expenditure in violation of Labor Code section 2802. Employer required Employees to use their personal cell phones and vehicles during their daily work, and to purchase gloves and decoration materials for holidays to promote flower sales without any reimbursement. Employer also required Employees to pay compensation to substitute workers without reimbursement.

In addition, Employer failed to maintain accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing premium wages earned per pay period, among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5 and is actionable under PAGA.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in her complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Mahoney Law Group, APC
Kevin Mahoney, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC