

LAW OFFICE OF
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October 9, 2024

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

VIA ELECTRONIC SUBMISSION

Re: Clare'mella "Clare" Riche's First Amended Claims Against Olive Tree
People Inc., et al. Under Private Attorney General Act (Cal. Lab. Code §§
2698, et seq.)

Dear Sir or Madam:

We represent Clare'mella "Clare" Riche ("Ms. Riche") in connection with her employment law claims against Olive Tree People Inc. and Thomas Lommel (collectively, "Olive Tree") from on or around April 28, 2024 to on or around August 5, 2024 ("Employment Period"). This letter is notice to the Labor Workforce Development Agency ("LWDA") of Ms. Riche'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 Olive Tree so that it may cure¹ its Labor Code violations.

Olive Tree blatantly disregarded the Labor Code and IWC Wage Order No. 7-2001. As a direct and proximate result, Olive Tree is liable to Ms. Riche, 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 The term "cure" means that (1) OTPI "corrects" all violations enumerated in this letter, (2) OTPI 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" OTPI 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.)

If LWDA declines to investigate Ms. Riche's claims, she will seek civil penalties against Olive Tree pursuant to Labor Code sections 98.7, 201, 203, 226, 226.7, 226.8, 510, 512, 558, 558.1, 1102.5, 1197, 1197.1, 1198.5, 1199, 2802, 2699, Minimum Wage Order-2024 and Wage Order 7-2001 on behalf of herself, the aggrieved employees, and the State of California.

1. Statement of Facts

a. Employer

Olive Tree People Inc. ("OTPI") is a California corporation with a principal place of business located at 401 Wilshire Boulevard, 12th Floor, Santa Monica, California 90401. OTPI's sole corporate director is Thomas Lommel; he is also the corporation's Chief Executive Officer, Chief Financial Officer, and Secretary. OTPI's agent for service of process is Setareh Maleknia who is located at the corporation's principal place of business.

Thomas Lommel also maintains a principal place of business located at 401 Wilshire Boulevard, 12th Floor, Santa Monica, California 90401. Upon information and belief, Mr. Lommel is OTPI's sole stockholder.

Olive Tree is a marketer and distributor of cosmetic and health products. Upon information and belief, Olive Tree currently employs 100 employees in the State of California. Upon further information and belief, Olive Tree employed approximately 125 employees from September 20, 2023 to the present ("PAGA Period").

b. Ms. Riche's Individual Allegations

Olive Tree hired Ms. Riche as Sales Support on or around April 28, 2024; Olive Tree misclassified her as an independent contractor. Upon hire, Olive Tree promised Ms. Riche \$25 per hour but it only paid her \$22 per hour during the Employment Period. Ms. Riche was assigned to work at OTPI's offices located at 1501 Main Street, Venice, California 90291.

During the Employment Period, Olive Tree controlled Ms. Riche's work. Ms. Riche performed no work outside the usual course of Olive Tree's business. And Ms.

Riche was not customarily engaged in any independently established trade, occupation, or business.

During the Employment Period, Ms. Riche was scheduled to work from 7:00 a.m. to 7:00 p.m., Monday through Sunday. However, Olive Tree did not pay Ms. Riche overtime wages when she worked more than eight hours in a workday, 40-hours in a workweek or seven consecutive days in a workweek. Worse, Ms. Riche was required to work 45 minutes to one hour off-the-clock, without *any* compensation, two to three times each workweek during the Employment Period.

Separately, during the Employment Period, Olive Tree did not authorize or permit Ms. Riche to take a 30-minute uninterrupted meal period after each five hours of work. Olive Tree also did not authorize or permit Ms. Riche to take a second 30-minute uninterrupted meal period after working 10-hours or more. Yet on those occasions, Olive Tree did not pay Ms. Riche an additional hour of pay as a meal period wage for workdays she was not provided a compliant meal period.

Similarly, Olive Tree did not authorize or permit Ms. Riche to take a 10-minute uninterrupted rest period after each four hours of work or major fraction thereof. But Olive Tree did not pay Ms. Riche a rest period wage in the form of an additional hour of pay for those workdays either.

Olive Tree did not provided Ms. Riche with any wage statements during the Employment Period. Consequently, Ms. Riche was confused about how Olive Tree calculated her wages.

During the Employment Period, Olive Tree required Ms. Riche to use her personal cell phone for work. Specifically, Ms. Riche was required to communicate with co-workers and direct supervisor on her personal cell phone during work for work purposes. Despite being required to use her personal cell phone for work, Olive Tree did not reimburse her for those necessary business expenses.

During the Employment Period, Ms. Riche repeatedly complained to her direct supervisor about Olive Tree's myriad Labor Code violations. In particular, Ms. Riche complained about not being paid for off-the-clock work or overtime, double-time, meal period wages, and rest period wages. Mr. Riche also complained about Olive Tree's

failure/refusal to reimburse her for using her personal cell phone for work. Ms. Riche further complained about Olive Tree's failure/refusal to furnish any wage statements.

Olive Tree terminated Ms. Riche on or around August 5, 2024. Upon information and belief, Olive Tree terminated Ms. Riche because she complained about its myriad Labor Code violations. Olive Tree did not pay Ms. Riche all of her earned but unpaid wages (i.e., minimum wage, overtime and double-time wages, and meal and rest period wages) immediately upon termination. To-date, Olive Tree has not paid Ms. Riche all of her earned but unpaid wages.

On August 9, 2024, through counsel, Ms. Riche requested to inspect her payroll records and personnel file at Olive Tree. To-date, Olive Tree has not complied with Ms. Riche's August 9 request.

c. Ms. Riche's Allegations on Behalf of Aggrieved Employees

Upon information and belief, during the PAGA Period, Olive Tree misclassified the aggrieved employees as independent contractors. Specifically, upon information and belief, Olive Tree controlled the aggrieved employees' work. Upon information and belief, the aggrieved employees performed no work outside the usual course of Olive Tree's business. And, upon further information and belief, the aggrieved employees were not customarily engaged in any independently established trade, occupation, or business.

Upon information and belief, Olive Tree did not pay the aggrieved employees at least minimum wage for all compensable hours during the PAGA Period.

Upon information and belief, 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. Upon further information and belief, Olive Tree did not pay those aggrieved employees their respective overtime and/or double-time wages as applicable.

Upon information and belief, Olive Tree did not authorize or permit the aggrieved employees to take compliant meal periods during the PAGA Period. Olive Tree did not pay the aggrieved employees a meal period wage on those occasions.

Upon information and belief, Olive Tree did not authorize or permit the aggrieved employees to take compliant rest periods during the PAGA Period. Olive Tree did not pay the aggrieved employees a rest period wage on those occasions.

Upon information and belief, Olive Tree did not furnish any wage statements to the aggrieved employees during the PAGA Period. Upon further information and belief, the aggrieved employees were confused about how Olive Tree's calculated their respective wages.

Upon information and belief, Olive Tree required the aggrieved employees to use their personal cell phones for work during the PAGA period. Upon further information and belief, Olive Tree did not reimburse the aggrieved employees for using their personal cell phones for work during the PAGA Period.

Upon information and belief, the aggrieved employees complained to Olive Tree about not being paid at least minimum wage, overtime, double-time, meal period wages, rest period wages, and cell phone expense reimbursements during the PAGA Period. Upon information and belief, the aggrieved employees complained about Olive Tree's failure/refusal to furnish any wage statements during the PAGA Period. Upon further information and belief, Olive Tree terminated those aggrieved employees for complaining about its myriad Labor Code violations during the PAGA Period.

Upon information and belief, Olive Tree did not pay terminated aggrieved employees all earned but unpaid wages immediately upon their termination during the PAGA Period. Upon further information and belief, Olive Tree has still not paid those terminated aggrieved employees during the PAGA Period.

Upon information and belief, the aggrieved employees requested their respective payroll records and personnel files from Olive Tree during the PAGA Period. But, upon further information and belief, Olive Tree did not produce and/or did not timely produce those aggrieved employees' payroll records and/or personnel files during the PAGA Period.

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 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]...” The phrase “any other person acting on behalf of an employer” includes any “natural person who is an owner, director, [or] officer...of the employer.” (Cal. Lab. Code § 558.1(b).) “Such 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, OTPI was unambiguously Ms. Riche’s employer during the PAGA Period. But Mr. Lommel was also Ms. Riche’s “employer” under Labor Code section 558.1 because he was OTPI’s Chief Executive Officer, Chief Financial Officer, Secretary, and sole corporate director during the PAGA Period. Accordingly, Mr. Lommel is personally liable to Ms. Riche and the aggrieved employees for Olive Tree’s failure/refusal to comply with the Labor Code.

3. Labor Code Violations

a. Retaliation in Violation of Labor Code § 98.6

Labor Code section 98.6 prohibits an employer from retaliating against or taking any adverse action against an employee if the employee makes a written or oral complaint about unpaid wages. (Cal. Lab. Code § 98.6(a).) An employer that retaliates against an employee in contravention of section 98.6 is liable to the employee for a civil penalty of up to \$10,000 for each violation. (Cal. Lab. Code § 98.6(b)(3).)

Here, Ms. Riche repeatedly complained to her direct supervisor about Olive Tree's myriad Labor Code violations (e.g., not being paid for off-the-clock work or for overtime, double-time, meal/rest period wages and business expense reimbursements, and not being furnished any wage statements) during the Employment Period. Upon information and belief, the aggrieved employees also complained to Olive Tree about those same Labor Code violations.

But on or around August 5, 2024, Olive Tree terminated Ms. Riche because she complained about its myriad Labor Code violations. Upon information and belief, Olive Tree terminated aggrieved employees who also complained about Olive Tree's myriad Labor Code violations.

b. Retaliation in Violation of Labor Code § 1102.5

Labor Code section 1102.5 prohibits an employer from retaliating against an employee who refuses to participate in an illegal activity. (Cal. Lab. Code § 1102.5(c).) An employer's violation of section 1102.5 attaches a maximum civil penalty of \$10,000 for each instance an employer retaliates against an employee for whistleblowing. (Cal. Lab. Code § 1102.5(f).) Violations of the whistleblower protection statute are a misdemeanor punishable by a fine of up to \$5,000. (Cal. Lab. Code § 1103.)

Here, Ms. Riche repeatedly complained to her direct supervisor about Olive Tree's myriad Labor Code violations (e.g., not being paid for off-the-clock work or for overtime, double-time, meal/rest period wages and business expense reimbursements, and not being furnished any wage statements) during the Employment Period. Upon information and belief, the aggrieved employees also complained to Olive Tree about those same Labor Code violations.

But on or around August 5, 2024, Olive Tree terminated Ms. Riche because she complained about its myriad Labor Code violations. Upon information and belief, Olive Tree terminated aggrieved employees who also complained about Olive Tree's myriad Labor Code violations.

c. Misclassification in Violation of Labor 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.

Here, Olive Tree cannot rebut the presumption of Labor Code section 2750.5. Further, none of the three factors enumerated in *Dynamex* are satisfied. Olive Tree willfully misclassified Ms. Riche and the aggrieved employees as independent contractors during the PAGA Period. Upon information and belief, Olive Tree's misclassification scheme was intended to evade paying employer-funded payroll taxes and withholdings. Ms. Riche and the aggrieved employees were subject to Olive Tree's control and direction during the PAGA Period. Ms. Riche and the aggrieved employees are/were not engaged in any independent trade, occupation, and/or business during the PAGA Period. Moreover, Olive Tree's practice of classifying all of the aggrieved employees as independent contractors is evidence of its "pattern" and "practice" of willful misclassification. Accordingly, Olive Tree is liable to Ms. Riche, the aggrieved employees, and the State of California for the maximum civil penalties permitted by Labor Code section 226.8(c).

d. Failure to Pay at Least Minimum Wages in Violation of Cal. Lab. Code §§ 1182.12 and IWC Wage Order MW-2024

"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, Ms. Riche was required to work 45 minutes to one hour off-the-clock, without *any* compensation, two to three times each workweek during the Employment Period. Upon information and belief, Olive Tree did not pay the aggrieved employees at least minimum wage for all compensable hours during the PAGA Period.

e. 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. Riche was scheduled to work from 7:00 a.m. to 7:00 p.m., Monday through Sunday during the Employment Period. However, Olive Tree did not pay Ms. Riche overtime wages when she worked more than eight hours in a workday, 40-hours in a workweek or seven consecutive days in a workweek. Upon information and belief, the aggrieved employees also worked more than eight hours in a workday, 40-hours in a workweek, and seven consecutive days in a workweek during the PAGA Period. Upon further information and belief, Olive Tree did not pay those aggrieved employees overtime wages.

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

If an employee works more than 12-hours in a workday, 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. Riche was scheduled to work from 7:00 a.m. to 7:00 p.m., Monday through Sunday during the Employment Period. However, Olive Tree did not pay Ms. Riche double-time wages when she worked more than 12-hours in each workday. Upon

information and belief, the aggrieved employees also worked 12-hours on workdays during the PAGA Period. Upon further information and belief, Olive Tree did not pay those aggrieved employees double-time wages.

g. 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, Olive Tree did not authorize or permit Ms. Riche to take a 30-minute uninterrupted meal period after each five hours of work during the Employment Period. Olive Tree also did not authorize or permit Ms. Riche to take a second 30-minute uninterrupted meal period after working 10-hours or more during the Employment Period. Yet on those occasions, Olive Tree did not pay Ms. Riche an additional hour of pay as a meal period wage for workdays she was not provided a compliant meal period. Similarly, Upon information and belief, Olive Tree did not authorize or permit the aggrieved employees to take compliant meal periods during the PAGA Period. And Olive Tree did not pay the aggrieved employees a meal period wage on those occasions.

h. 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, Olive Tree did not authorize or permit Ms. Riche to take a 10-minute uninterrupted rest period after each four hours of work or major fraction thereof during the Employment Period. But Olive Tree did not pay Ms. Riche a rest period wage in the form of an additional hour of pay for those workdays. Likewise, upon information and belief, Olive Tree did not authorize or permit the aggrieved employees to take compliant rest periods during the PAGA Period. Olive Tree did not pay the aggrieved employees a rest period wage on those occasions.

i. 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* (C.D. Cal. Aug. 13, 2008) 572 F. Supp. 2d 1169, 1181 (Labor Code section 226 is intended to prevent employee confusion about wages).)

Here, Olive Tree did not provide Ms. Riche any wage statements during the Employment Period. Consequently, Ms. Riche was confused about how Olive Tree calculated her wages. Additionally, upon information and belief, Olive Tree did not furnish any wage statements to the aggrieved employees during the PAGA Period. Upon further information and belief, the aggrieved employees were also confused about Olive Tree’s inaccurate and insufficiently itemized wage statements.

j. 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 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. 1, 11.)

Here, Olive Tree terminated Ms. Riche on or around August 5, 2024. But Olive Tree did not pay Ms. Riche all of her earned but unpaid wages (i.e., minimum wage, overtime and double-time wages, and meal and rest period wages) immediately upon termination. Indeed, Olive Tree has still not paid Ms. Riche all of her earned but unpaid wages. Upon information and belief, Olive Tree also did not pay terminated aggrieved employees all earned but unpaid wages immediately upon their termination during the PAGA Period. And, upon further information and belief, Olive Tree has still not paid those terminated aggrieved employees during the PAGA Period.

k. 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).)

Here, Olive Tree required Ms. Riche to use her personal cell phone for work. But Olive Tree did not reimburse her for those necessary business expenses. Upon information and belief, Olive Tree also required the aggrieved employees to use their personal cell phones for work during the PAGA period. But, Upon further information and belief, Olive Tree did not reimburse the aggrieved employees for using their personal cell phones for work during the PAGA Period either.

l. 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* (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, Olive Tree did not maintain accurate payroll records for Ms. Riche during the Employment Period or for the aggrieved employees during the PAGA Period. Specifically, Olive Tree did not maintain accurate payroll records for the off-the-clock work that Ms. Riche performed during the Employment Period or the off-the-clock work that the aggrieved employees performed during the PAGA Period. Likewise, Olive Tree did not maintain payroll records for Ms. Riche’s and/or the aggrieved employees’ missed/interrupted meal and rest periods during the Employment Period and PAGA Period, respectively.

m. 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. Riche requested her payroll records from Olive Tree by Certified Mail on August 9, 2024. The Postal Service delivered Ms. Riche's request to Olive Tree on August 12, 2024. The last day for Olive Tree to produce Ms. Riche's payroll records was August 30, 2024. But Olive Tree has not yet produced any of Ms. Riche's payroll records. Upon information and belief, the aggrieved employees requested their respective payroll records from Olive Tree during the PAGA Period. But, upon further information and belief, Olive Tree did not produce and/or did not timely produce those aggrieved employees' payroll records during the PAGA Period.

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

An employer is legally required to produce an employee's personnel file "not later than 30 calendar days from the date the employer receives a written request...." (Cal. Lab. Code § 1198.5(b).) An employer that fails or refuses to comply with a personnel file request is liable for a \$750 statutory penalty to the requesting employee. (Cal. Lab. Code § 1198.5(k).)

Here, Ms. Riche requested her personnel file from Olive Tree by Certified Mail on August 9, 2024. The Postal Service delivered Ms. Riche's request to Olive Tree on August 12, 2024. The last day for Olive Tree to produce Ms. Riche's personnel file was September 11, 2024. But Olive Tree has not yet produced any of Ms. Riche's personnel file. Upon information and belief, the aggrieved employees requested their respective personnel files from Olive Tree during the PAGA Period. But, upon further information and belief, Olive Tree did not produce and/or did not timely produce those aggrieved employees' personnel files during the PAGA Period.

o. 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.)

Here, Olive Tree is liable to Ms. Riche and, upon information and belief, the aggrieved employees for civil penalties, attorney's fees, and accrued interest under PAGA and the Labor Code because it violated—and is still violating—*inter alia*, Labor Code sections 98.7, 201, 203, 226, 226.7, 226.8, 510, 512, 1102.5, 1198.5, and 2802 during the Employment Period and PAGA Period, respectively.

Please review Ms. Riche's notice and act against Olive Tree as soon as possible. If LWDA declines to act against Olive Tree, please notify this office so that Ms. Riche may seek civil penalties, accrued interest, attorney's fees and costs, and all other relief recoverable under PAGA on behalf of herself, all aggrieved employees, and the State of California.

Sincerely,

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



Shafiel A. Karim
Attorney at Law

cc: Thomas Lommel (via Certified Mail, Return Receipt Requested)
Olive Tree People Inc.
c/o Setareh Maleknia
401 Wilshire Boulevard, 12th Floor
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Client (via email)

File No. 2962.00001