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November 18, 2024

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

C T Corporation
Agent for Service of Process for:
ColourPop Cosmetics, LLC
330 N Brand Blvd
Glendale, CA 91203
(Via Certified Mail, Return Receipt Requested)

C T Corporation
Agent for Service of Process for:
The Spatz Corporation
330 N Brand Blvd
Glendale, CA 91203
(Via Certified Mail, Return Receipt Requested)

C T Corporation
Agent for Service of Process for:
Colour Pop Disc Company
330 N Brand Blvd
Glendale, CA 91203
(Via Certified Mail, Return Receipt Requested)

C T Corporation
Agent for Service of Process for:
Spatz LLC
330 N Brand Blvd
Glendale, CA 91203
(Via Certified Mail, Return Receipt Requested)

C T Corporation
Agent for Service of Process for:
Seed Beauty, LLC
330 N Brand Blvd
Glendale, CA 91203
(Via Certified Mail, Return Receipt Requested)

Re: ***Elia Contreras v. The Spatz Corporation et al.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Elia Contreras (“Ms. Contreras” or “Employee”) to pursue a Labor Code Private Attorneys General Act of 2004 (“PAGA”) representative action (Cal. Lab. Code §§ 2699, et seq.) against Employee’s former employers, The Spatz Corporation, Spatz LLC, ColourPop Cosmetics, LLC, Colour Pop Disc Company, Seed Beauty, LLC. (“Employers”). Employers jointly employed Employee.

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

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

period (hereafter, the “Aggrieved Employees”).

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

Employers own and operate an industry, business, and establishment within the State of California and is, therefore, subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

Throughout Employee’s tenure, Employers compensated her with an hourly wage and classified her as non-exempt from overtime. Employers generally scheduled Employee for at least five days a week and at least eight hours each day. However, Employee often worked more than eight hours per day and exceeded forty hours in a workweek.

Throughout Employee’s tenure, Employers failed to compensate her for all hours worked, including minimum wage, straight time, and overtime wages. Employers also did not provide legally compliant meal periods, did not authorize or permit rest periods, and failed to reimburse business expenses. Additionally, Employers did not furnish accurate wage statements, and did not pay all wages upon termination. Furthermore, Employers failed to provide safe and healthy workplace, including personal protective equipment. Finally, Employers’ managers failed to maintain accurate records. As detailed below, Employee’s experiences while working for Employers were typical and illustrative of these issues.

Ms. Contreras’s Employment with Employers

Employers are companies that manufacturing and developing cosmetics products at various locations across the state, including Ventura County, where Employee was employed. Employee was an hourly, non-exempt worker. Ms. Contreras worked for Employers as a compounder from approximately February 2021 to September 2024, with primary responsibilities in compounding eyeshadows.

In carrying out her duties, Employee was frequently required to work off-the-clock, including overtime, without compensation. This included performing job responsibilities during meal and rest periods.

Due to understaffing and heavy workloads, Employee was often unable to take timely and compliant meal and rest breaks. Additionally, Employers failed to provide Employee and other Aggrieved Employees with the required meal and rest break premiums mandated by the Labor Code for every noncompliant break. For instance, Employee was forced to use a remote timekeeping machine during every meal break, which reduced the time available for her meal periods, causing her to fall short of the time required by law. Employers also failed to provide employees with the opportunity to correct noncompliant meal break hours because the cards used to access the timekeeping system frequently malfunctioned and/or employees were unable to access the timekeeping system in a timely manner due to long lines. Employee also regularly missed rest breaks and was unable to leave the premises during these breaks.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses, which included, but were not limited to, using their personal cell phones for work-related communications and paying for clothes that were damaged due to inadequate protective equipment, all without reimbursement.

Employee's pay stubs did not include all the necessary information, such as incorrect rest and meal break premiums, paid sick leave balances, as well as all wages for all hours worked.

Further, by not paying all meal and rest break penalties due and not paying all hours worked, Employers failed to pay all full and owed final wages in a timely manner.

Finally, Employers did not provide Employee and some of the Aggrieved Employees the safety and healthy workplace, including personal protective equipment.

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

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

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

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

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

During the statutory period, Employers failed to compensate Employee and some of the Aggrieved Employees for all hours worked, including minimum wage, straight time, and overtime wages. At times, Employers required Employee and some Aggrieved Employees to work "off-the-clock" without pay. For instance, Employers required Employee and the Aggrieved Employees to work during unpaid meal and rest periods, some of which should have been compensated at the overtime rate.

California Labor Code § 510 requires that employer compensate an employee 1.5 times their regular rate of pay when the employee work over eight hours per day, 40 hours per week, or when the employee work up to eight hours on any seventh day of a workweek. Employers failed to properly calculate Employee's regular rate of pay when paying overtime, by failing to include all compensation in Employee's overtime calculations. In failing to pay for all hours worked, Employers also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them.

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

Failure to Provide Meal Periods

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

Despite these legal requirements, Employers occasionally failed to provide Employee and some of the Aggrieved Employees with their legally mandated 30-minute uninterrupted and duty-free meal periods. Employers maintained control over Employee and the Aggrieved Employees by requiring, pressuring, or encouraging them to complete work tasks that could not be done without skipping mandatory meal breaks. Additionally, Employers denied Employee and some Aggrieved Employees permission to take meal periods as required by law, without properly compensating them for missed meal breaks. For example, Employee was forced to use a remote timekeeping machine during every meal break, which reduced the time available for her meal periods, causing her to fall short of the time required by law. Employers also failed to provide employees with the opportunity to correct noncompliant meal break hours because the cards used to access the timekeeping system frequently malfunctioned and/or employees were unable to access the timekeeping system in a timely manner due to long lines. As a result, Employers failed to provide meal periods to Employee and some Aggrieved Employees in accordance with California law.

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

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

Failure to Authorize and Permit Rest Periods

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

Throughout the statutory period, Employers have occasionally failed to authorize and permit Employee and some of the Aggrieved Employees to take legally compliant rest periods as required by law. At times, Employers required Employee and some Aggrieved Employees to work more than four consecutive hours without allowing them a 10-minute uninterrupted and duty-free rest period for every four hours worked (or major fraction thereof), nor did Employers compensate them for any unauthorized or unpermitted rest periods. For instance, Employee regularly missed rest breaks due to a heavy workload and was unable to leave the premises during these breaks.

Instead, Employers, at times, continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks, which could not be completed without working in lieu of taking mandatory rest periods, or, at times, by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employers, at times, failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law.

Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employers, however, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employers are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and

permit rest periods and pay rest period premium wages.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) states that employers must indemnify their employees for all necessary business expenditures or losses incurred while directly discharging their duties.

Throughout the statutory period relevant to this cause of action, Employers have, at times, wrongfully required Employee and some of the Aggrieved Employees to cover expenses they incurred in the direct performance of their duties for Employers. Employee and the Aggrieved Employees, at times, paid out-of-pocket for essential employment-related expenses. These employees incurred significant expenses as a direct result of their job duties for Employers, yet Employers failed to indemnify them for these costs. For example, Employee used her personal cell phone for work-related communications and paid for clothes that were damaged due to inadequate protective equipment, all without reimbursement.

As a result, Employers are liable to Employee and the Aggrieved Employees for the civil penalties outlined in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify them for necessary business expenditures.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish their employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by an employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is an employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by employers to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

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

During the statutory period, Employers have occasionally failed, and continues to fail, to provide Employee and some of the Aggrieved Employees with timely, accurate, itemized wage statements that meet all legal requirements. For instance, Employee’s pay stubs do not accurately reflect the rest and meal break premiums, paid sick leave accrual and the total wages for all hours worked,

among other things.

Accordingly, Employee and similarly the Aggrieved Employees, or some of them, are entitled to recover from Employers the greater of their actual damages caused by Employers' failure to comply with Labor Code § 226(a) and 226(i), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employers are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226(e)(2)(B)(iii) for failing to timely furnish accurate itemized wage statements.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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

However, Employers occasionally failed to keep accurate records of the hours worked and all meal periods taken or missed by Employee and some of the Aggrieved Employees. For instance, Employers failed to provide employees with the opportunity to correct noncompliant meal break hours because the cards used to access the timekeeping system frequently malfunctioned and/or employees were unable to access the timekeeping system in a timely manner due to long lines.

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

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

As a result of Employers' knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that, if employers discharge an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. Direct deposits of wages to an employee's bank, saving and loan, or credit union

account that were previously authorized by the employee are immediately terminated when the employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that employers comply with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

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

Failure to Provide Safe and Healthy Workplace, including Personal Protective Equipment

Under § 6400 of California Labor Code, (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. (b) On multiemployer worksites, both construction and nonconstruction, citations may be issued only to the following categories of employers when the division has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division: (1) The employer whose employees were exposed to the hazard (the exposing employer); (2) The employer who actually created the hazard (the creating employer); (3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer); (4) The employer who had the responsibility for actually correcting the hazard (the correcting employer).

Under § 6401 of California Labor Code, every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

According to § 3380 of Title 8 of California Code of Regulations, (d) The employer shall assure that all required safety devices and safeguards, whether employer or employee provided, including personal protective equipment for the eyes, face, head, hand, foot, and extremities (limbs), protective clothing, respiratory protection, protective shields and barriers, comply with the applicable Title 8 standards and are maintained in a safe, sanitary condition. (e) Protectors shall be of such design, fit and durability as to provide adequate protection against the hazards for which they are designed. They shall be reasonably comfortable and shall not unduly encumber the employee's movements necessary to perform his or her work.

During the statutory period, Employers have occasionally failed, and continue to fail, to provide the Employee and some of the Aggrieved Employees with a safe and healthful workplace, including failing to provide them with personal protective equipment. For example, the Employee was not provided with proper chemical protective clothing and regularly sustained injuries while performing her duties.

The failure to provide employees with a safe and healthful workplace, including the lack of proper personal protective equipment (PPE), falls under the Private Attorneys General Act because it constitutes a breach of described California labor laws.

Failure to Pay All Earned Wages Twice Per Month

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

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

As a result, Employers owed Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts. Moreover, Employers are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Refusal to Make Payment

Labor Code § 216 declares unlawful employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

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

These violations subject Employers to civil penalties under Labor Code § 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employee (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.¹

Statutory Wage Violations

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

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

¹ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

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

Action for Civil Penalties Under PAGA

Pursuant to Labor Code Sections 2699(a) and (f), Employee and the Aggrieved Employees are entitled to civil penalties for Employers' violations of Labor Code sections 201, 202, 203, 204, 210, 213, 216, 221, 223, 225.6, 226, 226.7, , 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2699, 2802, 6400, 6401, and the applicable IWC Wage Order.

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

WILSHIRE LAW FIRM

A handwritten signature in black ink that reads "m. desario". The signature is written in a cursive, lowercase style.

Molly DeSario, Esq.