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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 20, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
http://dir.tflaforms.net
Via Electronic Submission

Re: Rebecca Kurkhill / Kendo

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq*., Rebecca Kurkhill (hereafter "Kurkhill" or "Complainant") provides notice that Kendo Holdings Inc., and related entities (collectively "the Kendo Employers" or "the Employers") violated her rights and those of all other individuals the Kendo Employers have employed or otherwise contracted with in California as hourly, non-exempt, including salespersons and keyholders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes and related employee protections. On behalf of herself and all other Aggrieved Employees, Kurkhill hereby provides this notice to the Labor & Workforce Development Agency and the Kendo Employers and their agents and representatives.

At all relevant times, the Kendo Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Kurkhill and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

On approximately March 24, 2023, the Kendo Employers began to employ Kurkhill in Los Angeles in the position of salesperson and keyholder. The Kendo Employers continuously employed her in that capacity until on or about July 15, 2024 when her employment ended.

At all relevant times, the Kendo Employers issued wages to Kurkhill and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Kendo Employers classified Kurkhill and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely, 30-minute, off-duty meal periods. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. The Kendo Employers also failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with meal periods as required by law. The Kendo Employers instructed their managers to edit Kurkhill and the other Aggrieved Employees' time records to create the appearance of timely meal periods. Kurkhill's manager, Veronica Magana, often edited Kurkhill's time records to create the appearance of timely meal periods. For example, on July 4, 2024, due to her workload, Kurkhill was not able to take a full 30-minute meal period. Veronica Magana was aware of this fact. However, instead of paying Kurkhill premium wages for that day, she edited Kurkhill's time records to show that she took a meal period of exactly 30 minutes.

At all relevant times, the Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Kendo Employers never authorized, scheduled, or permitted Kurkhill and all of the other Aggrieved Employees to take any rest breaks. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. The Kendo Employers also failed to pay premium wages for days on which they failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks as required by law.

The Kendo Employers unlawfully deducted wages belonging to Kurkhill and all of the other Aggrieved Employees. The Kendo Employers deducted hours that Kurkhill and the other Aggrieved Employees spent in on-duty meal periods.

At all relevant times, the Kendo Employers failed to issue to Kurkhill and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, all hours work at each rate of pay, and related compensation.

The Kendo Employers also failed to timely pay Kurkhill and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills.

The Kendo Employers failed to maintain accurate employee records of Kurkhill and all of the other Aggrieved Employees.

For the reasons stated herein, Kurkhill alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

(a) The Kendo Employers failed to pay Kurkhill and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees all meal periods in compliance with California law;

(c) The Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

(d) The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at one hour's pay for each day in which the Kendo

Employers failed to provide them with one or more meal periods as required by law;

(e) The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees at one hour's pay for each day in which the Kendo Employers failed to authorize and permit them to take one or more rest breaks as required by law;

(f) The Kendo Employers unlawfully deducted wages belonging to Kurkhill and all of the other Aggrieved Employees;

(g) The Kendo Employers knowingly and intentionally failed to issue to Kurkhill and all of the other Aggrieved Employees accurate and complete wage statements;

(h) The Kendo Employers willfully failed to timely pay Kurkhill and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Kendo Employers and when their employment ended;

(i) The Kendo Employers failed to indemnify Kurkhill and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties; and

(j) The Kendo Employers failed to maintain accurate employment records pertaining to Kurkhill and all of the other Aggrieved Employees.

Accordingly, Kurkhill now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Kendo Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage

Order, § 2(H). At all relevant times during the applicable limitations period, the Kendo Employers, Kurkhill, and all of the Aggrieved Employees were covered by the Wage Order because the Kendo Employers operated, and Kurkhill, and all of the Aggrieved Employees worked for, one or more establishments operated as lip stick and other related products sales businesses. Accordingly, Kurkhill and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

<u>Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay</u>
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of

> eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

> The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek;
>
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work off-the-clock and without pay. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked overtime hours.

The Kendo Employers required Kurkhill and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. In order to adhere to schedules and complete time sensitive tasks and scheduling as described above, Kurkhill and the other Aggrieved Employees worked through meal periods on days they worked doubletime hours.

At all relevant times during the applicable limitations period, the Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Kurkhill now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. $50 for each aggrieved employee for each initial violation of Labor Code § 510, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, "The employment of any employee … under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Labor Code section 512 states:

> 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

> Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with all timely meal periods. The Kendo Employers denied Kurkhill and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through meal periods. Furthermore, the Kendo Employers failed to pay premium wages for days on which they failed to provide Kurkhill and all of the other Aggrieved Employees with timely meal periods. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. $50 for each aggrieved employee for each initial violation of Labor Code section 512, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

<u>Failure to Authorize and Permit Rest Periods</u>
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

> The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

> Rest Periods:
>
> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable

statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As discussed above, the Kendo Employers failed to authorize and permit Kurkhill and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Kendo Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Kendo Employers were under-staffed. They required Kurkhill and the other Aggrieved Employees to adhere to schedules and complete more time-sensitive tasks in a workday than they could without working off-the-clock or by working through rest breaks. Moreover, the Kendo Employers failed to pay Kurkhill and all of the other Aggrieved Employees premium wages on workdays the Kendo Employers failed to provide Kurkhill and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Kurkhill now seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, the Kendo Employers deducted wages from the wages earned by Kurkhill and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Kurkhill seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate and Complete Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate, complete, and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Kendo Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Kendo Employers failed to state in the wage statements they issued to Kurkhill and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above). The Kendo Employers knowingly and intentionally failed to state on the wage statements they issued to Kurkhill and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum, regular, overtime and doubletime wages, and all premium wages earned for missed meal and rest breaks, and related compensation. Accordingly, Kurkhill seeks civil penalties for the Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Kendo Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Kurkhill now seeks civil penalties for the Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Kendo Employers failed to pay Kurkhill and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Kurkhill, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. By failing to pay Kurkhill and all of the other Aggrieved Employees as set forth above at the end of employment, the Kendo Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Kurkhill seeks civil penalties from the Kendo Employers as follows:

1. For violations of Labor Code § 201, $100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and $200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, $100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and $200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, $100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and $200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

Additionally, the Wage Order states,

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

…

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At all relevant times, the Kendo Employers required Kurkhill and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Kendo Employers required Kurkhill and all of the other Aggrieved Employees to supply mobile phone to perform their job duties, including receiving and responding to communications from management and work scheduling. The Kendo Employers also required Kurkhill and all of the other Aggrieved Employees to pay for their own parking and did not provide them with transportation to the worksite. The Kendo Employers did not provide these items and did not reimburse Kurkhill and the other Aggrieved Employees for these items, nor did the Kendo Employers reimburse Kurkhill and the other Aggrieved Employees for mobile phone service bills. Accordingly, Kurkhill seeks civil penalties for these Labor Code violations that the Kendo Employers have committed against her and all of the other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code section 2802, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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<u>Failure to Maintain Accurate Employment Records</u>
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

> Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

Section 7 of Wage Order states,

> (A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Kendo Employers failed to compensate Kurkhill and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including, and related compensation. As a result, the Kendo Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Kurkhill and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Kurkhill seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

2. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Rebecca Kurkhill will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

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