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November 6, 2024

VIA ONLINE SUBMISSION

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

Subject: *Kaliph Chenevert v. L & W Supply Corporation, et al.*

Dear PAGA Administrator:

This office represents Kaliph Chenevert in connection with his claims under the California Labor Code. Mr. Chenevert was an employee of L & W SUPPLY CORPORATION and/or AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC. For the purpose of this letter, Mr. Chenevert collectively refers to these entities as "L&W."

The employers may be contacted directly at the addresses below:

L & W SUPPLY CORPORATION
300 RIVERSIDE PLAZA STE 200
CHICAGO, IL 60606

L & W SUPPLY CORPORATION
PO BOX 838
BELOIT, WI 53512

AMERICAN BUILDERS & CONTRACTORS
SUPPLY CO., INC.
ONE ABC PARKWAY
BELOIT, WI 53511

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

L&W employed Mr. Chenevert as an hourly paid, non-exempt employee from approximately March 2023 to February 2024. Mr. Chenevert worked for L&W as a Branch Helper/Stocker and Driver Assistant at its Palm Springs, California location. During his employment, Mr. Chenevert typically worked eight (8) or more hours per day and five (5) or more days per week. By the end of his

employment, Mr. Chenevert was compensated approximately \$20.00 per hour. His job duties included, without limitation, assisting drivers with loading, spotting, and equipment maintenance, stocking and inventory tasks, and organizing and staging materials at jobsites.

L&W committed each of the following Labor Code violations against Mr. Chenevert, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

L&W’s Company-Wide and Uniform Payroll and HR Practices

L & W SUPPLY CORPORATION and AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC. are Delaware corporations. Together, they are one of the nation’s largest distributors of wallboard, insulation, steel framing, acoustical ceilings and other interior building materials for the needs of commercial and residential contractors. Upon information and belief, L&W maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Chicago, Illinois, or, Beloit, Wisconsin, for all non-exempt, hourly paid employees working for L&W in California, including Mr. Chenevert and other aggrieved employees. At all relevant times, L&W issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Chenevert and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and

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

the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, L&W had, and continues to have, a company-wide policy and/or practice of understaffing its facilities and jobsites while assigning heavy workloads, including pressure to keep up with time-sensitive deliveries, which has resulted in a lack of meal period coverage and prevented Mr. Chenevert and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, L&W had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Chenevert and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Chenevert and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Chenevert was sometimes required to work straight through his meal periods in order to keep up with the demands of the workload and complete time-sensitive deliveries to multiple construction sites in a day. As another example, about 2-3 times per week, Mr. Chenevert's supervisors required him to return early from his meal periods to keep up with L&W's workload. Additionally, Mr. Chenevert sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage and L&W's failure to schedule meal periods.

Second, on information and belief, because L&W frowned upon employees accruing meal period premiums, L&W's management pressured Mr. Chenevert and other aggrieved employees to clock out for meal periods, even when they did not receive a compliant meal period. For example, Mr. Chenevert was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Third, L&W did not provide Mr. Chenevert and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During his employment, Mr. Chenevert worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Chenevert and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

At all times mentioned, L&W knew or should have known that as a result of its company-wide policies and/or practices, Mr. Chenevert and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. L&W further knew or should have known that it did not pay Mr. Chenevert and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, L&W engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Chenevert and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

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

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

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

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

During the relevant time period, L&W regularly failed to authorize and permit Mr. Chenevert and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, L&W’s company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Chenevert and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, L&W failed to schedule rest periods, which, coupled with L&W’s failure to provide adequate rest period coverage, further led to Mr. Chenevert and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, L&W maintained a company-wide on-premises rest period policy, which effectively required that Mr. Chenevert and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Chenevert and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, L&W effectively maintained control over Mr. Chenevert and other aggrieved employees during rest periods.

As a result of L&W’s practices and policies, Mr. Chenevert and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Chenevert had to regularly forgo at least one (1) of his rest periods each day, because of the pressure to keep up with time-sensitive deliveries, lack of rest period coverage, and L&W’s failure to schedule rest periods for employees. When Mr. Chenevert was able to take rest periods, they would often be interrupted by supervisors requiring him to work to complete inventory counts, unload materials, or attend to customers.

L&W also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Chenevert and other aggrieved employees have not received premium pay for all missed rest periods.

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

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

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC

Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, as stated, L&W had, and continues to have, company-wide policies and/or practices of understaffing its facilities and jobsites while assigning heavy workloads, including pressure to keep up with time-sensitive deliveries. L&W's policies and/or practices resulted in a failure to provide Mr. Chenevert and other aggrieved employees with adequate meal period coverage, and thus, Mr. Chenevert and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. As also stated, L&W had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Chenevert and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, as stated, Mr. Chenevert worked through all or part of his meal periods due to lack of coverage and heavy workload. L&W did not compensate Mr. Chenevert and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Second, as stated, on information and belief, because L&W frowned upon employees accruing meal period premiums, L&W's management pressured employees to clock out for meal periods, regardless of whether they had received a compliant meal period or not. Thus, L&W did not record all hours worked during meal periods, and Mr. Chenevert and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No.7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11070(2)(H) (defining “Hours Worked”).

As set forth above, due to L&W’s policies and/or practices of understaffing its facilities and jobsites while assigning heavy workloads, which included pressuring employees to meet time-sensitive repair deadlines, and failing to schedule meal periods, Mr. Chenevert and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Also, as stated above, on information and belief, because L&W frowned upon employees accruing meal period premiums, L&W’s managers pressured employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, L&W systematically failed to pay Mr. Chenevert and other aggrieved for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

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

During the relevant time period, L&W has knowingly and intentionally provided Mr. Chenevert and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, L&W issued uniform wage statements to Mr. Chenevert and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, L&W violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Further, and separate from these violations, L&W issued uniform wage statements to Mr. Chenevert and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Chenevert's and other aggrieved employees' wage statements incorrectly list the employer's address as "One ABC Parkway Beloit, WI 53511" but, according to the California Secretary of State's website, the correct address is "300 RIVERSIDE PLAZA STE 200 CHICAGO, IL 60606". *See example paystub below.*

L&W Supply Corporation One ABC Parkway Beloit, WI 53511 (608) 368-2577

[REDACTED]				
Company	Associate ID	Pay Period Begin	Pay Period End	

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

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

1174(d), L&W willfully failed to maintain accurate payroll records for Mr. Chenevert and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, L&W engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Chenevert and other aggrieved employees, in violation of section 1198. Also, in light of L&W’s failure to provide Mr. Chenevert and other aggrieved employees with second 30-minute meal periods to which they were entitled, L&W kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing" (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

During the relevant time period, L&W had an agreement with a payroll service provider, Wisely, for the issuance of payroll cards to employees, including Mr. Chenevert and other aggrieved employees, to discharge its wage payment obligations to its employees. On information and belief, L&W had a practice of and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Chenevert received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, L&W automatically enrolled Mr. Chenevert in its payroll debit card program for the purpose of issuing Mr. Chenevert’s final wages to him without prior, voluntary approval from Mr. Chenevert.

Moreover, under L&W’s payroll debit card program, Mr. Chenevert and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. Mr. Chenevert and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. For example, Mr. Chenevert was subjected to transaction fees when withdrawing his wages from an out-of-network ATM. Thus,

L&W's payroll debit card program was, and continues to be, unlawful as it did not give Mr. Chenevert and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. L&W's payroll card program is inconsistent with this policy because L&W's program is involuntary and presents a number of obstacles and hurdles that, together, make it difficult for Mr. Chenevert and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Chenevert and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring L&W into compliance with Labor Code sections 212 and 213, pursuant to Labor Code section 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that 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. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, upon information and belief, L&W unlawfully deducted a portion of wages previously paid to Mr. Chenevert and other aggrieved employees in violation of California Labor Code section 221. On information and belief, L&W systematically, and on a company-wide basis, provided Mr. Chenevert and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under L&W's payroll debit card program, Mr. Chenevert and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Mr. Chenevert and other aggrieved employees were required to pay out-of-network ATM withdrawal fees and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Chenevert and other aggrieved employees resulted in a discount of their wages.

L&W's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Chenevert's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Chenevert and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring L&W into compliance with Labor Code sections 221 and 224, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, L&W willfully and systematically issued payroll debit cards to Mr. Chenevert and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. L&W's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Chenevert and other aggrieved employees.

Thus, L&W paid Mr. Chenevert and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Chenevert and other aggrieved employees were properly paid.

L&W's failure to pay Mr. Chenevert and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Chenevert and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring L&W into compliance with Labor Code section 223, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, L&W violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because L&W failed to pay Mr. Chenevert and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

L&W had a company-wide practice of sending Mr. Chenevert and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Chenevert and other aggrieved employees for half of their scheduled shift. For example, when scheduled to work a shift of eight (8) hours, L&W's managers sent Mr. Chenevert home one (1) hour after the start of his shift. Although Mr. Chenevert and other aggrieved employees reported to work based on the schedule that was provided to them, L&W would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, L&W did not pay Mr. Chenevert and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Mr. Chenevert and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Mr. Chenevert and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring L&W into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 7-2001 further provides that: “[w]hen 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.”

During the relevant time period, Mr. Chenevert and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but L&W failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Chenevert was required to use his personal cellular phone to communicate with his supervisors to discuss the progress of assignments and to take and send pictures of work completed, and for calculating measurements. Although L&W required Mr. Chenevert and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, L&W failed to reimburse them for these costs.

Also, during the relevant time period, L&W required Mr. Chenevert and other aggrieved employees to wear uniforms bearing the L&W company logo, including high visibility shirts and pants. Due to the nature of construction work, Mr. Chenevert's uniforms would become sweaty, soiled, and/or stained by dirt and drywall materials, such that they were unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, L&W failed to maintain uniforms they required Mr. Chenevert and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

L&W could have provided Mr. Chenevert and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices as well as access to laundering services. Or, L&W could have reimbursed employees for the costs of their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, L&W passed these operating costs onto Mr. Chenevert and other aggrieved employees. At all relevant times, Mr. Chenevert did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” L&W, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Chenevert’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Chenevert seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Chenevert, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against L&W for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

1. L&W shall pay Mr. Chenevert and all other aggrieved employees employed by L&W at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. L&W shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods, and paid all reporting time pay.
3. L&W shall conduct a survey or interview all current and former aggrieved employees in California who worked for L&W in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device

expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. L&W shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. L&W also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. L&W shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for L&W's benefit, including, but not limited to, costs of mobile device usage, uniform maintenance, or other expenditures, as required by Labor Code section 2802.
6. L&W shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. L&W shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debt cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), unlawful deductions (Labor Code sections 221 and 224), and secret payment of lower wages (Labor Code section 223).
8. L&W shall provide all aggrieved employees employed by L&W at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. L&W shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. L&W shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. L&W shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: L & W SUPPLY CORPORATION (via U.S. Certified Mail); AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC. (via U.S. Certified Mail)

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



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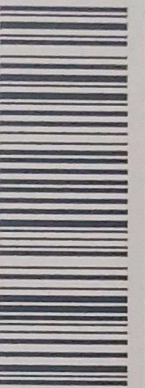
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300 RIVERSIDE PLAZA STE 200
CHICAGO, IL 60606

PS Form 3800, April 2015 PSN 7530-02-000-9017

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

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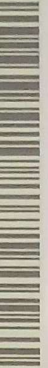
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BELOIT, WI 53512

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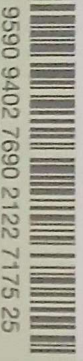


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