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VIA ONLINE FILING

Labor and Workforce Development Agency

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Lucero Estudillo v. Uniserve Facilities Services Corporation

Dear Representative:

This office represents Lucero Estudillo ("**Ms. Estudillo**") with respect to her claims under the California Labor Code against Uniserve Facilities Services Corporation ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employers employed Ms. Estudillo from approximately July 2013 as an hourly paid, non-exempt employee. During her employment with Employer, Ms. Estudillo was employed as a Janitor throughout various jobsite locations controlled by Employer. Employer provides janitorial and maintenance services throughout Southern California.

Ms. Estudillo intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Ms. Estudillo is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employers ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Ms. Estudillo's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders ("**IWC Wage Order**") including *inter alia*, IWC Wage Order No. 5. The claims made on behalf of Ms. Estudillo and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer have engaged in numerous unlawful practices which resulted in the failure to pay Ms. Estudillo and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



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First, Employers regularly required Ms. Estudillo and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employers also failed to provide Ms. Estudillo and Aggrieved Employees with adequate training as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employers regularly required Ms. Estudillo and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Estudillo and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks on their personal cell phones; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Ms. Estudillo and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Estudillo and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Estudillo and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Ms. Estudillo and Aggrieved Employees, which resulted in a failure to pay Ms. Estudillo and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Ms. Estudillo and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Ms. Estudillo and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Estudillo and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Ms. Estudillo and Aggrieved Employees with legally compliant 30-minute meal periods. Ms. Estudillo and Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Ms. Estudillo and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Ms. Estudillo and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour



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of work. On the occasions that Ms. Estudillo and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Estudillo and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Ms. Estudillo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Ms. Estudillo and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Estudillo and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Ms. Estudillo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls, text messages, and in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Estudillo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on cleaning the facilities and the bathrooms, taking out the trash, and sweeping the floors over employees right to receive timely, uninterrupted, and duty-free meal periods.

Ms. Estudillo and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7, 512(a) and 1198.

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employers failed to authorize and permit Ms. Estudillo and Aggrieved Employees take legally compliant 10-minute rest periods. Employers required Ms. Estudillo and Aggrieved Employees to work through rest periods. Ms. Estudillo and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Estudillo and Aggrieved Employees were not provided with a second uninterrupted, or a duty-free rest period when they worked more than six (6) hours in a day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Estudillo and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).



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Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Estudillo and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Ms. Estudillo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Ms. Estudillo and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Estudillo and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Ms. Estudillo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls, text messages, and in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Estudillo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Ms. Estudillo and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7, and 1198.

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employers has failed to timely pay all wages earned because Ms. Estudillo and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Ms. Estudillo and



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Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employers have failed to maintain accurate records relating to Ms. Estudillo and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. Estudillo and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include, but are not limited to, the use of a personal vehicle for business purposes such as purchasing cleaning supplies, and the use of a personal cell phone for business reasons.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Ms. Estudillo and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Ms. Estudillo and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Ms. Estudillo and Aggrieved Employees for all straight time wage, minimum



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wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Ms. Estudillo and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Ms. Estudillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of herself, the State of California and all Aggrieved Employees, Ms. Estudillo may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Susan Huerta

Notice provided to Employers via Certified Mail (9490 9112 0620 5534 2106 18)

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