



POTTER HANDY, LLP

A Law Firm

8033 Linda Vista Rd, Suite 200
San Diego, CA 92111

Rene Potter, Attorney
ReneP@PotterHandy.com
Jim Treglio
JimT@PotterHandy.com
Phone: (858) 375-7385
Fax: (888) 422-5191

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Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail to:

Human Resources
Randstad Inhouse Services, LLC
150 Presidential Way 3rd Floor
Woburn, MA 01801

Randstad Inhouse Services, LLC
150 Presidential Way 3rd Floor
Woburn, MA 01801

Human Resources
Ingram Micro Inc.
3351 Michelson Drive, Suite 100
Irvine, CA 92612

Ingram Micro Inc.
3351 Michelson Drive, Suite 100
Irvine, CA 92612

Corporation Service Company
which will do business in California as
CSC - Lawyers Incorporating Service
Resident Agent for Service for
Randstad Inhouse Services, LLC
2710 Gateway Oaks Drive Suite 150N
Sacramento, CA 95833

C T Corporation System
Resident Agent for Service for
Ingram Micro Inc.
330 N Brand Blvd. Ste. 700
Glendale, CA 91203

Re: Tahjee Newman v. Randstad Inhouse Services, LLC and Ingram Micro Inc.,
California Labor Code § 2699 Penalties; Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Tahjee Newman ("Plaintiff") and a proposed group of current and former employees working for Randstad Inhouse Services, LLC and Ingram

Micro Inc. (“Defendants”) in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226(e), 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,¹ 1198.5, 1199, as well as IWC Wage Order No. 4-2001. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following groups of aggrieved employees:

- (1) all individuals who are or were employed by Defendants or its predecessor or merged entities in California as hourly, non-exempt employees, who were not provided with duty-free meal periods, from one year prior to the mailing of this notice through the present (“meal period aggrieved employees”);*
- (2) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from one year prior the filing of this notification through the present (“overtime aggrieved employees”);*
- (3) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees from one year prior to the mailing of this notice through the present (“wage statement aggrieved employees”);*
- (4) all individuals who are or were employed by Defendants or its predecessor or merged entities in California as hourly, non-exempt employees, who requested for copies of their personnel file from Defendants but were not provided with the same from one year prior to the mailing of this notice through the present (“personnel file aggrieved employees”); and*
- (5) all individuals who are or were employed by Defendants or its predecessor or merged entities in California as hourly, non-exempt employees, who requested for copies of their time and wage records from Defendants but were not provided with the same from one year prior to the mailing of this notice through the present (“time and wage records aggrieved employees”).*

Collectively, hereinafter referred to as the “Aggrieved Employees” or “aggrieved employees.”

¹ All alleged violations of IWC Wage Order 4-2001 are also deemed to be alleged violations of Labor Code §§ 1197 and 1198.

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*²

Factual Background

Plaintiff and the aggrieved employees are and were employed by Randstad Inhouse Services, LLC, a company that offers unique onsite management solutions for contingent workforces. It works across various industries like manufacturing, logistics, and healthcare. It provides various services such as improving recruiting, retention, productivity, and flexibility.

On November 16, 2020, Plaintiff was hired as a worker assigned to Ingram Micro's distribution center in Rancho Cucamonga, California. Ingram Micro Inc. is a company that helps businesses maximize the value of the technology that they make, sell or use, with their vast global infrastructure and focus on cloud, mobility, technology lifecycle, supply chain and technology solutions.

Plaintiff's tasks included scanning iPhones and shipping them out (on behalf of AT&T). Defendants paid Plaintiff \$18 per hour. He was terminated on December 5, 2020.

Like all Aggrieved Employees, Plaintiff remained on-call during his meal period. Although Plaintiff was able to take his break, he would often be disturbed by his manager during this time.

In addition, Plaintiff had to work more than 8 hours per day or more than 40 hours per week. Despite working up to 50 hours per week on certain instances, Plaintiff was not paid for his overtime work.

On or about December 8, 2020, Plaintiff, through his counsel Potter Handy LLP, sent Defendants a letter requesting for Plaintiff's personnel, timekeeping, and payroll records ("First Request"). When Defendants did not respond to the First Request, Plaintiff, through Potter Handy LLP, sent a second letter request to Defendants on March 11, 2021

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

(“Second Request”). To date, however, Plaintiff has yet to receive copies of his personnel, timekeeping, and payroll records from Defendants.

Claims Asserted by Plaintiff

i. Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

As a result of its meal period policies of not requiring Plaintiff and the aggrieved employees to remain on-call during their meal periods, Defendant violated Labor Code § 512 and IWC Wage Order No. 4 by failing to provide duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more. Although they were able to take their breaks, Plaintiff and the aggrieved employees would often be disturbed by their managers during this time.

Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees frequently did not receive thirty-minute duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period.

Labor Code § 226.7 provides “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 (“IWC”). Similarly, IWC Wage Order 4-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 4-2001 further obligates employers to provide an employee to “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.” Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 4-2001.

ii. Plaintiff and the Overtime Aggrieved Employees Were Not Paid Proper Overtime Compensation for All Hours Worked in Excess of 8 Hours in Day or Forty Hours in a Workweek

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)

hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

For the reasons stated above, Plaintiff and the overtime aggrieved employees worked certain hours for which they were not paid. Plaintiff and the overtime aggrieved employees had to work beyond 40 hours each week. This time amounts and amounted to at least 10 hours per week. Because Plaintiff and the aggrieved employees spent eight hours or more working on “compensated” time, this uncompensated time for work done beyond eight hours each day should have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and Wage Order 4-2001. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

iii. Defendant Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that “[a]ll wages...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.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Due to Defendant’s failure to pay Plaintiff and the aggrieved employees for all meal period premiums³ and overtime, Defendant failed to timely pay the aggrieved employees

³ Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. See e.g. *In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar.

within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

iv. Defendant's Violation of Labor Code §§ 201-203

As a result of Defendant's failure to pay wages to Plaintiff and the aggrieved employees for overtime, meal period minimum wages, and meal period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendant has failed to pay all aggrieved employees for all overtime and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

v. Defendant's Violation of Labor Code §§ 226(a) and 226.3

Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

7, 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding "Plaintiffs' section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.".)

- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) 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;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal periods, the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).⁴

⁴ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

vi. Defendants' Violation of Labor Code § 1198.5

Labor Code § 1198.5 provides as follows:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. ...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action. ...

As discussed above, Plaintiff sent Defendants numerous requests for copies of his personnel records. The First Request was sent on December 8, 2020 and the Second Request was sent on March 11, 2021. To date, however, Plaintiff has yet to receive copies of his personnel records from Defendants.

Due to their failure to provide Plaintiff with copies of his personnel records upon request, Defendants violated Labor Code § 1198.5.

vii. Defendants' Violation of Labor Code § 226

Labor Code § 226 provides that:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)

total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made. ...

(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. ...

As discussed above, Plaintiff sent Defendants numerous requests for copies of his time and wage records. The First Request was sent on December 8, 2020 and the Second Request was sent on March 11, 2021. To date, however, Plaintiff has yet to receive copies of his time and wage records from Defendants.

Due to their failure to provide Plaintiff with copies of his time and wage records upon request, Defendants violated Labor Code § 226.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before

October 19, 2021. If we do not hear from you on or before **October 19, 2021**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

In all electronic correspondence that you send me, kindly copy the following addresses:

jimt@potterhandy.com

kevinw@potterhandy.com

waizaa@potterhandy.com

trinam@potterhandy.com

newmanvrandstadinhouseservicesllcz8185977@projects.filevine.com

Respectfully submitted,

Jim Treglio

Jim Treglio

POTTER HANDY, LLP