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

Agent for Service of Process for
California Commerce Club, Inc.
Joy Harn
6131 E. Telegraph Road
Commerce, CA 90040
(Via Certified Mail, Return Receipt Requested)

Re: **Guillermo Eldredge v. California Commerce Club, Inc.**
Notice of Labor Code and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Guillermo Eldredge ("Mr. Eldredge" or "Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employee's former employer, California Commerce Club, Inc. ("CCCI" or "Employer"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Employee and potentially all of Employer's Aggrieved Employees.

Mr. Eldredge wishes to pursue this action on behalf of Employees as Aggrieved Employees, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for CCCI in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

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

Mr. Eldredge's Employment with CCCI

CCCI is a casino. Employee worked for CCCI as a Casino Dealer. Employee's primary job function was to deal cards in various card games and tiles in Pai Gow games.

In performing Employee's duties, Employee was regularly required to perform work off-the-clock, without compensation.

Due to understaffing and high workloads, Employee was also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Employer failed to provide Employee and other Aggrieved Employees with the meal and rest break premiums required by the Labor Code.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses that included, but were not limited to, having to use personal cell phones for training and having to buy specialty clothing required by Employer, all without reimbursement.

Employer also engaged in altering, falsifying, and conducting timekeeping on employees' behalf without their involvement.

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

Employer own/owned and operate/operated an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employer's business in California, Employer are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Mr. Eldredge is a resident of Los Angeles County, California, who worked for Employer in Los Angeles County, California, as an hourly-paid, non-exempt employee from approximately January 2023 to approximately September 2023.

During Employee's employment for Employer, Employer paid Employee an hourly wage and classified Employee as non-exempt from overtime. Employer typically scheduled Employee to work at least five days in a workweek and at least eight hours per day, but Employee also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employee's employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employee with legally compliant meal periods, failed to authorize and permit Employee to take rest periods, failed to furnish accurate wage statements to Employee, and failed to indemnify for business expenses. As discussed below, Employee's experience working for Employer was typical and illustrative.

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

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

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

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

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employer at time required Employee and the Aggrieved Employees, or some of them, to work "off-the-clock," uncompensated. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that Employer compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when

employees work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee's regular rate of pay when paying overtime, by failing to include all compensation in Employee's overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated the time records in order to pay them less.

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

Failure to Provide Meal Periods

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

Despite these legal requirements, Employer at times wrongfully failed to provide Employee and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including, but not limited to, failing at times to provide Plaintiff, the Class, and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Employee and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employee and the Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Employee and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. Employer also did not inform Employee of Employee's right to, nor permitted Employee to take, all of Employee's second meal periods when Employee worked at least ten hours of work in a workday and otherwise unlawfully pressured Employee to waive such breaks. Employer also prevented employees from clocking out unless they confirmed that they took compliant meal periods even when they did not. Accordingly, Employer at times failed to provide meal periods to Employee and the Aggrieved Employees, or some of them, in compliance with California law.

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

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

Failure to Authorize and Permit Rest Periods

Employer are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is

entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer at times have wrongfully failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take legally compliant rest periods in a manner required by law (and also including, but not limited to, failing, at times, to authorize and permit Plaintiff, the Class, and the Aggrieved Employees, or some of them, the opportunity to leave the work premises to take rest periods). Employer at times required Employee and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day without Employer's authorizing and permitting Employee to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employee and the Aggrieved Employees, or some of them, for rest periods that were not authorized or permitted.

Instead, Employer at times continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or at times by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employer at times failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law. Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however, at times failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

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

Failure to Pay All Earned Wages Twice Per Month

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

Labor Code § 204 requires Employer to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employer failed and refused to pay the Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all meal periods not provided by Employer, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. As a result, Employer owe Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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

Employer, however, at times failed to maintain accurate records of hours worked and all meal periods taken or missed by Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated these records.

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

Failure to Furnish Accurate Itemized Wage Statements

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

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

In addition, California Labor Code § 246(i) required employer to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer

provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited."

Throughout the statutory period, Employer at times failed to, and continue at times to fail, to timely furnish Employee and the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employer at times violated Labor Code § 226, Employee and similarly Aggrieved Employees, or some of them, suffered injury and damage to their statutorily protected rights. Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires Employer to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by Employees and Aggrieved Employees. All applicable IWC Wage Orders, section 7 similarly requires Employer to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employer at times failed, and continue at times to fail, to keep accurate and complete payroll records as required by law, including, but not limited to, the following records: total daily hours worked, applicable rates of pay, time records showing when Employee and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employer at times failed and continue at times to fail to keep accurate and complete records showing total hours worked by Employee and Aggrieved Employees, or some of them, by virtue of Employer's work policies and practices. Employer failed at times and continue at times to fail to keep accurate and complete records showing total hours worked by virtue of Employer's failure to relieve Employee and Aggrieved Employees, or some of them, of all duties and Employer's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employer further failed at times, and continue at times to fail, to record the true start and end times of some of Employee's and Aggrieved Employees' shifts and meal periods.

Based on further information and belief, at times, Employer further failed and continues to fail to record the true start and end times of Employee's and Aggrieved Employees' work shifts and meal periods.

Employer's failure to keep "accurate and complete" payroll records for Employee and Aggrieved Employees, or some of them, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employee (or some of them), results in a separate civil penalty.¹

Falsifying Records

Additionally, on information and belief, Employer's management would alter and/or falsify time records to make it look like Employees did not work any overtime or took compliant meal breaks were taken whereas they were not. These overtime-rate work hours and non-compliant meal breaks should have been recorded by Employer, but it willfully ignored this requirement in an effort to avoid payment of overtime and of meal break penalties owed to Employee and the Aggrieved Employees. Thus, Employer failed to track the time employees spent working off the clock, and Employee and the Aggrieved Employees received no compensation for this time.

As also stated, due to Employer's practices of management altering and/or falsifying time records, Employee and the Aggrieved Employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

Thus, Employer 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 Employee and the Aggrieved Employees, in violation of section 1198.

Refusal to Make Payment

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

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

These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employee (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.²

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¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Statutory Wage Violations

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.

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

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

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that Employer shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of their duties. Throughout the statute of limitations period applicable to this cause of action, Employer at times wrongfully required Employee and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employer. Employee and the Aggrieved Employees, or some of them, at times paid out-of-pocket for necessary employment-related expenses. Employee and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Employee and the Aggrieved Employees, or some of them, for these employment-related expenses.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees, or some of them, for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Employee alleges that Employer violated the following provisions of the Labor Code with respect to the Aggrieved Employees, or some of them:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing at times to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing at times to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing at times to authorize and permit rest periods;
4. Labor Code § 204 by failing at times to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing at times to maintain accurate records of hours worked and meal periods taken or missed;

6. Labor Code § 226 by failing at times to provide accurate itemized wage statements;
7. Labor Code § 1174 by failing at times to keep accurate and complete payroll records;
8. Labor Code § 216 for refusal at times to pay wages due and payable and/or denial at times of the validity of any claim to wages due;
9. Labor Code § 223 for at times secretly paying wages lower than required by statute while purporting to pay legal wages; and
10. Labor Code § 2802 by failing at times to indemnify for necessary expenditures;

Therefore, on behalf of potentially Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

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

WILSHIRE LAW FIRM

A handwritten signature in cursive script, appearing to read "m. desario".

Molly DeSario, Esq.