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December 17, 2024

VIA ONLINE SUBMISSION

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

Subject: *Raul Barragan v. Hilmar Cheese Company, Inc.*

Dear PAGA Administrator:

This office represents Raul Barragan in connection with his claims under the California Labor Code. Mr. Barragan was an employee of HILMAR CHEESE COMPANY, INC. ("HCC").

The employer may be contacted directly at the addresses below:

HILMAR CHEESE COMPANY, INC.
8901 N LANDER AVE
HILMAR, CA 95324

HILMAR CHEESE COMPANY, INC.
PO BOX 910
HILMAR, CA 95324

Mr. Barragan 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. Barragan seeks relief on behalf of himself, the State of California, and other persons who are or were employed by HCC 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.

HCC employed Mr. Barragan as an hourly paid, non-exempt employee from approximately February 2022 to July 2024. Mr. Barragan worked for HCC as a Maintenance Technician at its manufacturing plant in Hilmar, California. During his employment, Mr. Barragan typically worked twelve (12) hours per day and two (2) or more days per week. By the end of his employment, Mr. Barragan was compensated approximately \$36.11 per hour. His job duties included, without limitation, repairing machinery to ensure smooth operation of the plant.

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

HCC’s Company-Wide and Uniform Payroll and HR Practices

HCC is a California corporation that manufactures cheese and whey protein and delivers its products to customers worldwide. Upon information and belief, HCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Hilmar, California, for all non-exempt, hourly paid employees working for HCC in California, including Mr. Barragan and other aggrieved employees. At all relevant times, HCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barragan and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“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.

HCC willfully failed to pay all overtime wages owed to Mr. Barragan and other aggrieved employees. During the relevant time period, Mr. Barragan 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.

¹ These facts, theories, and claims are based on Mr. Barragan’s experience and counsel’s review of those records currently available relating to Mr. Barragan’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. Barragan 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.

HCC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Barragan and other aggrieved employees to perform work off-the-clock before their scheduled shifts. For example, Mr. Barragan and other aggrieved employees were required to change into uniforms and don their personal protective equipment (“PPE”), such as steel-toed boots, hard hats, safety glasses, and ear plugs at HCC’s facility; however, HCC did not allow Mr. Barragan and other aggrieved employees to report the time spent donning their uniforms and PPE at the beginning of their shifts, which took approximately 15 minutes, despite being on HCC’s premises and under HCC’s control. As a result, Mr. Barragan and other aggrieved employees were required to spend time donning uniforms and PPE before clocking in for their shifts. As another example, HCC did not provide Mr. Barragan and other aggrieved employees with a sufficient number of timekeeping machines to clock in for their shifts, thus forcing Mr. Barragan and other aggrieved employees to wait in line off-the-clock and under HCC’s control, time for which they were not paid. Mr. Barragan and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line up to a minute to clock in, time for which they were not paid. Thus, HCC failed to track all hours Mr. Barragan and other aggrieved employees spent working before clocking in, and Mr. Barragan and other aggrieved employees received no compensation for this time.

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

Moreover, HCC did not pay Mr. Barragan and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, HCC paid Mr. Barragan and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HCC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Barragan and other aggrieved employees worked overtime and received these other forms of pay, HCC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, HCC paid Mr. Barragan and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barragan’s and other aggrieved employees’ wage statements as “Bonus Hourly.” During pay periods that Mr. Barragan and other aggrieved employees were paid overtime wages, HCC did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barragan’s and other aggrieved employees’ regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, HCC paid Mr. Barragan and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. HCC’s failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Barragan and other aggrieved employees on a company-wide basis.

HCC’s failure to pay Mr. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil

penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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. 1-2001 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, § 11010(2)(G) (defining "Hours Worked").

As set forth above, HCC maintained policies and/or practices requiring Mr. Barragan and other aggrieved employees to perform work off-the-clock prior to the start of their shifts, including waiting to clock in and donning uniforms and PPE. HCC failed to track all of this time Mr. Barragan and other aggrieved employees spent working off-the-clock, and thus, Mr. Barragan and other aggrieved employees received no compensation for this time.

Thus, HCC did not pay minimum wages for all hours worked by Mr. Barragan and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HCC 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, HCC regularly failed to pay at least minimum wages to Mr. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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 §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable 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 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.

Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L’Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

During the relevant time period, on information and belief, HCC had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, resulting in a failure to provide Mr. Barragan and other aggrieved employees with adequate meal period coverage. Because HCC did not employ or staff a sufficient number of employees to meet the plant’s production demand, there was no one available to relieve employees needing meal period coverage, and Mr. Barragan and other aggrieved employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, HCC, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Barragan and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Barragan and other aggrieved employees have 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. Barragan took his meal periods late, after having worked in excess of five (5) hours into his shift, due to lack of coverage and heavy workload.

Moreover, HCC did not provide Mr. Barragan and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Barragan worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Barragan 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. To the extent HCC required Mr. Barragan and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Barragan and other aggrieved employees and do not necessitate an “on-duty” meal period under California law.

Moreover, HCC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HCC 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. Furthermore, HCC’s “Meal Period Waiver – Shift Not More than Six Hours” requires employees to provide one day’s advanced written notice should they wish to revoke the waiver. HCC’s presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or 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 the waivers in advance in writing, discouraged and impeded Mr. Barragan 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 HCC require Mr. Barragan 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 HCC's obligation to provide Mr. Barragan and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, HCC knew or should have known that, as a result of these policies, Mr. Barragan and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. HCC further knew or should have known that HCC did not pay Mr. Barragan and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HCC 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. Barragan and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HCC did pay Mr. Barragan and other aggrieved employees premium pay for missed, late, and interrupted meal periods, HCC did not pay Mr. Barragan and other aggrieved employees at the correct rate of pay for premiums because HCC systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, as stated, HCC paid Mr. Barragan and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barragan's and other aggrieved employees' wage statements as "Bonus Hourly." During pay periods that Mr. Barragan and other aggrieved employees were paid premium pay for missed, late, and interrupted meal periods, HCC did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barragan's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, HCC paid Mr. Barragan and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay. As a result, HCC failed to provide Mr. Barragan and other aggrieved employees compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

Accordingly, HCC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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, HCC regularly failed to authorize and permit Mr. Barragan 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, HCC's company-wide policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Barragan and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HCC also failed to schedule rest periods, which, coupled with HCC's failure to provide adequate rest period coverage, further led to Mr. Barragan and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HCC maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Barragan and other aggrieved employees remain on the premises during their rest periods. Because Mr. Barragan and other aggrieved employees were restricted from leaving HCC's 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, HCC effectively maintained control over Mr. Barragan and other aggrieved employees during rest periods.

As a result of HCC's practices and policies, Mr. Barragan 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 rest periods to which they were entitled. For example, Mr. Barragan had to forgo majority of his rest periods due to the lack of coverage, heavy workload, and HCC's failure to schedule rest periods for employees.

HCC has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Barragan and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HCC did pay Mr. Barragan and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HCC did not pay Mr. Barragan and other aggrieved employees at the correct rate of pay for premium wages because HCC failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or

other forms of compensation, in the regular rate of pay. As a result, HCC denied Mr. Barragan and other aggrieved employees rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

Accordingly, HCC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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 §§ 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. HCC has not provided Mr. Barragan 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, HCC has knowingly and intentionally provided Mr. Barragan and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HCC issued uniform wage statements to Mr. Barragan and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, HCC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because HCC did not record the time Mr. Barragan and other aggrieved employees spent working off-the-clock clock, HCC did not list the correct amount of gross wages and net wages earned by Mr. Barragan and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HCC failed to accurately list the total number of hours worked by Mr. Barragan 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, because HCC did not calculate Mr. Barragan's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HCC failed to list the correct amount of net wages in violation of section 226(a)(5). HCC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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 and address 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), HCC willfully failed to maintain accurate payroll records for Mr. Barragan 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, HCC 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. Barragan and other aggrieved employees, in violation of section 1198. Also, in light of HCC’s failure to provide Mr. Barragan and other aggrieved employees with second 30-minute meal periods to which they were entitled, HCC kept no records of meal start and end times for second meal periods.

Because HCC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Barragan 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. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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, HCC failed to pay Mr. Barragan and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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.

HCC willfully failed to pay Mr. Barragan and other aggrieved employees who are no longer employed by HCC the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving HCC's employ.

Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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 § 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. 1-2001, 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.”

During the relevant time period, Mr. Barragan 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 HCC failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Barragan would use his personal cellular phone to take photos of broken machinery and send them to his supervisor to alert the supervisor regarding the parts that needed to be ordered for repairs. As a further example, Mr. Barragan used his personal cellular phone to communicate with HCC’s management regarding work-related issues and procedures. Although HCC required Mr. Barragan and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HCC failed to reimburse them for these costs.

HCC could have provided Mr. Barragan and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices. Or, HCC could have reimbursed employees for their mobile device usage. Instead, HCC passed these operating costs onto Mr. Barragan and other aggrieved employees.

Thus, HCC 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring HCC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 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.” HCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Barragan’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Barragan 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. Barragan, 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 HCC for violations of California Labor Code sections 201, 202, 204, 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. Barragan seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Ninel Kocharyan
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 "Ninel", written over a light gray rectangular background.

Ninel Kocharyan

Copy: HILMAR CHEESE COMPANY, INC. (via U.S. Certified Mail)

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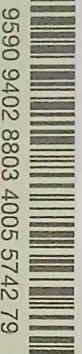
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