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August 5, 2024

VIA ONLINE SUBMISSION

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

Subject: *Javier Felix v. Staples Contract & Commercial LLC*

Dear PAGA Administrator:

This office represents Javier Felix in connection with his claims under the California Labor Code. Mr. Felix was an employee of STAPLES CONTRACT & COMMERCIAL LLC ("STAPLES").

The employer may be contacted directly at the address below:

STAPLES CONTRACT & COMMERCIAL LLC
500 STAPLES DRIVE
FRAMINGHAM, MA 01702

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

STAPLES employed Mr. Felix as an hourly paid, non-exempt Warehouse Lean Replenishment employee from approximately October 2022 to August 2023. During his employment, Mr. Felix typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment ended, Mr. Felix was compensated approximately $20.75 per hour. His primary job duties included, without limitation, cleaning and sanitizing the forklifts, preparing scanners, receiving order batches on the scanner, retrieving items from the warehouse to fulfill orders, loading items on pallets, and dropping off pallets in the designated area.

STAPLES has committed each of the following Labor Code violations against Mr. Felix, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):[1]

STAPLES's Company-Wide and Uniform Payroll and HR Practices

STAPLES CONTRACT & COMMERCIAL LLC is a Delaware limited liability company and is the business-to-business contract arm of office supply retailer Staples; it sells and delivers products and services directly to customers, ranging from small businesses and up to Fortune 500 corporations, with at least four (4) warehouse and fulfillment center locations in California. Upon information and belief, STAPLES maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Framingham, Massachusetts, for all non-exempt, hourly paid employees working for STAPLES in California, including Mr. Felix and other aggrieved employees. At all relevant times, STAPLES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Felix and other aggrieved employees, regardless of their location or position.

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

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

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

[1] These facts, theories, and claims are based on Mr. Felix's experience and counsel's review of those records currently available relating to Mr. Felix'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. Felix 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.

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.

During the relevant period, STAPLES had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. On information and belief, STAPLES's uniform practice of labor budgeting and understaffing its facilities while assigning heavy workloads, including pressuring employees to meet productivity expectations, resulting in a failure to provide Mr. Felix and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. For example, STAPLES's management implemented specific productivity goals, such as picking 120 items per hour, and Mr. Felix and other aggrieved employees were reprimanded in writing if they did not meet them. This practice, coupled with a company-wide policy and/or practice of failing to schedule meal periods, further caused Mr. Felix and other aggrieved employees to not be relieved of their duties for meal periods. Thus, Mr. Felix and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

Additionally, STAPLES had, and continues to have, a policy and/or practice of requiring that Mr. Felix and other aggrieved employees carry company-issued radios and respond to calls at all times. As a result, STAPLES's management contacted Mr. Felix and other aggrieved employees on the radios during unpaid meal periods to discuss work-related issues. STAPLES knew or should have known that Mr. Felix and other aggrieved employees were performing work during their meal periods in order to meet STAPLES's expectations.

As a result, Mr. Felix 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, STAPLES's management, either in-person or over the radio, would interrupt Mr. Felix's meal periods and ask that he return to work. As a further example, Mr. Felix took his meal periods late, after having worked in excess of five (5) hours into his shift.

Moreover, STAPLES did not provide Mr. Felix 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. Felix worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Felix and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties

Moreover, STAPLES had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. STAPLES took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, STAPLES's "Meal Period Waiver Agreement" form requires employees to provide advance written notice should they wish to revoke the waiver. STAPLES's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke waivers by providing advance written notice, discouraged and impeded Mr. Felix 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 STAPLES required Mr. Felix 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 STAPLES's obligation to provide Mr. Felix 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, STAPLES knew or should have known that, as a result of these policies, Mr. Felix and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. STAPLES further knew or should have known that STAPLES did not pay Mr. Felix and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, STAPLES 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. Felix and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that STAPLES did pay Mr. Felix and/or other aggrieved employees for missed, late, and interrupted meal periods, STAPLES did so at the incorrect rates. In addition to an hourly wage, STAPLES paid Mr. Felix and/or other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, STAPLES failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when Mr. Felix and/or other aggrieved employees received meal period premiums and these other forms of pay, STAPLES failed to pay full meal period premiums by paying a lower rate than required.

Accordingly, STAPLES failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, 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, STAPLES regularly failed to authorize and permit Mr. Felix 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, STAPLES's company-wide practices, including labor budgeting, understaffing, and assigning heavy workloads, including implementing productivity expectations, prevented Mr. Felix and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, STAPLES failed to schedule rest periods, which, coupled with STAPLES's failure to provide adequate rest period coverage, further led to Mr. Felix and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of STAPLES's practices and policies, Mr. Felix and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Felix had to forgo his rest periods or had his rest periods interrupted due to the heavy workload, productivity expectations, and lack of coverage.

STAPLES 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. Felix and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that STAPLES did pay Mr. Felix and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, STAPLES did not pay Mr. Felix and other aggrieved employees at the correct rate of pay for premiums because STAPLES failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, STAPLES failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant time period, STAPLES failed to provide Mr. Felix and other aggrieved employees with a sufficient number of timekeeping machines to clock in for their shifts, thus forcing Mr. Felix and other aggrieved employees to wait in line off-the-clock and under STAPLES's control, time for which they were not paid. For example, Mr. Felix and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to spend time waiting in a line to clock in, time for which they were not paid. As a result, Mr. Felix and other aggrieved employees were subject to STAPLES's control before their shifts but were not compensated for this time.

Second, as set forth above, STAPLES's company-wide policy and/or practice of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads (including productivity expectations and quotas), has resulted in a lack of meal period coverage and prevented Mr. Felix and other aggrieved employees from taking all uninterrupted 30-minute meal periods to which they were entitled. Moreover, as also stated, STAPLES had a practice of failing to schedule meal periods which further caused Mr. Felix and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Felix and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Moreover, as stated, STAPLES had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Felix and other aggrieved employees respond to requests on company-issued radios, including during meal periods. As a result, STAPLES's management contacted Mr. Felix and other aggrieved employees on the radios during meal periods to discuss work-related matters, time for which they were not paid.

STAPLES knew or should have known that as a result of these company-wide practices and/or policies, Mr. Felix and other aggrieved employees were performing their assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Felix and other aggrieved employees sometimes 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. Felix and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, STAPLES did not pay Mr. Felix and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. STAPLES failed to incorporate all compensation, including shift differential pay, 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. Felix and/or other aggrieved employees worked overtime and received these other forms of pay, STAPLES failed to pay all overtime wages by paying a lower overtime rate than required.

STAPLES's failure to pay Mr. Felix 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. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, 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 IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(H) (defining "Hours Worked").

As set forth above, STAPLES had a company-wide policy and/or practice of failing to compensate Mr. Felix and other aggrieved employees for their time spent waiting in line to clock in on a timekeeping machine before their scheduled shifts because STAPLES failed to track this time they remained under the control of STAPLES. As also stated, due to STAPLES's policies and/or practices of labor budgeting, resultant understaffing while assigning heavy workloads, including enforcing productivity expectations, and failing to schedule meal periods, Mr. Felix and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Thus, STAPLES systematically failed to pay Mr. Felix and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, STAPLES did not pay minimum wages for all hours worked by Mr. Felix and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, STAPLES 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, STAPLES regularly failed to pay at least minimum wages to Mr. Felix 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. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. STAPLES has not provided Mr. Felix 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, STAPLES has knowingly and intentionally provided Mr. Felix and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, STAPLES issued uniform wage statements to Mr. Felix 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, STAPLES violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because STAPLES did not record the time Mr. Felix and other aggrieved employees spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), STAPLES did not list the correct amount of gross wages and net wages earned by Mr. Felix and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, STAPLES failed to accurately list the total number of hours worked by Mr. Felix 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).

Second, because STAPLES did not calculate Mr. Felix's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, STAPLES did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, STAPLES failed to list the correct amount of net wages in violation of section 226(a)(5). STAPLES 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 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 the 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), STAPLES willfully failed to maintain accurate payroll records for Mr. Felix 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, STAPLES 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. Felix and other aggrieved employees, in violation of section 1198. Also, in light of STAPLES's failure to provide Mr. Felix and other aggrieved employees with second 30-minute meal periods to which they were entitled, STAPLES kept no records of meal start and end times for second meal periods.

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

Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, 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.

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

Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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

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

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

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

STAPLES had a company-wide practice of sending Mr. Felix and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Felix and other aggrieved employees for half of their scheduled shift. For example, STAPLES's managers sent Mr. Felix home before half of his scheduled shift was over, but on information and belief, Mr. Felix was only paid for the time he had worked. Although Mr. Felix and other aggrieved employees reported to work based on the schedule that was provided to them, STAPLES would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, STAPLES did not pay Mr. Felix and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>

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

First, during the relevant time period, STAPLES had a company-wide policy of requiring Mr. Felix and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but STAPLES failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Felix and other aggrieved employees were required to use their personal cellular phones to take photos of warehouse items that were misplaced or damaged and send them to STAPLES's management. Although STAPLES required Mr. Felix and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, STAPLES failed to reimburse them for these costs.

Second, during the relevant time period, STAPLES, on a company-wide basis, required Mr. Felix and other aggrieved employees to wear special safety shoes such as steel-toed boots, which they were required to wear while at work and were necessary for the completion of their work-related duties. However, STAPLES did not provide these safety shoes to employees. Instead, Mr. Felix and other aggrieved employees were required to purchase safety shoes such as steel-toed boots in order to perform their work duties, and were not reimbursed for this cost.

Third, during the relevant time period, STAPLES, on a company-wide basis, required that Mr. Felix and/or other aggrieved employees use their own personal vehicles to run company errands. For example, other aggrieved employees were required to use their personal vehicles to make deliveries for STAPLES. Although STAPLES required Mr. Felix and/or other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, STAPLES failed to fully reimburse them for their mileage or travel expenses.

STAPLES could have provided Mr. Felix and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, safety shoes, and/or company vehicles, or, STAPLES could have reimbursed employees for the costs of their mobile device usage, safety shoes, travel, and/or mileage. Instead, STAPLES passed these operating costs off onto Mr. Felix and other aggrieved employees. At all relevant times, Mr. Felix did not earn at least two (2) times the minimum wage.

Thus, STAPLES 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. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, STAPLES failed to provide Mr. Felix and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, STAPLES failed to provide Mr. Felix and other aggrieved employees with the minimum and overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that STAPLES provided to Mr. Felix is blank where the aforementioned wage information should be filled in. STAPLES's failure to provide Mr. Felix and other aggrieved employees with written notice of basic information regarding their employment with STAPLES is in violation of Labor Code section 2810.5.

Mr. Felix and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, 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." STAPLES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Felix's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Felix 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Felix, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against STAPLES 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, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Felix 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,

Ninel

Ninel Kocharyan

Copy: STAPLES CONTRACT & COMMERCIAL LLC (via U.S. Certified Mail)

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

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Felix v. Staples Contract

STAPLES CONTRACT & COMMERCIAL LLC
500 Staples Drive
Framingham, MA 01702

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7022 2410 0000 2264 9070

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CERTIFIED MAIL®
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STAPLES CONTRACT & COMMERCIAL LLC
500 Staples Drive
Framingham, MA 01702

SENDER: COMPLETE THIS SECTION
■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.

STAPLES CONTRACT & COMMERCIAL LLC
500 Staples Drive
Framingham, MA 01702

9590 9402 8803 4005 5747 36

2. Article Number (Transfer from service label)
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PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

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B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
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