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October 17, 2023

VIA ONLINE SUBMISSION

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

Subject: *Angel Mena v. Sonic.Net, LLC, et al.*

Dear PAGA Administrator:

This office represents Angel Mena in connection with his claims under the California Labor Code. Mr. Mena was an employee of SONIC.NET, LLC; SONIC.NET HOLDINGS, INC.; and/or SONIC TELECOM, LLC. For the purpose of this letter, Mr. Mena collectively refers to these entities as "SONIC."

The employers may be contacted directly at the addresses below:

SONIC.NET, LLC
2260 APOLLO WAY
SANTA ROSA, CA 95407

SONIC.NET HOLDINGS, INC.
2260 APOLLO WAY
SANTA ROSA, CA 95407

SONIC TELECOM, LLC
2260 APOLLO WAY
SANTA ROSA, CA 95407

Mr. Mena intends to seek civil penalties, attorney's 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. Mena seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SONIC 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.

SONIC employed Mr. Mena as an hourly paid, non-exempt Field Service Technician from approximately July 2021 to May 2023. During his employment, Mr. Mena typically worked eight (8) hours or more per day and five (5) days per week. At the time his employment ended, Mr. Mena was compensated approximately \$22.00 per hour. His primary job duties included, without

limitation, driving to customer appointments, communicating with customers regarding services, installing utility boxes, running fiber lines, and setting up internet and phone services.

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

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

SONIC.NET, LLC and SONIC.NET HOLDINGS, INC. are a Delaware limited liability company and corporation, respectively, while SONIC TELECOM, LLC is a California limited liability company. Together, they are the largest independently owned internet service provider in California bringing internet and phone service to businesses and homes. Upon information and belief, SONIC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Rosa, California, for all non-exempt, hourly paid employees working for SONIC in California, including Mr. Mena and other aggrieved employees. At all relevant times, SONIC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mena and other aggrieved employees, regardless of their location or position.

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

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

SONIC willfully failed to pay all overtime wages owed to Mr. Mena and other aggrieved employees. During the relevant time period, Mr. Mena 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, SONIC had, and continues to have, a company-wide policy and/or practice requiring Mr. Mena and other aggrieved employees to perform various work-related tasks while off-the-clock after their shifts and on their days off. For example, after his shifts and at least once a week, SONIC's management contacted Mr. Mena and requested that he submit job reports for the installations completed that day, which would take him 30-45 minutes each occurrence. SONIC's management specifically instructed Mr. Mena to complete this work off-the-clock. Additionally, SONIC required Mr. Mena to complete various training sessions throughout his employment. For example, Mr. Mena spent approximately three (3) hours reading training materials and answering questions pertaining to safety issues. Thus, SONIC failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Mena and other aggrieved employees received no compensation for this time.

Second, SONIC had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and strict productivity quotas, resulting in a failure to provide Mr. Mena and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Mena and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. SONIC also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads and productivity quotas, further caused Mr. Mena and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Mena's meal periods were frequently interrupted by SONIC's dispatch contacting him regarding the status of installations and to request that he start driving to the next appointment. SONIC did not compensate Mr. Mena and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Furthermore, on information and belief, because SONIC frowned upon employees accruing meal period penalties, SONIC's management pressured employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to limit the meal penalties that SONIC would otherwise owe. Thus, SONIC did not record all hours worked during meal periods, and Mr. Mena and other aggrieved employees performed work during meal periods for which they were not paid.

Moreover, SONIC's timekeeping system prevented Mr. Mena and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mena and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, SONIC's timekeeping system further prevented Mr. Mena and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

SONIC knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Mena and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mena and other aggrieved employees worked shifts of eight

(8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Mena and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SONIC did not pay Mr. Mena and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SONIC paid Mr. Mena and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SONIC 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. Mena and other aggrieved employees worked overtime and received these other forms of pay, SONIC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, SONIC paid Mr. Mena and other aggrieved employees nondiscretionary bonuses. On information and belief, these nondiscretionary bonuses were listed on Mr. Mena's and other aggrieved employees' wage statements as "Company Bonus" and "Install Bonus." During pay periods that Mr. Mena and other aggrieved employees were paid overtime wages, SONIC did not incorporate the bonus pay into Mr. Mena'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, SONIC paid Mr. Mena and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. SONIC'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. Mena and other aggrieved employees on a company-wide basis.

SONIC's failure to pay Mr. Mena 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. Mena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. 4-2001 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, § 11040(2)(K) (defining "Hours Worked").

As set forth above, during the relevant time period, SONIC had a company-wide policy and/or practice requiring Mr. Mena and other aggrieved employees to perform work-related tasks while off-the-clock after their shifts and on their days off, including preparing and submitting job reports and completing training sessions. SONIC failed to track this time Mr. Mena and other aggrieved employees spent working off-the-clock, and Mr. Mena and other aggrieved employees received no compensation for this time.

Further, as also stated above, due to SONIC's policies and/or practices of understaffing its locations while assigning heavy workloads and strict productivity quotas, and failing to schedule meal periods, Mr. Mena 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. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, SONIC's management pressured employees to record compliant meal periods, upon threat of discipline, when meal periods were missed, short, and/or interrupted to reflect compliant meal periods. Moreover, as stated, SONIC's timekeeping system prevented Mr. Mena and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Mena and other aggrieved employees for a full 30 minutes. Thus, SONIC systematically failed to pay Mr. Mena and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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).

First, as stated, during the relevant time period, SONIC had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads and strict productivity quotas, which resulted in a lack of meal period coverage and prevented Mr. Mena and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as also stated, SONIC had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Mena and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Mena 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, about twice per week, Mr. Mena took his meal periods late, after having worked in excess of five (5) hours into his shift, in order to complete his assigned duties. Moreover, as stated, Mr. Mena's meal periods were occasionally cut short and/or interrupted by SONIC's dispatch requesting the status of installations or that he start driving to the next appointment.

Second, as set forth above, on information and belief, because SONIC frowned upon employees accruing meal period penalties, SONIC's management pressured Mr. Mena and other aggrieved employees to clock out for meal periods, upon threat of discipline, to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by SONIC. For example, Mr. Mena was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Third, as stated, SONIC's company-wide timekeeping system prevented Mr. Mena and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Mena and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Mena had his meal periods interrupted or cut short to answer calls from dispatch or start driving to the next appointment, in order to keep up with customer demand and handle the heavy workload, but was unable to record that his meal period was shortened.

Fourth, SONIC did not provide Mr. Mena and/or other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Mena 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, SONIC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SONIC took the position that non-exempt, hourly paid employees had waived their rights to 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, SONIC's "Meal Period Waiver" form requires employees to provide advanced written notice should they wish to revoke the waiver. SONIC's presumption that meal periods would not be provided 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 writing, discouraged and impeded Mr. Mena and/or 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 SONIC requires Mr. Mena and/or 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 SONIC's obligation to provide Mr. Mena and/or other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Additionally, SONIC's meal period waiver is unlawful insofar as it fails to correctly inform employees of the requirements for waiving second meal periods. Under California law, the second meal period may be waived only if the first meal period was not waived. However, SONIC's "Meal Period Waiver" form states in relevant part: "I am aware that I may waive one meal break in any day where I work ten or more hours, and that I may waive only one of the meal breaks My employer has asked, and I have agreed, that I waive one meal break in any day where I am entitled to two meal breaks." Notably absent from SONIC's written policy is any mention that the second meal period may be waived only if the first meal period was not waived, rendering the policy facially invalid.

Finally, SONIC has implemented a company-wide written policy that treats noncompliant meal periods as "on-duty" meal periods instead of paying meal period premiums. For example, SONIC's "On-Duty Meal Break Agreement" provides, in relevant part:

I understand that there are times when I am prevented from taking a 30-minute meal break before the end of the fifth hour, due to situations such as: workload, customer location, nature of the service call, number of calls, duration of the call, weather, roadway conditions, traffic conditions, and time and day of the week. In these cases, I agree that my meal break will be considered an "on-duty" meal break.

However, under California law, "on-duty" meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 4-2001, subdivision 11(A) provides that an "on duty" meal period "shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

SONIC's "on-duty" meal period policy results from the company's own staffing and business decisions, not because the nature of the work required on-duty meal periods. The work of SONIC's employees is not of the kind that could be said to meet the "nature of the work" exception. Mr. Mena and other aggrieved employees were responsible for traveling to customer appointments and setting

up internet and phone services. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Furthermore, SONIC did not provide Mr. Mena and other aggrieved employees with a written “on duty” meal period agreement that stated that the employee could revoke the agreement in writing at any time. Instead, SONIC’s “On-Duty Meal Break Agreement” states that the agreement may be revoked “at any time **by providing at least one day’s advance notice in writing.**” (Emphasis added.) Therefore, SONIC’s use of an “on-duty” meal period agreement is improper and unlawful. Because of SONIC’s company-wide “on-duty” meal period policy, Mr. Mena and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

To the extent that SONIC’s “On-Duty Meal Break Agreement” functioned as a blanket meal period waiver, it is unlawful insofar as it fails to state the timing of when meal periods must occur. Under California law, first meal periods must start after no more than five hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, SONIC’s “on duty” meal period agreement states, in part: “This meal break will occur no later than 5 hours and 59 minutes into my work shift, unless I work six hours in the day. If my shift ends by the end of the sixth hour, I may waive this meal break.” SONIC’s written policy fails to state the correct timing of when the first meal period must take place (i.e., within the first five (5) hours of work) under California law and is therefore facially invalid.

At all times herein mentioned, SONIC knew or should have known that, as a result of these policies, Mr. Mena and other aggrieved employees were prevented from being relieved of all duties and were required to perform some of their assigned duties during meal periods. SONIC further knew or should have known that it did not pay Mr. Mena and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, SONIC 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. Mena and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that SONIC did pay Mr. Mena and other aggrieved employees for missed, late, and interrupted meal periods, SONIC did not pay Mr. Mena and other aggrieved employees at the correct rate of pay for premiums because SONIC 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. Therefore, during times when Mr. Mena and other aggrieved employees received meal period premiums and these other forms of pay, SONIC failed to pay full meal period premiums by paying a lower rate than required. Specifically, SONIC paid Mr. Mena and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, SONIC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mena and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, SONIC regularly failed to authorize and permit Mr. Mena 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, SONIC's company-wide practices, including understaffing while assigning heavy workloads and strict productivity quotas, prevented Mr. Mena and other aggrieved employees from being relieved of all duty to take rest periods. SONIC also failed to schedule rest periods, which further led to Mr. Mena and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, upon information and belief, SONIC maintained a company-wide on-premises rest period policy, which effectively required that Mr. Mena and/or other aggrieved employees remain on SONIC's premises during their rest periods. Because Mr. Mena and/or 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, SONIC effectively maintained control over Mr. Mena and/or other aggrieved employees during rest periods.

As a result of SONIC's practices and policies, Mr. Mena 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, Mr. Mena had to forego his rest periods altogether, due to SONIC's policy of assigning heavy workloads, strict productivity quotas, and management's expectation that all employees would work through their rest periods.

SONIC also has 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. Mena and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SONIC did pay Mr. Mena and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SONIC did not pay Mr. Mena and other aggrieved employees at the correct rate of pay for premiums because

SONIC 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.

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

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. SONIC has not provided Mr. Mena 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, SONIC has knowingly and intentionally provided Mr. Mena and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SONIC issued uniform wage statements to Mr. Mena 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, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, SONIC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SONIC did not record the time Mr. Mena 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), SONIC did not list the correct amount of gross wages and net wages earned by Mr. Mena and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SONIC failed to accurately list the total number of hours worked by Mr. Mena 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).

Additionally, because SONIC did not calculate Mr. Mena's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, SONIC did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). SONIC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, 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” At all relevant times, and in violation of Labor Code section 1174(d), SONIC willfully failed to maintain accurate payroll records for Mr. Mena 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, SONIC engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and end times for Mr. Mena and other aggrieved employees, in violation of section 1198. Also, in light of SONIC’s failure to provide Mr. Mena and/or other aggrieved employees with second 30-minute meal periods to which they were entitled, SONIC kept no records of meal start and end times for second meal periods.

Because SONIC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mena 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. Mena 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. Mena and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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, SONIC willfully failed to pay Mr. Mena and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Mr. Mena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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.

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

Mr. Mena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(b)(3)(A) provides that each hour

of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

During the relevant time period, SONIC did not pay Mr. Mena and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, SONIC paid Mr. Mena and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SONIC 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 sick leave rate. Therefore, during times when Mr. Mena and other aggrieved employees took sick leave and received these other forms of pay, SONIC failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, SONIC paid Mr. Mena and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

SONIC’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Mena and other aggrieved employees on a company-wide basis, in violation of Labor Code sections 246(l) and 248.6(b)(3)(A).

Mr. Mena and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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. 4-2001, 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.”

During the relevant time period, SONIC, on a company-wide basis, required Mr. Mena and other aggrieved employees to report to work in clean and presentable uniforms bearing the company logo, including uniform t-shirts and jackets. Due to the nature of the installation work, Mr. Mena’s and other aggrieved employees’ uniform t-shirts and jackets would attract and acquire very small fiber glass particles, dust, and dirt over the course of their shifts. As a result, Mr. Mena and other aggrieved employees were forced to wash their uniform t-shirts and jackets separately from any other clothing items to prevent glass particles from getting into their regular clothes during a wash, thus incurring additional utility and laundry expenses. Thus, SONIC failed to maintain the uniforms they required Mr. Mena and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

SONIC could have provided Mr. Mena and other aggrieved employees with access to laundering services. Or, SONIC could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, SONIC passed these operating costs off onto Mr. Mena and other aggrieved employees.

Thus, SONIC 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. Mena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.

SONIC failed to provide Mr. Mena and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SONIC's failure to provide Mr. Mena and other aggrieved employees with written notice of basic information regarding their employment with SONIC is in violation of Labor Code section 2810.5.

Mr. Mena and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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." SONIC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mena's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mena 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. Mena, 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 SONIC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 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. Mena seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Mena's reasonable attempt to settle his dispute with SONIC prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SONIC of Mr. Mena's aforementioned grievances and the proposed remedies as detailed below, while affording SONIC a reasonable opportunity to satisfy Mr. Mena's demands.

Demand is hereby made that SONIC shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SONIC shall pay Mr. Mena and all other aggrieved employees employed by SONIC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SONIC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. SONIC shall conduct a survey or interview all current and former aggrieved employees in California who worked for SONIC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SONIC shall pay Mr. Mena and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SONIC also shall pay Mr. Mena and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SONIC shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and 248.6(b)(3)(A).

6. SONIC shall reimburse Mr. Mena and all aggrieved employees who were required to pay for any business expenses incurred for SONIC's benefit, including, but not limited to, costs of maintenance, as required by Labor Code section 2802.
7. SONIC shall pay accrued legal interest to Mr. Mena and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. SONIC shall provide Mr. Mena and all aggrieved employees employed by SONIC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. SONIC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. SONIC shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. SONIC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 4-2001, section 20.

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 Kocharyan

Copy: SONIC.NET, LLC (via U.S. Certified Mail), SONIC.NET HOLDINGS, INC. (via U.S. Certified Mail), SONIC TELECOM, LLC (via U.S. Certified Mail)

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



7022 2410 0000 2264 6611

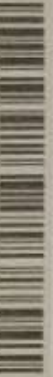
SONIC.NET, LLC
2260 APOLLO WAY
SANTA ROSA, CA 95407

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

SONIC.NET, LLC
2260 APOLLO WAY
SANTA ROSA, CA 95407

9590 9402 7690 2122 7206 93



2. Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

□ Agent

□ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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Certified Mail Fee

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Signature Required (Signature of Agent)
Certified Mail Restricted Delivery

SONIC.NET, LLC
2260 APOLLO WAY
SANTA ROSA, CA 95407

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

7022 2410 0000 2264 6628



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Signature Confirmation[™] (Required for Certified Mail)
Return Receipt (hardcopy) \$ _____
Return Receipt (electronic) \$ _____

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SONIC.NET HOLDINGS, INC.
2260 APOLLO WAY
SANTA ROSA, CA 95407

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

SONIC.NET HOLDINGS, INC.
2260 APOLLO WAY
SANTA ROSA, CA 95407

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressed

Received by (Printed Name)

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Signature Confirmation[™]
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- ☐ Signature Confirmation[™]
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Domestic Return Receipt

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



7022 2410 0000 2264 6604

SONIC TELECOM, LLC
 2260 APOLLO WAY
 SANTA ROSA, CA 95407

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.

SONIC TELECOM, LLC
 2260 APOLLO WAY
 SANTA ROSA, CA 95407



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2. Article Number (Transfer from service label)

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B. Received by (Printed Name)

- ☐ Agent
- ☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

4. Service Type

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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MEAN V.
 SONIC, LLC

SONIC TELECOM, LLC
 2260 APOLLO WAY
 SANTA ROSA, CA 95407

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PS Form 3800, April 2013 PSN 7530-02-000-9047