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Via Certified Mail

Methodology, Inc.
1130 Burnett Avenue, Suite K
Concord, CA 94520

James Lee
17531 South Central Ave, Suite A-819
Carson, CA 90746

James Lee
14742 Beach Blvd, Unit 402
La Mirada, CA 90638

Subject: *Cameron Brannon v. Methodology, Inc. and James Lee*

Dear Representative:

This office represents Cameron Matthew Brannon (“Plaintiff”) in connection with Labor Code violation claims related to their employment with Methodology, Inc. (“Employer”). Employer can be contacted at:

Methodology, Inc.
1130 Burnett Avenue, Suite K
Concord, CA 94520

James Lee
17531 South Central Ave, Suite A-819
Carson, CA 90746

James Lee
14742 Beach Blvd, Unit 402
La Mirada, CA 90638

Plaintiff has personally suffered each of the Labor Code violations alleged in this letter while employed by Employer within the applicable one-year statute of limitations period. As such, Plaintiff intends to seek PAGA penalties on behalf of themselves and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period (together with Plaintiff, “Aggrieved Employees”). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

In response to Labor Code violations alleged below, PAGA provides Employer with specific options to mitigate potential penalties:

Taking All Reasonable Steps to Be in Compliance:

Employer can reduce potential penalties to 15% of the maximum by demonstrating it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice prior to receiving it. If Employer believes it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to contact our office to set forth all reasonable steps taken.

If all reasonable steps are taken to be in compliance with all Labor Code provisions identified in this notice within 60 days after receiving it, penalties may be reduced to 30% of the maximum. If Employer intends to take all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to engage in good faith meet-and-confer discussions with our office regarding the alleged violations. Failure to do so may support a finding that all reasonable steps were not taken to comply with the Labor Code provisions identified herein.

Curing Violations:

For certain violations, Employer has the opportunity to fully cure the alleged violations to further reduce penalties or even avoid penalties altogether. Once again, we strongly encourage Employer to promptly initiate meet-and-confer discussions with our office as part of any compliance or cure efforts. Failure to do so may result in a cure that is insufficient.

Employer must notify both our office and the Labor and Workforce Development Agency (LWDA) of any steps taken towards compliance or any attempts to cure. Not only does this approach demonstrate a good faith attempt to come into compliance, but failure to do so could potentially support a finding that Employer's conduct was malicious, fraudulent, or oppressive, thereby leading to increased penalties pursuant to Labor Code section 2699(f)(2)(B).

All communications regarding this matter should be directed to:

Frontier Law Center
23901 Calabasas Road, Suite 1084
Calabasas, CA 91302

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

Willful Misclassification

The employer has engaged in the willful misclassification of employees as exempt in violation of California Labor Code § 226.8. If a Court determines that a person or employer has

willfully misclassified an employee as an independent contractor, the employer shall be subject to a civil penalty not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law.

The misclassification is demonstrably willful as evidenced by multiple clear violations of California's requirements under § 226.8. Specifically, the Employer's piece rate of \$5.50 per package falls substantially below minimum and overtime wage standards. Second, the Aggrieved Employees' job duties are plainly those of traditional employees, rather than independent contractors. The Aggrieved Employees were subject to Employer's control over their work performance, Employer engaged in app-based supervision of the Aggrieved Employees, the Aggrieved Employees were subject to reporting requirements, and many Aggrieved Employees engaged in exclusive working relationships with Employer. Therefore, Employer misclassified the Aggrieved Employees as independent contractors in violation of Labor Code section 226.8

Minimum Wage Violations

Labor Code section 1197 and the applicable Wage Order requires an employer to pay an employee no less than the minimum wage for all hours worked.

Employer failed to pay the Aggrieved Employees the minimum wage for all hours worked because the Aggrieved Employees were required to perform work while off the clock. Specifically, Aggrieved Employees were paid piece rate rather than by the hour, without the Employer ensuring they received minimum wage for all hours worked. Aggrieved Employees were further not compensated during downtime or while performing tasks that were not related to deliveries, such as answering calls and texts, loading and unloading, packing orders, and other non-delivery tasks.

Civil Penalties Applicable to Minimum Wage Violations

As a result of the above minimum wage violations, Employer is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699.

Unpaid Non-Productive Time

Labor Code section 226.2(a)(1) provides that employees compensated on a piece-rate or commission only basis shall be compensated for rest and recovery periods and other nonproductive time separate from other earnings. Under subparagraph (3), this compensation should be at the regular hourly rate that is determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

Here, the Aggrieved Employees were required to perform work such as answering calls and texts, loading and unloading, packing orders, and other non-delivery tasks. This work should have been separately compensated for on an hourly basis.

As a result of Employer's failure to pay all non-productive time to its commission or piece-rate only employees, it is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699

Failure to List Non-Productive Time on Wage Statements

Employees paid on a piece-rate or commission only basis must be provided with wage statements which separately state the total hours of compensable rest and recovery periods and the total hours of other nonproductive time. (Labor Code section 226.2(a)(2)). Employer failed to accurately list this information on the Aggrieved Employees' wage statements in violation of Labor Code section 226, and is thus subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Overtime Violations

Labor Code section 510 and the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

The Aggrieved Employees regularly worked in excess of eight hours in a day and 40 hours in a workweek. Since the Aggrieved Employees were required to perform work off the clock, it follows that this time was often overtime. Thus, the Aggrieved Employees were not paid all overtime wages owed.

Overtime must further be paid based off an employee's regular rate of pay. Here, Employer failed to incorporate all remunerations, including shift differentials / incentive pay / non-discretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the Aggrieved Employees overtime rates.

Specifically, the Aggrieved Employees received piece-rate pay, however, this was not correctly calculated into a regular rate for the purposes of calculating their overtime rate of pay. Further, these shift differentials / incentive pay / non-discretionary bonuses were not included in the Aggrieved Employees regular rate of pay for purposes of calculating their overtime rate of pay. This resulted in the underpayment of overtime to the Aggrieved Employees..

Civil Penalties Applicable to Overtime Violations

As a result of the above overtime violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the

employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

The Aggrieved Employees' meal breaks were regularly late, missed or interrupted. Further, the Aggrieved Employees did not receive a second meal break for 12-hour shifts.

An employer provides compliant meal breaks to its employees "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees were frequently required to remain on call, on duty, and on premises during breaks.

Premium pay for missed meal breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees received shift differentials / incentive pay / non-discretionary bonuses, however, this pay was not included in the calculation of premium pay paid for missed meal breaks.

Not only must an employer affirmatively relieve its employees of all duty during their meal breaks, it also must not "impede or discourage" its employees from taking compliant meal breaks. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, Employer impeded or discouraged its employees from taking compliant meal breaks because Employees were required and/or encouraged to continue working in order to meet business needs, and were discouraged from taking breaks during busy hours. Employees were further not instructed to clock in and out for meal periods, meaning Employer had no time tracking system in place to ensure lawfully required meal breaks were taken.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

The Aggrieved Employees' rest breaks were regularly missed or short because Employees were required and/or encouraged to continue working in order to meet business needs, and were discouraged from taking breaks during busy hours.

Premium pay for missed rest breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees received shift differentials / incentive pay / non-discretionary bonuses, however, this pay was not included in the calculation of premium pay paid for missed rest breaks.

The Aggrieved Employees were required to remain on call and generally on duty during their rest breaks. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer cannot "satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call")). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to remain on call and on duty during their rest breaks.

An employer generally may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the California Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises during their rest breaks, they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

Here, the Aggrieved Employees incurred out of pocket expenses in connection with their employment, but these expenses were not reimbursed by Employer. Specifically, Employees were required to use their own personal vehicles for deliveries but had to pay for all gas and fuel expenses from their own pockets. The Aggrieved Employees were further required to pay for all car repairs, including regular wear and tear, from their own pockets. Aggrieved Employees were further required to use their personal cell phone for work purposes, including messaging with clients through the company’s App, without compensation for this use.

Civil Penalties Applicable to Work Expense Violations

As a result of Employer’s failure to reimburse all work-related expenses, Employer is subject to the civil penalties listed in Labor Code section 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned / total hours worked / the number of piece-rate units earned and any applicable piece rate / all deductions / the inclusive dates of the period for which the employee is paid / the name of the employee and only the last four digits of his or her social security number or an employee identification number / the name and address of the legal entity that is the employer / all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee’s resignation. When an employer fails to comply with the above, the employee is

entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203). Employer failed to pay all wages owed at the conclusion of the Aggrieved Employees' employment.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Rebecca Harteker