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April 18, 2023

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Apex Systems, LLC
4400 Cox Rd Suite 200
Glen Allen, VA 23060

Apex Systems, LLC
26745 Malibu Hills RD
Calabasas, CA 91301

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **LATASIA BURROUGHS** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

APEX SYSTEMS, LLC

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of customer service representative from about November 2021 to February 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and the aggrieved employees are hourly workers who tracked their time using Defendant’s time tracking system online. Plaintiff and the aggrieved employees often experienced technical difficulties that kicked them out of Defendant’s time tracking system. These difficulties were not the result of bad internet connection, but because of Defendant’s system issues. This occurred often and Plaintiff and the aggrieved employees were not paid for this time even though they were still required to keep working.

Plaintiff was paid an hourly wage of \$15.87. California’s minimum wage starting in January 2023 is \$15.50. Any unpaid off the clock work performed by Plaintiff at this pay rate will result in a minimum wage violation.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unlawful Wage Deductions
Violation of Labor Code §§ 221 through 225

Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment. Labor Code section 223 states “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees were paid a “PPA” pay at \$15.87 an hour. This was explained to Plaintiff and the aggrieved employees as “pre-payment of hourly wages from the contracted party” which then will be confirmed with the contracted party. Should the contracted party confirm less hours than what was reported then the difference is deducted from Plaintiff and the aggrieved employee’s next pay period. However, Plaintiff and the aggrieved class members were never given any proof of what the contracted party confirmed or how the contracted party tracked Plaintiff and the aggrieved employee’s hours worked. Defendant refused to provide any type of physical or written support for these deductions.

[REDACTED]hs		Employee ID:	12671638
		Department:	CONT-CE
		Location:	Delivery
		Job Title:	Customer Service Representativ
		Pay Rate:	\$0.000000 Hourly

HOURS AND EARNINGS							
Description	Pay Period		Rate	Current		YTD	
	Begin Date	End Date		Hours	Earnings	Hours	Earnings
Fringe Ben	2023-01-15	2023-01-21	1.000000	133.84	133.84	641.44	641.44
Holiday	2023-01-15	2023-01-21	15.870000	8.00	126.96	24.00	380.88
Regular	2023-01-15	2023-01-21	15.870000	23.64	375.17	125.28	1,988.19
Regular	2023-01-08	2023-01-14	15.870000	7.00	111.09		0.00
PPA	2023-01-08	2023-01-14	15.870000	-7.02	-111.41		0.00
Misc Earn					0.00		15.00
Overtime					0.00	0.34	8.08
Pd Sick NB					0.00	2.32	36.82
PPA OT					0.00		0.00

Extract from Plaintiff’s wage statement dated January 27, 2023 for the pay period
from January 15, 2023 to January 21, 2023.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 225.5 (\$100/\$200), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As stated above, Plaintiff and the aggrieved employees were often kicked out of Defendant’s online time keeping system. When this occurred, Plaintiff and the aggrieved employees were not paid for those hours worked. Defendant informed Plaintiff and the aggrieved employees that they will only be paid for the hours logged on the system regardless of whether there was a technical difficulty. Plaintiff and the aggrieved employees were further informed that if they wanted their full shift’s pay then they would have to make up those hours.

Additionally, any overtime that was paid was not paid calculated using the “regular rate of pay” as any bonuses, commissions, and supplemental income were not factored into such calculations. Plaintiff and the aggrieved employees regularly received a taxable “fringe ben” that was not factored into Plaintiff and aggrieved employees’ overtime pay. This violation is evidence on Plaintiff’s wage statement.

	Employee ID: 12671638
	Department: CONT-CE
	Location: Delivery
	Job Title: Customer Service Representative
	Pay Rate: \$0.000000 Hourly

HOURS AND EARNINGS							
Description	Pay Period		Rate	Current		YTD	
	Begin Date	End Date		Hours	Earnings	Hours	Earnings
Fringe Ben	2022-11-27	2022-12-03	1.000000	169.20	169.20	1,141.56	1,073.88
OT 2x	2022-11-27	2022-12-03	31.740000	0.05	1.59	1.05	46.23
Overtime	2022-11-27	2022-12-03	23.805000	7.59	180.68	266.62	8,759.75
Regular	2022-11-27	2022-12-03	15.870000	39.96	634.17	1,392.18	29,568.35
PPA OT	2022-11-27	2022-12-03	23.805000	0.13	3.09	0.13	3.09
PPA	2022-11-27	2022-12-03	15.870000	8.00	126.96	16.00	253.92
Holiday					0.00	16.00	253.92
Misc Earn					0.00		120.00
Client Trn					0.00	1.25	21.25
PTO NB					0.00	80.00	1,785.60
Pd Sick NB					0.00	23.15	516.70

Extract from Plaintiff's wage statement dated December 09, 2022 for the pay period from November 27, 2022 to December 02, 2022

Because Defendants excluded the fringe benefit and other forms of non-excludable remuneration from the regular rate of pay, Defendants underpaid employee overtime to Plaintiff and the other aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the

workweek;” (2) “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;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants failed to properly calculate Plaintiff and the aggrieved employees’ sick pay using the “regular rate of pay,” as commissions, bonuses, and other supplemental income was not factored into such pay. Plaintiff and the aggrieved employees regularly received a “fringe ben” that was not factored into Plaintiff and aggrieved employees’ overtime pay, among other forms of remuneration. This violation is evidence on Plaintiff’s wage statement.

Latasia Sheron Burroughs [REDACTED]		Employee ID:	12671638
		Department:	CONT-CE
		Location:	Delivery
		Job Title:	Customer Service Representativ
		Pay Rate:	\$0.000000 Hourly

HOURS AND EARNINGS							
Description	Pay Period		Rate	Current		YTD	
	Begin Date	End Date		Hours	Earnings	Hours	Earnings
Fringe Ben	2023-01-22	2023-01-28	1.000000	122.50	122.50	763.94	763.94
Regular	2023-01-22	2023-01-28	15.870000	17.25	273.76	142.53	2,261.95
Pd Sick NB	2023-01-22	2023-01-28	15.870000	3.71	58.88	6.03	95.70
PPA	2023-01-22	2023-01-28	15.870000	8.00	126.96	8.00	126.96
Holiday					0.00	24.00	380.88
Misc Earn					0.00		15.00
Overtime					0.00	0.34	8.08
PPA OT					0.00		0.00

Extract from Plaintiff’s wage statement dated February 03, 2023 for the pay period from January 22, 2023 to January 28, 2023.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and aggrieved employees often experienced a late, interrupted, or shortened meal period due to the nature of the job. If Plaintiff was assisting a customer, she cannot simply hang up the call or ask the customer to be put on hold to take her meal period. Defendants failed to pay Plaintiff and the aggrieved employees for any meal period violations.

To the extent that any premiums were paid, they were underpaid as Defendant failed to factor in bonuses, commissions, and other supplemental income into such calculations for the reasons set forth in the above section, as Defendant maintained an unlawful payroll policy and practice of undercalculating the regular rate for purposes of such wages and premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

As explained above, Plaintiff and the aggrieved employees were not able to take a rest period free from job duties for the same reasons they were not able to take meal period. Plaintiff and the aggrieved employees were also not paid a premium pay for any rest period violations.

To the extent that any premiums were paid, they were underpaid as Defendant failed to factor in bonuses, commissions, and other supplemental income into such calculations for the reasons set forth in the above section, as Defendant maintained an unlawful payroll policy and practice of undercalculating the regular rate for purposes of such wages and premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As explained above, Defendant underpaid Plaintiff and aggrieved employee’s regular, overtime, and premium pay, including at the lawful regular rate of compensation/pay. Defendant is separately liable for not paying the full amount owed to Plaintiff and the aggrieved employee’ each payday in violation of Labor Code section 204 and/or 204b.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or

an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Additionally, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Plaintiff and aggrieved employees’ wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay” with respect to overtime, meal/rest period premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and reflected as such on Plaintiff’s wage statements. Additionally, the same violation occurred with respect to off-the-clock hours worked.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and the aggrieved employees were required to use their own Wi-Fi and cell phone for work related purposes, which were not reimbursed.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Provide Employee Records **Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders**

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff's request. Defendants failed to provide the timesheets to ascertain Plaintiff and aggrieved employees' PPA hours.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "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." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved

employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia Jiang Yu".

Julia Jiang Yu

Cc Plaintiff Latasia Burroughs