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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANA GARCIA, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

STG INTERNATIONAL, INC., a
Virginia Corporation,

Defendant.

Case No. 20-CV-1701-AJB-LL

CLASS ACTION

**SECOND AMENDED CLASS AND
COLLECTIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Owed (Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*)
2. Failure to Pay All Wages Owed (Lab. Code §§ 1194 and 1194.2)
3. Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1194)
4. Failure to Timely Pay Wages at Separation (Lab. Code §§ 201-203)
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 226(a) and (b))
6. Failure to Permit Meal Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)
7. Failure to Permit Rest Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)

8. Violation of Unfair Business Practices Act (Bus. & Prof. Code §§ 17200-17208)
9. Civil Penalties for Failure to Pay All Regular and Minimum Wages (PAGA)
10. Civil Penalties for Failure to Pay All Overtime Wages (PAGA)
11. Civil Penalties for Meal Period Violations (PAGA)
12. Civil Penalties for Rest Period Violations (PAGA)
13. Civil Penalties for Untimely Payment of Wages (PAGA)
14. Civil Penalties for Wage Statement Violations (PAGA)
15. Civil Penalties for Failure to Timely Pay All Wages Upon Separation of Employment (PAGA)
16. Civil Penalties for Recordkeeping Violations (PAGA)

Action Filed: August 31, 2020
Trial Date: Not Set

1 Plaintiff ANA GARCIA (“Plaintiff”), on behalf of herself, and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class, PAGA, and collective action against Defendant STG
5 INTERNATIONAL, INC (collectively “Defendant” or “STG”).

6 2. Plaintiff brings this action on behalf of herself and all other non-
7 exempt employees of Defendant who (1) worked in California (“California Class
8 Members”) at any time during the four years preceding the filing of this action
9 (“California Class Period”), limited to those employees who worked in ICE
10 Detention Centers for Defendant, and (2) worked in the United States other than
11 the State of California (the “FLSA Collective”), at any time in the three years
12 preceding the filing of this action (“FLSA Collective Period”), limited to those
13 who worked in ICE Detention Centers for Defendant.

14 3. During the California Class Period and FLSA Collective Period,
15 Defendant had a consistent payroll administration practice whereby Defendant did
16 not accurately calculate the “regular rate of pay” for non-exempt employees
17 because Defendant failed to include all remuneration earned—including bonuses,
18 cash health and welfare benefits, shift differentials, among other sums—in the
19 lawful overtime hourly rate in violation of California and federal wage and hour
20 laws.

21 4. Defendant also failed to provide meal and rest periods (or pay the
22 applicable premiums) and failed to provide notice of paid sick leave to the
23 California Class.

24 5. These issues are apparent based on the face of records STG maintains
25 and is required to maintain, including wage statements and time records, and are
26 amenable for adjudication on a class and collective action bases on the claims set
27 forth in this Complaint.
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1 6. Plaintiff includes in this amended complaint causes of action for civil
2 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA,”
3 California Labor Code § 2689 *et seq.*) on behalf of herself, the aggrieved
4 employees, and the State of California as a private attorney general.

5 **JURISDICTION AND VENUE**

6 7. This Court has original federal question jurisdiction under 28 U.S.C.
7 § 1331 because this case is brought under the Fair Labor Standards Act (“FLSA”),
8 29 U.S.C. §§ 201, *et seq.* Diversity subject matter jurisdiction exists pursuant 28
9 U.S.C. § 1332(d)(2) as amended by the Class Action Fairness Act of 2005,
10 because at least some members of the proposed class have different citizenship
11 from Defendant, and the claims of the proposed class members exceed five
12 million dollars (\$5,000,000) in the aggregate.

13 8. Diversity of citizenship exists between Plaintiff ANA GARCIA, a
14 citizen of California, and STG, a Virginia corporation.

15 9. The exact damages of Plaintiff and the California Class are unknown,
16 but Plaintiff reasonably believes they exceed \$5,000,000 in the aggregate.

17 10. This Court has personal jurisdiction over STG because STG
18 purposefully availed itself of the privilege of conducting business in the State of
19 California, in this judicial district.

20 11. Venue is proper in this district because a substantial part of the events
21 and omissions giving rise to the claims occurred in this district and because
22 Plaintiff seeks claims on behalf of a Class of California current and former
23 employees. Venue is proper in this district also because there is personal
24 jurisdiction in this district over STG. Presently and at all relevant times, STG has
25 conducted substantial, continuous and systematic commercial activities in this
26 district.

1 **PARTIES**

2 **A. The Plaintiff**

3 12. Plaintiff ANA GARCIA is over the age of 18 and a California
4 citizen.

5 13. The State of California, via the Labor and Workforce Development
6 Agency (“LWDA”), is the real party in interest in this action with respect to the
7 PAGA claims.

8 **B. The Defendant**

9 14. Plaintiff is informed, believes, and alleges: Defendant STG
10 INTERNATIONAL, INC. is a Virginia corporation, which conducts business in
11 the County of San Diego, was the employer of Plaintiff and California Class
12 Members during the California Class Period; and, also employed the FLSA
13 Collective during the FLSA Collective Period.

14 15. Plaintiff is informed, believes, and alleges that Defendant employed
15 California Class Members in California during the California Class Period and
16 employed the FLSA Collective during the FLSA Collective Period in the
17 following states: Virginia, Arizona, Texas, Florida, Missouri, Maryland, North
18 Dakota, South Dakota, Pennsylvania, Oklahoma, Tennessee, Kentucky,
19 Massachusetts, Illinois, Louisiana, Idaho, Georgia, Arkansas, Washington, New
20 Jersey, New York, and Washington, D.C.

21 **GENERAL ALLEGATIONS**

22 16. At all times during the California Class Period, Defendant conducted
23 business and employed Plaintiff and California Class Members in San Diego
24 County, California.

25 17. Plaintiff and California Class members were non-exempt employees,
26 covered by Defendant’s policies and Industrial Welfare Commission (IWC) Wage
27 Orders, including 4-2001, Labor Code § 1194, the FLSA, and/or other orders,
28 regulations and statutes, throughout the California Class Period.

PLAINTIFF'S EXPERIENCE

18. Plaintiff was employed by STG INTERNATIONAL, INC. as a Registered Nurse from December 2018 through July 2020. For part of her employment, Plaintiff worked in El Paso, Texas. During the last three months of her employment, Plaintiff worked at the Otay Mesa Detention Facility in San Diego County, California.

19. Plaintiff was classified as a non-exempt employee by Defendant throughout her employment and paid various forms remuneration, including shift differentials, bonuses, and cash benefits.

20. Each pay period, STG paid Plaintiff bonuses and multiple types of remuneration, in addition to her regular hourly wage, which were identified as follows on her wage statements as "bonus," "Sd/Oc 3.00," "Shift Diff/Page," "Shift Diff 1.00," "Shift Diff 1.50," "Shift Diff 1.75," "Shift Diff 3.50," "Shift Diff 4.00."

21. Plaintiff alleges that Defendant paid the same or similar non-discretionary bonuses and shift differentials to other non-exempt employees.

22. Some of the bonuses paid to Plaintiff, the FLSA Collective, and California Class Members were flat sum bonuses that were earned by showing up for a particular shift.

23. Plaintiff is informed, believes and alleges that she and other FLSA Collective members and California Class Members received other forms of remuneration during their employment and during the relevant time periods that were required to be included in the regular rate of pay for purposes of calculation and payment of the lawful overtime rate, but which were excluded from the calculation without a legal basis and in violation of California and federal wage and hour laws.

1 24. Throughout her employment, Plaintiff received cash health and
2 welfare payments that fluctuated based on the number of hours that she worked
3 each pay period.

4 25. These payments appear on Plaintiff's wage statements as "Cash 4.13"
5 and "Cash 4.18" and may appear on the wage statements or records of California
6 Class Members and the FLSA Collective with the same or similar designations,
7 without limitation.

8 26. The cash payments were paid directly by Defendant to Plaintiff and
9 not by a third party or trustee and are not excluded from the regular rate of pay
10 calculation under California or federal law. *See Bonner v. Metropolitan Security*
11 *Services, Inc.* (W.D. Tex. Mar. 15, 2011) Case No. SA-10-CV-937-XR (holding
12 that cash health and welfare payments made directly by an employer to an
13 employee under a contract governed by the Service Contract Act are not are not
14 excludable from the "regular rate of pay").

15 27. Plaintiff is informed and believes the FLSA Collective and California
16 Class Members also received the same or similar cash health and welfare
17 payments which may bear the same or different description on each employee's
18 wage statement.

19 28. In pay periods when Plaintiff earned overtime or meal and rest period
20 premiums, Defendant calculated and paid Plaintiff and California Class Members
21 based only on their straight time hourly rate, not their respective regular rate of
22 pay, which includes the cash payments, shift differentials, and bonuses, among
23 other sums.

24 29. Defendant underpaid Plaintiff, the FLSA Collective, and California
25 Class Members by not including all forms of remuneration, including the cash
26 payments, shift differentials, bonuses, and other forms of remuneration in the
27 regular rate of pay for purposes of overtime during the respective statutory
28 periods.

1 30. By way of example, on Plaintiff's June 10, 2020 wage statement, she
2 was paid overtime at a rate of \$78.19, which was one and one-half times her
3 *straight time* hourly rate of \$52.13 (i.e., $\$52.13 \times 1.5 = \78.19).

4 31. However, in addition to her hourly wages, Plaintiff was also paid
5 shift differentials, cash health and welfare benefits, a bonus, and other
6 remuneration in the total amount of \$866.40.

7 32. Although this amount is required to be included in the "regular rate
8 of pay" Defendant failed to include the \$866.40 (or any additional amount) in the
9 regular rate of pay for Plaintiff or the FLSA Collective and California Class
10 Members as a matter of common practice, as the overtime rate is a straight time
11 1.5x multiple of the hourly rate, facially demonstrating Defendant's failure to pay
12 all overtime at the proper hourly rate (i.e., the regular rate of pay multiple).

13 33. Additionally, Defendant issued wage statements to Plaintiff and, on
14 information and belief, other California Class Members, which contain at least six
15 distinct types of violations.

16 34. First, in each wage statement furnished to Plaintiff and on
17 information and belief the California Class Members, Defendant failed to identify
18 the "total hours worked" on the wage statement.

19 35. Second, Defendant's wage statements inaccurately state the gross
20 wages, total hours worked, net wages earned, applicable hourly rates in effect and
21 the number of hours worked at each hourly rate.

22 36. These wage statement defects are the result of Defendant's failure to
23 pay overtime at the "regular rate of pay," thus rendering the wage statement total
24 amounts inaccurate.

25 37. Third, Defendant failed to pay meal and rest period premiums at the
26 lawful regular rate of compensation rendering the wage statements an inaccurate
27 reflection of the wages and hours of Plaintiff and the California Class Members.
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1 38. Because of the failure to pay meal and rest premiums, Defendant
2 thus listed the incorrect gross wages earned, total hours worked, net wages earned,
3 and all applicable hourly rates in effect during the pay period with the number of
4 hours worked at each hourly rate by the employee.

5 39. Fourth, irrespective of the “regular rate of pay” issue, when Plaintiff
6 was paid for double time, the double time rate on the wage statement was
7 inaccurate because it is stated as being the same as Plaintiff’s straight time hourly
8 rates instead of a 2x multiple of the straight hourly rate. As a result, Defendant
9 failed to list the correct hourly rate of pay for double time compensation for
10 Plaintiff and the California Class Members.

11 40. Fifth, Defendant did not list the corresponding number of hours
12 worked for all forms of hourly-based remuneration earned by Plaintiff and the
13 California Class Members.

14 41. Specifically, Defendant’s wage statements for Plaintiff did not list the
15 corresponding number of hours worked for earnings listed as “Cash,” “Sd/Oc,”
16 “Shift Diff 3.50,” Shift Diff/Page,” among other forms of pay.

17 42. When Plaintiff and California Class Members were paid these forms
18 of remuneration, such as shift differentials, their wage statements failed to specify
19 the number of hours worked for the particular earning category.

20 43. An example of this practice appears on Plaintiff’s wage statement
21 with the pay date 05/22/2020.

22 44. Sixth, Defendant also failed to include paid sick leave accruals and
23 balance on Plaintiff and the California Class Members’ wage statements in
24 violation of California Labor Code section 246.

25 45. Defendant’s wage statement issues described above rendered the
26 wage statements inaccurate and confusing to Plaintiff and California Class
27 Members.

1 46. Plaintiff and California Class Members suffered injury in the form of
2 confusion regarding amounts paid for hours worked, and in the form of
3 concealment of the common payroll practices causing the violations and
4 underpayment of wages and wage statement deficiencies as addressed in this
5 Complaint.

6 47. Defendant's wage statement violations were knowing and intentional
7 as a matter of law with respect to Plaintiff and California Class Members given
8 that the legal obligation was not disputed, the wage statement and overtime laws
9 are clear and unambiguous as written, and because Defendant nevertheless failed
10 to comply despite the means and ability to do so.

11 48. Plaintiff is informed and believes, and alleges, that Defendant knew
12 or should have known Plaintiff and California Class Members were entitled to
13 receive all meal periods or payment of one additional hour of pay at their
14 respective regular rate of compensation when they did not receive a compliant
15 meal period.

16 49. Plaintiff is informed and believes that Defendant maintained a
17 company-wide practice in which it automatically deducted a 30-minute
18 uncompensated meal period per workday regardless of whether Plaintiff and the
19 California Class Members actually took a duty-free 30-minute meal period.
20 Because of this practice, Defendant did not maintain any records of the actual
21 times that Plaintiff and California Class Members took meal periods (if any).

22 50. Plaintiff's actual meal periods were often late, short, interrupted, or
23 missed entirely due to Defendant's policies and practices which did not provide
24 enough coverage for employees to take meal periods and which effectively
25 required employees to skip, work through, or cut short meal periods on certain
26 occasions.

27 51. Despite being on notice of its employees being deprived of the
28 opportunity to take compliant meal periods or any meal period at all, Defendant

1 nonetheless automatically deducted 30 minutes of time from Plaintiff and the
2 California Class Members each workday. These automatic deductions are
3 reflected on Plaintiff's time records for each workday as .50 "non-work hours."

4 52. Additionally, Plaintiff and the California Class Members were
5 required to spend time waiting in security check lines before their scheduled shift
6 without pay, in violation of state and federal law.

7 53. As a result of Defendant's practice, Plaintiff and the California Class
8 Members often worked multiple hours per workweek for which they received no
9 compensation whatsoever, whether straight time or overtime pay.

10 54. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
11 California Class Members did not receive all meal periods or payment of one
12 additional hour of pay at their "regular rate of compensation" when they did not
13 receive a compliant meal period (i.e., untimely, short or interrupted).

14 55. Plaintiff is informed and believes, and alleges, Defendant knew or
15 should have known Plaintiff and California Class Members were entitled to
16 receive all rest periods or payment of one additional hour of pay at their respective
17 regular rate of compensation when they did not receive a compliant rest period.

18 56. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
19 California Class Members did not receive all rest breaks or payment of one
20 additional hour of pay at their respective regular rate of pay when they did not
21 receive a compliant rest period (i.e., short or interrupted).

22 **PAGA ALLEGATIONS**

23 57. "Notwithstanding any other provision of law, any provision of this
24 code that provides for a civil penalty to be assessed and collected by the Labor
25 and Workforce Development Agency or any of its departments, divisions,
26 commissions, boards, agencies, or employees, for a violation of this code, may, as
27 an alternative, be recovered through a civil action brought by an aggrieved
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1 employee on behalf of himself or herself and other current or former employees
2 pursuant to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

3 58. Plaintiff seeks to recover civil penalties as an individual aggrieved
4 employee and on behalf of the State of California and all other current and former
5 non-exempt employees of Defendant who worked at the ICE Detention Centers
6 and who work or worked within the State of California within the one-year period
7 prior to the date on which Plaintiff first provided written notice to the Labor and
8 Workforce Development Agency and Defendant under Labor Code § 2699.3 and
9 continuing through the present (the “aggrieved employees” and the “PAGA
10 Period”) (i.e., August 10, 2019 through the present).

11 59. Plaintiff is an “aggrieved employee” because Plaintiff was employed
12 by Defendant and suffered one or more of the Labor Code violations committed
13 by Defendant and alleged in this Complaint.

14 60. On August 10, 2020, Plaintiff gave written notice by online filing
15 with the LWDA and by certified mail to Defendant of the specific provisions of
16 the Labor Code and Wage Orders alleged to have been violated, including the
17 facts and theories to support the alleged violations. Plaintiff paid the requisite
18 filing fee to the LWDA.

19 61. On July 26, 2021, Plaintiff filed an amended PAGA notice by online
20 filing with the LWDA and by certified mail to Defendant.

21 62. A copy of the July 26, 2021 PAGA notice is attached hereto as
22 Exhibit 2 and incorporated by reference as though fully set forth herein.

23 63. Within 33 calendar days of the postmark date of the notices sent by
24 Plaintiff, Defendant did not give written notice by certified mail to Plaintiff
25 providing a description of any actions taken to cure the alleged violations.

26 64. Now that at least 65 days have passed from Plaintiff notifying
27 Defendant of these violations, without any notice of cure from them or notice
28 from the LWDA of its intent to investigate the alleged allegations and issue the

1 appropriate citations to Defendant, Plaintiff exhausted all prerequisites and
2 commences this civil action under Labor Code § 2699.

3 **FLSA COLLECTIVE ACTION**

4 65. Plaintiff brings the First Cause of Action for violations of FLSA
5 Section 16(b), 29 U.S.C. § 216(b), on behalf of all of the FLSA Collective during
6 the FLSA Collective Period.

7 66. At all relevant times, Plaintiff and the FLSA Collective have been
8 similarly situated, had substantially similar job requirements and pay provisions,
9 and been subject to Defendant's common practices, policies and procedures of
10 willfully failing to pay them for all straight and overtime hours due to Defendant's
11 practice of automatically deducting 30 minutes of pay each shift for a meal period
12 regardless of whether a meal period was actually taken. Defendant also failed to
13 pay Plaintiff and the FLSA Collective them at the legally required time-and-a-half
14 rates for work in excess of forty (40) hours per workweek, including by failing to
15 include all remuneration to correctly calculate the "regular rate of pay."
16 Plaintiff's claims are similar to those of the other FLSA Collective members.

17 67. The First Cause of Action is properly brought and maintained as an
18 opt-in collective action. FLSA, 29 U.S.C. 216(b). The FLSA Collective members'
19 names and addresses are readily available from Defendant. The FLSA Collective
20 can be provided notice by first class mail to the last address known to their
21 employer.

22 68. Plaintiff ANA GARCIA'S signed consent is attached to this
23 Complaint as Exhibit 1. Plaintiff is informed, believes and alleges many other
24 FLSA Collective members' will sign and file consents to join this lawsuit if given
25 the opportunity to do so.
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1 74. Plaintiff seeks to certify a subclass of employees defined as:

2 **Premium Wage Subclass**

3 All California Class Members who were not paid premium
4 wages for a meal period not provided or a rest period not
5 permitted or authorized.

6 75. Plaintiff seeks to certify a subclass of employees defined as:

7 **UCL Subclass**

8 All members of the California Overtime Subclass and
9 Premium Wage Subclass.

10 76. This action has been brought and may be maintained as a class action
11 pursuant to FRCP 23 because there is a well-defined common interest of many
12 persons and it is impractical to bring them all before the court. Plaintiff reserves
13 the right to modify the California Class description or further divide it into
14 subclasses (“Subclasses”) or limit it to particular issues.

15 77. **Ascertainability**: The proposed California Class and Subclasses are
16 ascertainable because they can be identified and located using Defendant’s payroll
17 and personnel records.

18 78. **Numerosity**: The potential members of the California Class and
19 Subclasses as defined is so numerous that joinder of all members would be
20 infeasible and impractical. The disposition of their claims through this class action
21 will benefit both the parties and this Court. The number of members of the
22 California Class and Subclasses is unknown to Plaintiff, but is estimated to be in
23 excess of 100 individuals. The number and identity of members can be readily
24 ascertained using Defendant’s records.

25 79. **Typicality**: Plaintiff’s claims are typical of California Class and
26 Subclass Member’s because all sustained similar injuries and damages arising out
27 of Defendant’s common course of conduct in violation of law and the injuries and
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1 damages of all members of the California Class and Subclasses were caused by
2 Defendant's wrongful conduct in violation of law, as alleged.

3 80. **Adequacy**: Plaintiff is an adequate representative of the California
4 Class and Subclasses, will fairly protect the interests of California Class and
5 Subclass members, has no interests antagonistic to California Class and Subclass
6 members, and will vigorously pursue this lawsuit. Plaintiff's attorneys are
7 competent, skilled and experienced in litigating large wage and hour class actions.

8 81. **Superiority**: A class action is superior to other available means for
9 the fair and efficient adjudication of this controversy. Each California Class
10 Member has been damaged, and is entitled to recovery, by Defendant's unlawful
11 policies. A class action will allow litigation of claims in the most efficient and
12 economical manner for the parties and judicial system. Plaintiff is unaware of any
13 likely difficulties in managing this action that precludes a class action.

14 82. Nearly all factual, legal, statutory, declaratory, and injunctive relief
15 issues that are raised in this Complaint are common to the California Class
16 Members and will apply uniformly to every California Class Member. The
17 predominating common questions of law and fact include:

- 18 a. Whether Defendant violated California law by failing to properly
19 compensate Plaintiff California Class Members when it automatically
20 deducted 30 minutes for a meal period each workday on days when a
21 30-minute uninterrupted meal period was not actually taken.
- 22 b. Whether Defendant violated federal law by failing to properly
23 compensate Plaintiff California Class Members when it automatically
24 deducted 30 minutes for a meal period each workday on days when a
25 30-minute uninterrupted meal period was not actually taken.
- 26 c. Whether Defendant violated state or federal law by not paying
27 California Class Members for time spent waiting in security lines
28 prior to the start of each scheduled shift;

- 1 d. Whether Defendant violated the law by failing to properly calculate
2 Plaintiff California Class Members' regular rate of pay;
- 3 e. Whether Defendant violated California law by failing to properly
4 compensate Plaintiff California Class Members for all overtime
5 hours;
- 6 f. Whether Defendant violated federal law by failing to properly
7 compensate the FLSA Collective for all overtime hours;
- 8 g. Whether Defendant violated California law by failing to properly
9 compensate Plaintiff California Class Members for all compensation
10 based on the regular rate of pay;
- 11 h. Whether Defendant violated California law by failing to properly
12 compensate Plaintiff California Class Members for all meal and rest
13 period premium payments at the regular rate of compensation;
- 14 i. Whether Defendant violated California Labor Code section §§ 226
15 and 246 by failing to provide Plaintiff California Class Members with
16 accurate itemized wage statements;
- 17 j. Whether the Plaintiff and California Class is entitled to waiting time
18 penalties under § 203;
- 19 k. Whether Defendant violated Labor Code §§ 201, 202, 203, 204, 226,
20 510, 1182.12, 1194, 1194.2, 1197, 1198; IWC Wage Order 4-2001,
21 and other applicable IWC Wage Orders, and whether that establishes
22 a violation of fundamental public policy;
- 23 g. Whether the Plaintiff and California Class and Subclasses are entitled
24 to equitable relief pursuant to Business and Professions Code, §§
25 17200, *et seq.*
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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay All Wages Owed [FLSA - 29 USC §§ 206, 207]**

4 **(Plaintiff and the FLSA Collective Against Defendant)**

5 83. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 84. At all relevant times, Defendant has been, and continues to be, an
7 “employer” engaged in “interstate commerce” within the meaning of FLSA, 29
8 U.S.C. § 203, and Defendant has employed, and continues to employ the FLSA
9 Collective as “employee[s]” within the meaning of the FLSA.

10 85. Defendant knowingly, willfully, and intentionally, failed to
11 compensate Plaintiff and the FLSA Collective all wages due under the FLSA,
12 including agreed upon wages and the applicable minimum wage, as mandated by
13 29 U.S.C. § 206(a), and for overtime hours, as mandated by 29 U.S.C. § 207(a).

14 86. Defendant failed to pay Plaintiff and the FLSA Collective for all
15 hours worked as a result of its policy of automatically deducting 30 minutes for
16 each work day for an unpaid meal period even when employees did not actually
17 take a full 30-minute, uninterrupted meal period. Additionally, Plaintiff alleges
18 that the FLSA Collective spent time before each scheduled shift waiting in
19 security check lines, but were not paid for this time. These practices resulted in
20 Plaintiff and the FLSA Collective being deprived of their regular and overtime
21 wages.

22 87. Defendant employed Plaintiff and the FLSA Collective to work, and
23 they did work, in excess of forty (40) hours per week.

24 88. Further, Defendant paid Plaintiff and the FLSA Collective non-
25 discretionary bonuses, cash health and welfare benefits, shift differentials, and
26 other forms of remuneration that were not subject to exclusion from the regular
27 rate of pay under the FLSA.

1 89. Defendant failed to pay Plaintiff and the FLSA Collective for work in
2 excess of forty (40) hours per week at one-and-one half times the regular rate of
3 pay for each Employee.

4 90. Plaintiff seeks judgment against Defendant on her own behalf, and on
5 behalf of each FLSA Collective, for all unpaid wages, including minimum and
6 overtime wages owed by Defendant, together with an award of an additional equal
7 amount as liquidated damages, and costs, interest, and reasonable attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Pay All Wages [Labor Code §§ 1194 and 1194.2]**

10 **(Plaintiff and the Unpaid Wage Subclass Against Defendant)**

11 91. Plaintiff incorporates the preceding paragraphs of this Complaint.

12 92. At all times herein relevant, Defendant had a duty to comply with
13 Labor Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC
14 Wage Orders, and all applicable local minimum wage ordinances in effect
15 throughout California.

16 93. Labor Code section 204 and the IWC Wage Orders require timely
17 payment of all wages owed on regularly scheduled paydays at least twice during
18 each calendar month, on days designated in advance by the employer as the
19 regular paydays. All wages in earned in excess of the normal work period must be
20 paid no later than the payday for the next regular payroll period.

21 94. Labor Code section 1182.12 sets forth the minimum hourly wage that
22 must be paid to all employees in California for all hours worked. Labor Code
23 section 1197 affirms that it is unlawful to pay less than the state or local minimum
24 wage, whichever is higher, for any hour of work.

25 95. Labor Code section 1194 requires that employers pay employees at
26 least the legal minimum wage rate for all hours worked, notwithstanding any
27 agreement to work for a lesser wage. Labor Code section 1194 further authorizes
28 any employee receiving less than the legal minimum wage applicable to the

1 employee to recover in a civil action the unpaid balance of the full amount of
2 wages, along with interest thereon, reasonable attorneys' fees and costs of suit.

3 96. Labor Code section 1194.2 authorizes the recovery of liquidated
4 damages in an amount equal to the wages unlawfully unpaid and interest thereon
5 for unpaid wage violations.

6 97. Labor Code section 1198 prohibits employers from employing for
7 longer hours or less favorable conditions than those set forth in the Labor Code,
8 IWC Wage Orders, or as otherwise set by the Labor Commissioner.

9 98. Defendant failed to pay Plaintiff and the California Class Members
10 for all hours worked as a result of its policy of automatically deducting 30 minutes
11 for each workday for an unpaid meal period even when employees did not
12 actually take a full 30-minute, uninterrupted meal period. Additionally, Plaintiff
13 alleges that the FLSA Collective spent time before each scheduled shift waiting in
14 security check lines, but were not paid for this time. These practices resulted in
15 Plaintiff and the California Class Members being deprived of compensation for all
16 hours that they worked.

17 99. As a direct and proximate result of Defendant's failure to pay
18 Plaintiff and California Class Members in accordance with Labor Code sections
19 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
20 applicable local minimum wage ordinances in effect throughout California,
21 Plaintiff and California Class Members are entitled to recover the full amount of
22 unpaid wages, liquidated damages, prejudgment interest, and statutory penalties,
23 along with attorneys' fees and costs in amounts that will be established at trial.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Pay Overtime Wages [Labor Code §§ 510 and 1194]** 26 **(Plaintiff and the Unpaid Wage Subclass and California Overtime Subclass** 27 **Against Defendant)**

28 100. Plaintiff incorporates the preceding paragraphs of this Complaint.

101. Defendant employed Plaintiff and California Class Members to work, and they did work, in excess of eight hours per day and forty hours per week.

102. Defendant paid Plaintiff and the California Class Members non-discretionary bonuses, cash health and welfare benefits, shift differentials, and other forms of remuneration that were not subject to exclusion from the regular rate of pay.

103. Defendant failed to pay Plaintiff and California Class Members for work in excess of eight hours per day and forty hours per week at one-and-one half times the regular rate of pay in violation of Labor Code §§ 510 and 1194. Instead, Defendant paid Plaintiff and California Class Members overtime based on a 1.5x or 2.0x multiple of their straight time hourly rate, notwithstanding the well known obligation and requirement for employers in California (and the United States) to include all other forms of remuneration in the “regular rate of pay” for purposes of overtime, with the exception of the well-defined and narrowly construed exclusions.

104. Defendant also failed to pay Plaintiff and the California Class Members for all hours worked, which included overtime hours, as a result of its policy of automatically deducting 30 minutes for each work day for an unpaid meal period even when employees did not actually take a full 30-minute, uninterrupted meal period. This practice resulted in Plaintiff and the California Class Members being deprived of their overtime wages.

105. Defendant's unlawful acts deprived Plaintiff and California Class Members of overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION

Failure to Pay Wages Due at Termination [Labor Code §§ 201 through 203]

(Plaintiff and the Waiting Time Subclass Against Defendant)

106. Plaintiff incorporates the preceding paragraphs of this Complaint.

1 107. Defendant had a consistent and uniform policy, practice and
2 procedure of willfully failing to pay their employees all final wages due within the
3 time required by law, in violation of Labor Code §§ 201, 202, and 203. This is a
4 result of Defendant's overtime violations that occurred systemically throughout
5 the California Class Period as a result of the regular rate violations.

6 108. An employer that willfully fails to timely pay such wages must, as a
7 penalty, continue to pay an employee's wages until the back wages are paid in full
8 or an action is commenced. Labor Code § 203. The penalty cannot exceed 30
9 days of wages.

10 109. The Waiting Time Subclass Members no longer work for Defendant.

11 110. Defendant knew wages were due them, but willfully failed to pay
12 Waiting Time Subclass Members all wages due at termination or within seventy-
13 two (72) hours of resignation, in violation of Labor Code §§ 201, 202, and 203.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Provide Itemized Wage Statements [Labor Code § 226(a)]** 16 **(Plaintiff and the Wage Statement Subclass Against Defendant)**

17 111. Plaintiff incorporates all preceding paragraphs of this Complaint.

18 112. Labor Code section 226(a) requires an employer to furnish wage
19 statements to employees semimonthly or at the time of each payment of wages,
20 "an accurate itemized statement in writing showing:" (1) gross wages earned,
21 (2) total hours worked, (3) the number of piece rate units earned and applicable
22 piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates
23 of the pay period, (7) the name of the employee and last four digits of SSN or an
24 EIN, (8) the name and address of the legal name of the employer, and (9) all
25 applicable hourly rates in effect during the pay period and the number of hours
26 worked at each hourly rate by the employee.

27 113. Defendant knowingly and intentionally failed to comply with this
28 provision by, among other things, providing wage statements to Plaintiff and

1 California Class Members which failed to accurately set forth all gross wages
2 earned, total hours worked, net wages earned, and all applicable hourly rates in
3 effect during the pay period with the number of hours worked at each hourly rate
4 by the employee.

5 114. As described herein, Defendant's wage statement violations caused
6 injury to Plaintiff and California Class Members in the form of confusion about
7 wages paid and amounts owed, misleading and incorrect rates of pay listed on
8 wage statements (causing Plaintiff and California Class Members to not vindicate
9 their rights or inquire about the miscalculation of wages due to the
10 misrepresentation on the wage statement), among other reasons.

11 115. Based on Defendant's knowing and intentional failure to provide
12 accurate itemized wage statements, Wage Statement Subclass members are
13 entitled to penalties not to exceed \$4,000 for each employee together with interest
14 and attorneys' fees and costs.

15 **SIXTH CAUSE OF ACTION**

16 **Failure to Provide Meal Periods or Pay All Meal Period Premiums Owed**

17 **[Labor Code §§ 226.7, 512]**

18 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

19 116. Plaintiff incorporates all preceding paragraphs of this Complaint.

20 117. Defendant violated Labor Code §§ 226.7 and 512 and the IWC Wage
21 Orders by failing to provide compliant meal periods or pay meal period premiums
22 at the regular rate of compensation in lieu thereof.

23 118. Defendant did not maintain a lawful meal period waiver that allowed
24 for Defendant and the California Class Members to waive meal periods for shifts
25 of less than six hours in length. During such times, Defendant required Plaintiff
26 and other California Class Members to work shifts of five hours or more, but did
27 not provide a timely, uninterrupted 30-minute meal period or a payment of a meal
28

1 period premium in lieu thereof for those shifts in excess of five hours (with no
2 meal period waiver in effect).

3 119. On days in which Plaintiff and California Class Members did not
4 receive an uninterrupted 30-minute meal period within the first five hours of their
5 shift, Defendant failed to pay a corresponding meal period premium at one hour
6 their regular rate of compensation. Plaintiff alleges, on information and belief,
7 that this practice extends to second meal periods for shifts in excess of 10 hours in
8 a workday, as Defendant had a policy and frequent practice of not paying meal
9 period premiums when due to the California Class Members.

10 120. As a result of this common practice, Defendant failed to provide
11 Plaintiff and the California Class Members and Premium Wage Subclass all meal
12 periods owed and all premiums due at the lawful regular rate of compensation in
13 violation of Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

14 **SEVENTH CAUSE OF ACTION**

15 **Failure to Permit Rest Periods or Pay All Rest Period Premiums Owed**

16 **[Labor Code §§ 226.7, 512]**

17 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

18 121. Plaintiff incorporates all preceding paragraphs of this Complaint.

19 122. Defendant violated Labor Code § 226.7 and the IWC Wage Orders
20 by failing to authorize and permit compliant rest periods for every 4 hours worked
21 or major fraction thereof or pay rest period premiums in lieu thereof.

22 123. On days in which Plaintiff and California Class Members did not
23 receive at least one 10-minute rest period for each four-hour period worked (or
24 major fraction thereof), Defendant failed to pay a corresponding rest period
25 premium at one hour their regular rate of compensation.

26 124. As a result of this common practice, Defendant failed to provide
27 Plaintiff and the California Class Members and Premium Wage Subclass all meal
28

1 periods owed and all premiums due at the lawful rate in violation of Labor Code
2 §§ 226.7 and 512 and the IWC Wage Orders

3 **EIGHTH CAUSE OF ACTION**

4 **Violations of the Unfair Competition Law**

5 **[Business and Professions Code §§ 17200 et seq.]**

6 **(Plaintiff and the California Class Members against Defendant)**

7 125. Plaintiff incorporates all preceding paragraphs of this Complaint.

8 126. Defendant's failure to pay Plaintiff and California Class Members for
9 all hours worked, as required by Wage Orders and the Labor Code, constitutes
10 unlawful activity prohibited by Business and Professions Code §§ 17200, et seq.

11 127. Defendant's actions constitute false, unfair, fraudulent and deceptive
12 practices, within the meaning of Business and Professions Code, §§ 17200, et seq.

13 128. Plaintiff is entitled to an injunction, specific performance under
14 Business and Professions Code, § 17202, and other equitable relief against such
15 unlawful practices in order to prevent future loss, for which there is no adequate
16 remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause
17 individually and as a member of the general public as a representative of all others
18 subject to Defendant's unlawful acts and practices.

19 129. This cause of action is brought as a cumulative remedy and is
20 intended as an alternative remedy for restitution for Plaintiff, and each California
21 Class Member, for the four (4) year period before the filing of this Complaint, and
22 as the primary remedy during the fourth year before the filing of this Complaint.
23 Business and Professions Code § 17205.

24 130. As a result of Defendant's unlawful and unfair business practice of
25 failing to pay earned wages, Plaintiff, and each California Class Member has
26 suffered damages and is entitled to restitution in an amount according to proof.

27 131. The illegal conduct alleged is continuing and there is no indication
28 Defendant will discontinue such activity. Plaintiff alleges if Defendant is not

1 enjoined from the conduct set forth in this Complaint, it will continue to fail to
2 pay all overtime, premium, and final wages as required by law.

3 132. Plaintiff further requests the court issue a preliminary and permanent
4 injunction prohibiting Defendant from continuing to fail to pay overtime wages at
5 the lawful regular rate.

6 **NINTH CAUSE OF ACTION**

7 **Civil Penalties for Failure to Pay All Regular and Minimum Wages (PAGA)**

8 **[Labor Code §§ 2698, *et seq.*]**

9 133. Plaintiff incorporates all outside paragraphs of this Complaint as if
10 set forth herein.

11 134. Labor Code section 2699(a) provides: “Notwithstanding any other
12 provision of law, any provision of this code that provides for a civil penalty to be
13 assessed and collected by the Labor and Workforce Development Agency or any
14 of its departments, divisions, commissions, boards, agencies, or employees, for a
15 violation of this code, may, as an alternative, be recovered through a civil action
16 brought by an aggrieved employee on behalf of himself or herself and other
17 current or former employees pursuant to the procedures specified in Section
18 2699.3 .”

19 135. Labor Code section 2699(f) provides: “For all provisions of this
20 code except those for which a civil penalty is specifically provided, there is
21 established a civil penalty for a violation of these provisions, as follows: ... (2) If,
22 at the time of the alleged violation, the person employs one or more employees,
23 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
24 pay period for the initial violation and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation.”

26 136. Labor Code section 558(a) provides: “Any employer or other
27 person acting on behalf of an employer who violates, or causes to be violated, a
28 section of this chapter or any provision regulating hours and days of work in any

1 order of the Industrial Welfare Commission shall be subject to a civil penalty as
2 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition
4 to an amount sufficient to recover underpaid wages. (2) For each subsequent
5 violation, one hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee was underpaid in addition to an amount sufficient
7 to recover underpaid wages.”

8 137. Labor Code section 1197.1(a) provides: “Any employer or other
9 person acting either individually or as an officer, agent, or employee of another
10 person, who pays or causes to be paid to any employee a wage less than the
11 minimum fixed by an applicable state or local law, or by an order of the
12 commission, shall be subject to a civil penalty ... and any applicable penalties
13 imposed pursuant to Section 203 as follows: (1) For any initial violation that is
14 intentionally committed, one hundred dollars (\$100) for each underpaid employee
15 for each pay period for which the employee is underpaid ... and any applicable
16 penalties imposed pursuant to Section 203. (2) For each subsequent violation for
17 the same specific offense, two hundred fifty dollars (\$250) for each underpaid
18 employee for each pay period for which the employee is underpaid regardless of
19 whether the initial violation is intentionally committed.”

20 138. Plaintiff does not seek for any cause of action in this Complaint
21 under PAGA any amounts that are not recoverable pursuant to Labor Code
22 section 2699 *et seq.* (i.e., underpaid wages).

23 139. Defendant willfully failed in its affirmative obligation to pay
24 Plaintiff and aggrieved employees at least the lawful minimum wage for all hours
25 worked in violation of Labor Code sections 1182.12, 1194, 1197 and 1198 and
26 the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages”
27 sections of the applicable orders).

1 140. Despite being on notice of its employees being deprived of the
2 opportunity to take compliant meal periods or any meal period at all, Defendant
3 nonetheless automatically deducted 30 minutes of time from Plaintiff and the
4 aggrieved employees each workday. These automatic deductions are reflected on
5 Plaintiff's time records for each workday as .50 "non-work hours."

6 141. As a result, Defendant violated the Labor Code and IWC Wage
7 Orders and are liable to Plaintiff, the aggrieved employees and the State of
8 California for civil penalties as required by Labor Code sections 558, 1197.1, and
9 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
10 permitted by law, including under Labor Code section 2699(g).

11 **TENTH CAUSE OF ACTION**

12 **Civil Penalties for Failure to Pay All Overtime Wages (PAGA)**

13 **[Labor Code §§ 2698, *et seq.*]**

14 142. Plaintiff incorporates all outside paragraphs of this Complaint as if
15 set forth herein.

16 143. Defendant failed in its affirmative obligation to pay Plaintiff and
17 aggrieved employees no less than one and one-half times their respective
18 "regular rate of pay" for all hours worked in excess of eight hours in one day,
19 40 hours in one week, or the first eight hours worked on the seventh day of work
20 in any one workweek, and no less than twice their respective "regular rate of
21 pay" for all hours over 12 hours in one day and any work in excess of
22 eight hours on any seventh day of a workweek in violation of Labor Code
23 sections 510 and 1198 and the IWC Wage Orders and the IWC Wage Orders
24 (the "Hours and Days of Work" sections of the applicable orders).

25 144. As described in full detail in the allegations section of this
26 Complaint, the civil penalties sought are based on Defendant's policy and
27 practice of underpaying the hourly overtime rate using the method required by
28 California law and, additionally, based on Defendant's policy and practice of

1 automatically deducting 30 minutes from the workday for meal periods not
2 always taken.

3 145. As a result, Defendant violated the Labor Code and IWC Wage
4 Orders and are liable to Plaintiff, the aggrieved employees and the State of
5 California for civil penalties as required by Labor Code sections 558 and 2699(a)
6 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
7 permitted by law, including under Labor Code section 2699(g).

8 **ELEVENTH CAUSE OF ACTION**

9 **Civil Penalties for Meal Period Violations (PAGA)**

10 **[Labor Code §§ 2698, *et seq.*]**

11 146. Plaintiff incorporates all outside paragraphs of this Complaint as if
12 set forth herein.

13 147. Defendant willfully failed in its affirmative obligation to consistently
14 provide Plaintiff and aggrieved employees compliant, duty-free meal periods of
15 not less than 30 minutes beginning before the fifth hour of hour for each work
16 period of more than five hours per day and a second on-duty meal period of not
17 less than 30 minutes beginning before the tenth hour of hour of work in violation
18 of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
19 Periods" sections of the applicable orders)..

20 148. Further, Defendant willfully failed in its affirmative obligation to
21 consistently pay Plaintiff and aggrieved employees one additional hour of pay at
22 the respective regular rate of compensation for each workday that a fully
23 compliant meal period was not provided, in violation of Labor Code sections
24 226.7 and the IWC Wage Orders.

25 149. As a result, Defendant violated the Labor Code and IWC Wage
26 Orders and are liable to Plaintiff, the aggrieved employees and the State of
27 California for civil penalties as required by Labor Code sections 558 and 2699(a)
28

1 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
2 by law, including under Labor Code section 2699(g).

3 ///

4 **TWELFTH CAUSE OF ACTION**

5 **Civil Penalties for Rest Period Violations (PAGA)**

6 **[Labor Code §§ 2698, *et seq.*]**

7 150. Plaintiff incorporates all outside paragraphs of this Complaint as if
8 set forth herein.

9 151. Defendant willfully failed in its affirmative obligation to consistently
10 authorize and permit Plaintiff and aggrieved employees to receive compliant,
11 duty-free rest periods of not less than ten (10) minutes for every four hours
12 worked (or major fraction thereof) in violation of Labor Code sections 226.7 and
13 516 and the IWC Wage Orders (the "Rest Periods" sections of the applicable
14 orders).

15 152. Further, Defendant willfully failed in its affirmative obligation to
16 consistently pay Plaintiff and aggrieved employees one additional hour of pay at
17 the respective regular rate of compensation for each workday that a fully
18 compliant rest period was not provided, in violation of Labor Code sections 226.7
19 and the IWC Wage Orders.

20 153. As a result, Defendant violated the Labor Code and IWC Wage
21 Orders and are liable to Plaintiff, the aggrieved employees and the State of
22 California for civil penalties as required by Labor Code sections 558 and 2699(a)
23 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
24 by law, including under Labor Code section 2699(g).

1 **THIRTEENTH CAUSE OF ACTION**

2 **Civil Penalties for Untimely Payment of Wages (PAGA)**

3 **[Labor Code §§ 2698, *et seq.*]**

4 154. Plaintiff incorporates all outside paragraphs of this Complaint as if
5 set forth herein.

6 155. Defendant willfully failed in its affirmative obligation to timely pay
7 all wages and premiums earned by Plaintiff and aggrieved employees twice
8 during each calendar month on days designated in advance by the employer as
9 regular paydays (for employees paid on a non-weekly basis) and on the regularly-
10 scheduled weekly payday for any weekly employees, in violation of Labor Code
11 sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages”
12 sections of the applicable orders).

13 156. As a result, Defendant violated the Labor Code and IWC Wage
14 Orders and are liable to Plaintiff, the aggrieved employees and the State of
15 California for civil penalties as required by Labor Code sections 558 and 2699(a)
16 and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
17 by law, including under Labor Code section 2699(g).

18 **FOURTEENTH CAUSE OF ACTION**

19 **Civil Penalties for Wage Statement Violations (PAGA)**

20 **[Labor Code §§ 2698, *et seq.*]**

21 157. Plaintiff incorporates all outside paragraphs of this Complaint as if
22 set forth herein.

23 158. Labor Code section 226.3 provides: “Any employer who violates
24 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
25 two hundred fifty dollars (\$250) per employee per violation in an initial citation
26 and one thousand dollars (\$1,000) per employee for each violation in a
27 subsequent citation, for which the employer fails to provide the employee a wage
28 deduction statement or fails to keep the records required in subdivision (a) of

1 Section 226. The civil penalties provided for in this section are in addition to any
2 other penalty provided by law.”

3 159. Defendant failed in its affirmative obligation provide accurate
4 itemized wage statements to Plaintiff and aggrieved employees in violation of
5 Labor Code section 226(a) and Labor Code section 246(i) which requires
6 employers with written notice that sets forth the amount of paid sick leave
7 available on wage statements or other notices each pay period.

8 160. As a result, Defendant violated the Labor Code and IWC Wage
9 Orders and are liable to Plaintiff, the aggrieved employees and the State of
10 California for civil penalties as required by Labor Code sections 226.3 and
11 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent
12 permitted by law, including under Labor Code section 2699(g).

13 **FIFTEENTH CAUSE OF ACTION**

14 **Civil Penalties for Failure to Timely Pay All Wages**

15 **Upon Separation of Employment (PAGA)**

16 **[Labor Code §§ 2698, *et seq.*]**

17 161. Plaintiff incorporates all outside paragraphs of this Complaint
18 as if set forth herein.

19 162. Defendant willfully failed in its affirmative obligation to pay
20 all wages earned and unpaid to Plaintiff and aggrieved employees immediately
21 upon termination of employment or within 72 hours thereafter for employees who
22 did not provide at least 72 hours prior notice of his or her intention to quit, and
23 further failed to pay those sums for 30 days thereafter in violation of Labor Code
24 sections 201 through 203 and the IWC Wage Orders.

25 163. As a result, Defendant violated the Labor Code and IWC
26 Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of
27 California for civil penalties as required by Labor Code sections 558 and 2699(a)
28

1 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
2 by law, including under Labor Code section 2699(g).

3 **SIXTEENTH CAUSE OF ACTION**

4 **Civil Penalties for Recordkeeping Violations (PAGA)**

5 **[Labor Code §§ 2698, *et seq.*]**

6 164. Plaintiff incorporates all outside paragraphs of this Complaint as if
7 set forth herein.

8 165. Labor Code section 1174 provides: "Every person employing labor
9 in this state shall: ...(d) Keep, at a central location in the state or at the plants or
10 establishments at which employees are employed, payroll records showing the
11 hours worked daily by and the wages paid to, and the number of piece-rate units
12 earned by and any applicable piece rate paid to, employees employed at the
13 respective plants or establishments. These records shall be kept in accordance
14 with rules established for this purpose by the commission, but in any case shall be
15 kept on file for not less than three years."

16 166. Labor Code section 1174.5 provides: "Any person employing labor
17 who willfully fails to maintain the records required by subdivision (c) of Section
18 1174 or accurate and complete records required by subdivision (d) of Section
19 1174 ..., shall be subject to a civil penalty of five hundred dollars (\$500)."

20 167. Defendant willfully failed in its affirmative obligation to maintain
21 accurate records showing the hours worked daily and wages paid to the aggrieved
22 employees, in violation of Labor Code section 1174.

23 168. As a result, Defendant violated the Labor Code and are liable to
24 Plaintiff, the aggrieved employees and the State of California for civil penalties
25 as required by Labor Code section 1174.5, in addition to interest, attorneys' fees,
26 and costs to the extent permitted by law, including under Labor Code section
27 2699(g).

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. Determine this action may be maintained as a class action with Plaintiff as California Class Representative and Plaintiff's counsel as California Class Counsel;

B. Determine this action may be maintained as a collective action, with Plaintiff serving as FLSA Collective Representative and her counsel serving as FLSA Collective Counsel;

C. For Facilitated Notice under 29 USC § 216(b);

D. For recovery of all unpaid wages owed, including all overtime wages, and interest, and an equal amount as liquidated damages pursuant to the FLSA, 29 U.S.C. § 207, et seq;

E. Attorneys' fees and costs pursuant to statute, including, but not limited to, 29 USC § 216;

F. Determine Defendant's failure to pay overtime and premium wages to Plaintiff and California Class members violates IWC Wage Orders, regulations and statutes;

G. Defendant be ordered to pay and judgment entered for overtime and premium wages for Plaintiff and Plaintiff Subclass members, according to proof;

H. Defendant be ordered to pay and judgment entered for Labor Code § 226 penalties to Plaintiff and Plaintiff Subclass member, according to proof;

I. Defendant be ordered to pay and judgment entered for Labor Code § 203 penalties to Plaintiff and each Plaintiff Subclass member, according to proof;

J. Defendant be ordered to pay liquidated damages under Labor Code § 1194.2;

K. Defendant be found to have engaged in unfair competition in violation of Business and Professions Code § 17200 and be ordered to pay

1 restitution to Plaintiff, and each California Class member, due to Defendant's
2 unlawful and unfair competition, including disgorgement of wrongfully obtained
3 profits, and wrongfully withheld wages, according to proof, and interest, under
4 Business and Professions Code §§ 17203 and 17204;

5 L. For this action to be maintained as a representative action under the
6 PAGA and for Plaintiff and counsel to be provided with all enforcement capability
7 as if the action were brought directly by the State of California, LWDA, or
8 California Division of Labor Standards Enforcement;

9 M. For recovery of all civil penalties and other recoverable amounts
10 under the PAGA;

11 N. Defendant be enjoined from further acts of unfair competition and
12 specifically from failing to pay California Class Members overtime wages;

13 O. Plaintiff, California Class members, and Subclass members be
14 awarded attorneys' fees and costs pursuant to statute, including, but not limited to,
15 Labor Code §§ 226, 1194, 2699 and Code of Civil Procedure § 1021.5;

16 P. Determine the appropriate remedy to compensate Plaintiff, California
17 Class and Subclass members, as required to promote fairness and justice,
18 including but not limited procedures for compensation, and fluid recovery if
19 appropriate;

20 Q. Prejudgment Interest; and

21 R. Any other relief the court deems proper.

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1 Respectfully submitted,

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3 Dated: September 27, 2021

4 FERRARO VEGA EMPLOYMENT LAWYERS, INC.

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7 _____
NICHOLAS J. FERRARO

8 Attorneys for Plaintiff Ana Garcia, on behalf of
9 herself and all others similarly situated
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EXHIBIT 1

FLSA CONSENT TO JOIN FORM

I work or worked for STG International, Inc. at some point after August 31, 2017.

I choose to participate in the FLSA collective action titled *Ana Garcia v. STG International, Inc.* in the U.S District Court for the Southern District of California to recover the unpaid overtime pay and other relief provided under the Fair Labor Standards Act, 29 U.S.C. § 216(b).

I choose to be represented by attorneys Lauren N. Vega and Nicholas J. Ferraro of Ferraro Employment Law, Inc. in this litigation.

Print Name:

Ana Garcia

Signature:



Date:

08/28/2020

EXHIBIT 2

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com

July 26, 2021

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

PAGA NOTICE VIA ONLINE FILING

California Labor and Workforce Development Agency
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

PAGA NOTICE VIA EMAIL AND CERTIFIED U.S. MAIL (RETURN RECEIPT)

STG International, Inc.
c/o Holland & Knight

linda.allderdice@hklaw.com
john.haney@hklaw.com

Linda Auerbach Allderdice, Esq.
John H. Haney, Esq.
Holland & Knight
400 South Hope Street, 8th Floor
Los Angeles, CA 90071

Dear Labor Enforcement Officer and STG Representatives:

This letter serves as Claimant ANA GARCIA's ("Claimant") *amended* written notice under Labor Code section 2699.3 of prior and ongoing violations of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders committed by Defendant STG INTERNATIONAL, INC. ("Defendant"). Claimant previously submitted a notice on August 10, 2020.

If the Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations and violations set forth in this notice within the statutorily-prescribed time period under Labor Code section 2699.3, Claimant intends to seek and recover civil penalties on behalf of Claimant, the State of California, and all other aggrieved employees of Defendant under Labor Code section 2698, *et seq.* for all Labor Code violations committed by Defendant. *See e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

FACTUAL STATEMENT

Defendant provides medical staffing and human resources services and other solutions for government and military clients, including, including Head Start, the Department of Defense, Veterans

Community-Based Outpatient Clinics, and ICE detention centers. Defendant maintains corporate headquarters in Virginia and employs employees throughout California and the United States.

Claimant was employed by Defendant as a Registered Nurse from December 2018 to July 2020. During her employment she worked at the Otay Mesa Detention Facility. She also previously worked for Defendant in El Paso, Texas. Claimant was classified as a non-exempt employee and paid on an hourly basis. In addition to her regular hourly wage, Claimant received other forms of remuneration from Defendant.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein, and will represent all current and former non-exempt employees who worked for Defendant in the State of California during one year period preceding the date of this notice through the current date (the “aggrieved employees”).

Claimant seeks all recoverable civil penalties for Defendant’s violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses and violations are uncovered which relate back to the core nucleus of allegations set forth herein.

Violation of Labor Code §§ 510 and 1194, 1197 – Failure to Pay all Regular and Overtime Wages

Defendant failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 510 and 1194 and the related sections of the applicable IWC Wage Orders, and failed to pay wages for all hours worked at the minimum wage in violation of Labor Code section 1194. Claimant and the aggrieved employees were not paid at their lawful overtime rate (i.e., time and a half or double time based on their *regular rate of pay*) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal. Additionally, Claimant and other aggrieved employees were not paid all wages for time spent in security lines and as a result of Defendant’s alleged auto-deduct policy.

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 sections 1194 and 1197 and the IWC Wage Orders require that all employees be paid at least minimum wage for all hours worked.

Claimant and the aggrieved employees received various forms of remuneration that were not properly included in the regular rate of pay when Defendant paid overtime to Claimant and other aggrieved employees. These forms of remuneration that were not properly included in the regular rate of pay include, but are not limited to, shift differentials, show up and on-call pay, education assistance, non-discretionary bonuses, and cash in lieu of benefits. For example, the pay codes on Claimant’s wage statements show that she was paid bonuses, “Cash,” “Sd/Oc 3.00,” “Shift Diff/Page,” “Shift Diff 1.00,” “Shift Diff 1.50,” “Shift Diff 1.75,” “Shift Diff 3.50,” “Shift Diff 4.00,” and other forms of

remuneration which were not included in the regular rate of pay in pay periods in which Claimant worked overtime. These violations occurred company-wide as a matter of corporate payroll administration and policy and apply to all other aggrieved employees who worked overtime and received such remuneration that cannot be lawfully excluded from the regular rate of pay.

Shift differentials were paid to Claimant and the aggrieved employees in differing amounts for working evening, night, and weekend shifts. Some of the bonuses paid to Claimant and the aggrieved employees were flat-sum bonuses that were earned by showing up for a particular shift and/or not calling off for a shift. These amounts were not included in employees' regular rate of pay for the purpose of paying overtime, in violation of California law. See *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal. 5th 542 (confirming the California method for calculating the "regular rate of pay" when an employee earns a flat sum bonus).

Regarding the cash in lieu of benefits payments, Claimant of other aggrieved employees who elected to waive benefits were paid compensation in lieu of those benefits (i.e., cash in lieu of benefits). In *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, the court made clear that when an employer pays an employee compensation in lieu of the employee's participation in benefits, that amount must be included in the "regular rate of pay" for the purpose of paying overtime.

Claimant's wage statement dated June 10, 2020 provides one example of Defendant's overtime violations.

Earnings	rate	hours	this period
Regular	52.1300	64.89	3,382.71
Overtime	78.1950	16.18	1,265.20
Bonus			380.00
Cash 4.18			334.40
Holiday	52.1300	8.00	417.04
Sd/Oc 3.00			96.00
Shift Diff 3.50			56.00
Sick	52.1300	19.00	990.47
Double Time			
Pto			
Shift Diff/Page			
Gross Pay			\$6,921.82

On Claimant's June 10, 2020 wage statement, Claimant was paid overtime at a rate of **\$78.19**, which was one and one-half times her straight time hourly rate of \$52.13. However, she also was paid for shift differentials, cash in lieu of benefits, a bonus, and SD/Oc pay in the *total amount* of \$866.40. Although this amount is required to be included in the "regular rate of pay" Defendant failed to include the \$866.40 (or any amount) in the regular rate of pay for Claimant or other aggrieved employees as a matter of common practice, as the overtime rate is a straight time 1.5x multiple of the hourly rate, facially demonstrating Defendant's failure to pay all overtime at the proper hourly rate (i.e., the regular rate of pay multiple).

The above violation serves as an illustrative example and is not exhaustive of all violations applicable to Claimant or other aggrieved employees. Claimant alleges Defendant's policy and practice of failing to properly include and calculate all forms of remuneration in the regular rate when paying overtime, is a common practice that applies to all current and former employees of Defendant during the statutory period in pay periods in which Claimant and aggrieved employees earned overtime. As a result, Defendant failed to timely pay the full amount of overtime wages owed to Claimant and other aggrieved employees each pay period or upon separation at the lawful regular rate of pay.

Moreover, Defendant had a common practice of automatically deducting 30-minutes from employees' hours worked each day to account for a meal period. The automatic deduction occurred regardless of whether employees actually took a meal period that was a full 30-minutes in length. Because employees worked shifts of 8-hours or more, the automatic deduction resulted in unpaid overtime on days when employees had no meal period or when they took a meal period that was less than 30 minutes. Defendant also failed to pay minimum wages and overtime, as applicable, for those hours worked where employees spent passing through security checks prior to the start of each shift.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 558 (\$50/\$100) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 226.7, 512, § 11 of the IWC Wage Orders – Meal Period Violations

Defendant violated Labor Code sections 226.7 and 512 and section 11 of the IWC Wage Orders, with respect to Claimant and other aggrieved employees by failing to consistently provide lawful meal periods, failing to pay meal period premiums in lieu of such compliant periods, and failing to pay meal period premiums based on the "regular rate of compensation" of Claimant and other aggrieved employees.

Defendant engaged in a practice of automatically deducting 30-minutes from employees' working time for a meal period regardless of whether employees actually took a meal period that was 30 minutes in length. Defendant did not track whether and what time employees took a meal period. Defendant failed to consistently provide timely, off-duty 30-minute meal periods to Claimant and other aggrieved employees within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Claimant's actual meal periods were often late, short, interrupted, or missed due to Defendant's policies and practices which did not provide enough coverage for employees to take meal periods and which effectively required employees to skip, work through, or cut short meal periods on certain occasions. Claimant is informed, believes and alleges that these violations are evident based on the records maintained by Defendant.

When Defendant did not provide fully-compliant meal periods, Defendant failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. Claimant's wage statements reveal that Claimant did not receive a meal period premium, despite receiving non-compliant meal periods. Claimant is informed, believes and alleges that Defendant's policy and practice of not paying meal period premiums is a matter of common corporate policy and payroll administration such that it applies and affected all other aggrieved employees. To the extent Defendant paid *any* meal period premiums (in lieu of providing compliant meal periods), Claimant is

informed, believes and alleges (based on Defendant's regular rate overtime violations) that Defendant did not pay such premiums at each employee's respective "regular rate of compensation."

As a result, Claimant may recover civil penalties on behalf of herself, 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.

Violation of Labor Code §§ 226.7, 516, § 12 of the IWC Wage Orders – Rest Period Violations

Defendant violated Labor Code sections 226.7, 516 and section 12 of the applicable IWC Wage Orders with respect to Claimant and other aggrieved employees by failing to provide lawful rest periods or rest period premiums at the regular rate of compensation in lieu of such compliant periods.

Defendant failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order. Claimant and other aggrieved employees routinely worked through rest periods, which were neither authorized or permitted. Given the work environment and demands, Claimant and the aggrieved employees simply had too many tasks to complete such they were unable to take their 10-minute rest breaks. Claimant alleges that these violations were common and widespread, due to Defendant's written and stated policies and practices and due to the demanding nature of nursing care.

On those occasions Defendant did not provide a fully-compliant rest period to Claimant or other aggrieved employees, Defendant failed to pay Claimant and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. Defendant never paid a rest period premium to Claimant during her employment, despite her entitlement to compliant rest periods or premiums in lieu of such rest periods. To the extent Defendant paid *any* rest period premiums (in lieu of providing compliant rest periods), Claimant is informed, believes and alleges (based on Defendant's regular rate overtime violations) that Defendant did not pay such premiums at each employee's respective "regular rate of compensation."

As a result, Claimant may recover civil penalties on behalf of herself, 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.

Violation of Labor Code §§ 204 and 204b – Failure to Timely Pay Wages Owed Each Payday

Defendant violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages and premiums owed on time each pay period.

Because Defendant failed to pay all overtime wages and meal and rest period premiums in each pay period in which such wages were earned, Defendant violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of "all wages" for non-exempt employees at least twice each calendar month. 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.

As explained above, Defendant underpaid Claimant and other aggrieved employees or otherwise failed to pay at the lawful rate for all hours worked and premiums earned and owed. As a result, Defendant

is separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

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

Violation of Labor Code §§ 201 through 203 – Failure to Pay Amounts Due Upon Separation

Defendant violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to Claimant and other aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Because Defendant failed to pay all wages and premiums owed to Claimant and other aggrieved employees during their employment, Defendant failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

As explained above, Defendant routinely underpaid Claimant and other aggrieved employees and otherwise failed to pay at the lawful rate for all hours worked (including overtime and premiums at the regular rate of pay/compensation), and premiums owed, each relevant pay period.

Further, Claimant believes that Defendant also failed to pay her for all accrued but unused Paid Time Off ("PTO") at the time of her termination. Claimant alleges that other aggrieved employees may have suffered the same type of violation.

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

Violation of Labor Code § 246 – Failure to Provide Paid Sick Leave Balance/Accruals

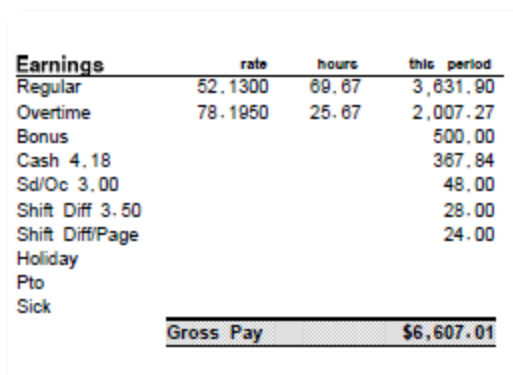
Defendant violated Labor Code section 246 because it failed to provide Claimant and the aggrieved employees written notice that set forth the amount of paid sick leave available on itemized wage statements under section 226 or in a "separate writing provided on the designated pay date with the employee's payment of wages." Labor Code section 246(i) requires employers to provide employees with written notice every pay period "that sets forth the amount of paid sick leave available, or paid time off in lieu of sick leave." The notice can be either on the employees' wage statements or a separate written notice. Defendant failed to provide Claimant and the aggrieved employees with the required written notice each pay period and is liable for civil penalties accordingly.

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

Violation of Labor Code § 226 – Failure to Provide Accurate Itemized Wage Statements

Defendant violated Labor Code section 226 requiring accurate, itemized wage statements with respect to Claimant and other aggrieved employees by failing to meet the requirements of the statute. 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.¹

First, Defendant did not list a “total hours worked” column on wage statements for Claimant and other aggrieved employees in violation Labor Code section 226(a)(2). This appears to apply to every single paystub furnished by Defendant. Example of violation from Claimant’s wage statement with the pay period date of 04/16/2020 to 04/30/2020 (pay date: 05/08/2020):



Earnings	rate	hours	this period
Regular	52.1300	69.67	3,631.90
Overtime	78.1950	25.67	2,007.27
Bonus			500.00
Cash 4.18			367.84
Sd/Oc 3.00			48.00
Shift Diff 3.50			28.00
Shift Diff/Page			24.00
Holiday			
Pto			
Sick			
Gross Pay			\$6,607.01

Second, Defendant violated Labor Code section 226 because the wage statements did not correctly reflect the wages and hours of Claimant and other aggrieved employees. As described throughout this notice, Defendant failed to pay overtime compensation based on the regular rate of pay. Because of the failure to pay overtime at the lawful rate, Defendant thus listed the incorrect gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period with the number of hours worked at each hourly rate by the employee. These wage statement defects

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’”) (rejecting *Maldonado* defense for class claims).

occurred with respect to Claimant and all other aggrieved employees in violation of Labor Code sections 226(a) (1), (2), (5), and (9).

Third, Defendant failed to pay meal and rest period premiums at the lawful regular rate of compensation rendering the wage statements an inaccurate reflection of the wages and hours of Claimant and other aggrieved employees. Because of the failure to pay meal and rest premiums, Defendant thus listed the incorrect gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period with the number of hours worked at each hourly rate by thee employee. These wage statement defects occurred with respect to Claimant and all other aggrieved employees in violation of Labor Code sections 226(a) (1), (2), (5), and (9).

Fourth, irrespective of the “regular rate of pay” issue, when Claimant and the aggrieved employees worked were paid for double time, the double time rate on the wage statement is inaccurate because it is stated as being the same as Claimant and the aggrieved employees’ respective straight time hourly rates instead of a 2x multiple of the straight hourly rate. As a result, Defendant failed to list the correct hourly rate of pay for double time compensation in violation of Labor Code section 226(a)(9). Example of violation from Claimant’s wage statement with the pay period date of 06/16/2020 to 06/30/2020 (pay date: 07/10/2020):

Earnings	rate	hours	this period
Regular	52.1300	44.88	2,339.59
Overtime	78.1950	11.62	908.63
Double Time	52.1300	1.50	156.39
Cash 4.18			357.39
Pto	52.1300	14.98	780.91
Sd/Oc 3.00			48.00
Shift Diff 3.50			28.00
Bonus			
Holiday			
Shift Diff/Page			
Sick			
Gross Pay			\$4,618.91

Fifth, Defendant did not list the corresponding number of hours worked for all forms of hourly-based remuneration earned by Claimant and other aggrieved employees in violation of Labor Code section 226(a)(9). Specifically, Defendant’s paystubs for Claimant and other aggrieved employees did not list the corresponding number of hours worked for earnings listed as “Cash”, “Sd/Oc”, “Shift Diff 3.50”, “Shift Diff/Page”, among other forms of pay. When Claimant and the aggrieved employees were paid these forms of remuneration, such as shift differentials, their wage statements failed to specify the number of hours worked for the particular earning category. Plaintiff is informed, believes and alleges that to the extent other aggrieved employees earned hourly compensation separate and apart from their base hourly rate, Defendant as a matter of common payroll administration failed to comply with section 226(a)(9) with respect to these additional sums. Example from Claimant’s wage statement with the pay period date of 05/01/2020 to 05/15/2020 (pay date: 05/22/2020):

Earnings	rate	hours	this period	year to date
Regular	52.1300	72.00	3,753.36	27,835.91
Overtime	78.1950	16.75	1,309.77	5,527.95
Double Time	52.1300	.13	13.55	13.55
Bonus			600.00	1,400.00
Cash 4.18			367.84	1,101.51
Sd/Oc 3.00			96.00	234.36
Shift Diff 3.50			56.00	111.37
Holiday				1,179.20
Pto				-294.80
Shift Diff/Page				898.68
Sick				1,888.34
Gross Pay			\$6,196.52	41,969.83

As discussed in detail above, the wage statements provided to Claimant and other aggrieved employees include incorrect hourly rates, do not accurately itemize all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, nor do they state the accurate gross and net wages owed or earned or total hours worked. They misstate the hourly rates and wages and fail to include required information. As a result, Claimant 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, though Defendant's facial violation of Labor Code section 226 requires application of the civil penalties applicable thereto under *Lopez*. These wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated.

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

Violation of Labor Code § 1174 – Failure to Maintain Accurate Payroll Records.

Because of the violations set forth in this notice, including Defendant's failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendant violated Labor Code section 1174 and the IWC Wage Orders, including section 7 of the IWC Wage Order by failing to maintain accurate payroll records showing daily hours worked, all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendant is liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs

Claimant was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendant. Claimant has thereby incurred attorneys' fees and costs, which she is entitled to receive on all causes of action under Labor Code section 2699(g).

CONCLUSION

Claimant requests the LWDA initiate enforcement for the violations described in this letter. If the LWDA does not pursue enforcement, Claimant will pursue representative claims on behalf of the State of California and the aggrieved employees and will seek all remedies available for violations of the Labor Code and the IWC Wage Orders, including attorneys' fees, costs, interest, and all available penalties set forth in Labor Code section 2699 and all other applicable sections of the Labor Code.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro, Esq.

Cc Lauren N. Vega (lauren@ferrarovega.com)
 Ana Garcia