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13 YOUSSEF GAYED, and all other similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA
(UNLIMITED JURISDICTION)

YOUSSIF GAYED, as an "aggrieved
employee" on behalf of other similarly situated
"aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

Plaintiff(s),

vs.

22ND CENTURY TECHNOLOGIES, INC., a
New Jersey corporation; and DOES 1 through
50, inclusive,

Defendant(s).

Case No.: 56-2021-00556640-CU-OE-VTA

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE LABOR CODE
AND CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

By FAX



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VENTURA
SUPERIOR COURT
FILED

AUG 30 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By: NINA LEMOS, Deputy

1 Plaintiff YOUSSEF GAYED (hereafter "Plaintiff"), on behalf of himself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 1-2001 (hereafter "the
6 Wage Order"), against Defendants 22ND CENTURY TECHNOLOGIES, INC., a New Jersey
7 corporation, and DOES 1 through 50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and other similarly situated aggrieved current and former employees
10 who worked in California as hourly, non-exempt employees for civil penalties and other related
11 relief. These claims are based on Defendants' failures to: (1) Provide all rest and meal periods;
12 (2) Pay all wages earned for all hours worked at the correct rates of pay; (3) Indemnify for
13 necessary work-related expenditures; (4) Provide accurate and complete written wage
14 statements; and (5) Timely pay wages during and upon termination of employment. Accordingly,
15 Plaintiff now seeks to recover civil penalties and related relief through this representative action.

16 **II. THE PARTIES**

17 3. Plaintiff, YOUSSEF GAYED, is an individual and resident of California.
18 Defendants first employed Plaintiff on or about August 28, 2019, as an Associate Manufacturing
19 Process Technician with one of their clients, Amgen. Defendants continuously employed
20 Plaintiff from his hire date until June 27, 2020, when his employment ended. At all relevant
21 times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations
22 Section 11010, and an "aggrieved employee" within the meaning of California Labor Code
23 § 2699(c).

24 4. Defendant 22ND CENTURY TECHNOLOGIES, INC., is a corporation
25 organized and existing under the laws of New Jersey and a citizen of California based on
26 Plaintiff's information and belief.

27 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
is informed and believes and thereon alleges that said defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants



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when ascertained.

A. THE AGGRIEVED EMPLOYEES

6. The “Aggrieved Employees” are all individuals Defendants currently and formerly employed in California as non-exempt, hourly employees at any time during the period of March 4, 2020 through entry of judgment (“the PAGA Period”). Only for the purpose of claims under §§ 201, 201.3, 202, and 203 of the California Labor Code, the “Aggrieved Employees” will include all individuals currently and formerly employed in California, regardless of their classification as exempt or non-exempt employees or their pay structure.

7. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

9. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

III. FACTUAL ALLEGATIONS

10. On or about August 28, 2019, Defendants first employed Plaintiff to work in California as an Associate Manufacturing Process Technician with one of their clients, Amgen. Amgen is a biotechnology company that manufactures pharmaceuticals. Plaintiff continuously worked with Amgen until June 27, 2020. Plaintiff’s employment with Defendants ended in July of 2020.

11. At all relevant times, Defendants compensated Plaintiff and the Aggrieved Employees on a bi-weekly basis.

12. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all



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1 hours worked at the correct rates of pay, including overtime wages. At all relevant times,
2 Defendants instructed Plaintiff and the Aggrieved Employees to record their hours in an electronic
3 timesheet available through Fieldglass, a workforce application. In order to access their
4 timesheets, Plaintiff and the Aggrieved Employees had to log into their computers and this
5 software which took approximately three (3) minutes. Defendants, however, instructed Plaintiff
6 and the Aggrieved Employees to record the start of their shifts only after they had logged into
7 their computers and were ready to start work. As such, Defendants failed to compensate Plaintiff
8 and the Aggrieved Employees for the time they spent logging into their computers and the time
9 keeping software.

10 13. Further, Defendants required Plaintiff and the Aggrieved Employees to transport
11 specimens to a different building after the end of their shifts and off-the-clock. Additionally,
12 Defendants required Plaintiff and the Aggrieved Employees to go through a temperature check
13 process. During the COVID-19 pandemic, Defendants assigned Plaintiff and the Aggrieved
14 Employees to a different parking structure. Defendants required Plaintiff and the Aggrieved
15 Employees to arrive approximately eight (8) to ten (10) minutes before the start of their scheduled
16 shifts to walk from the new parking structure and wait for a temperature check, and issuance of
17 personal protective equipment such as masks. Defendants did not pay Plaintiff and the Aggrieved
18 Employees for the time they spent completing these tasks.

19 14. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
20 Employees with all timely, duty-free rest and meal periods as provided under California law.
21 Defendants instructed Plaintiff and the Aggrieved Employees to obtain their supervisors'
22 permission before they could take their meal periods. Plaintiff and the Aggrieved Employees'
23 supervisors often authorized the meal periods after Plaintiff and the Aggrieved Employees had
24 already worked more than five (5) hours in a workday. Plaintiff and the Aggrieved Employees'
25 supervisors also often interrupted their meal periods by calling them on their personal cellphones
26 to discuss work-related matters. Defendants also failed to provide Plaintiff and the Aggrieved
27 Employees with a second meal period when they worked more than 10 hours in a workday.
28 Additionally, Defendants failed to provide Plaintiff and the Aggrieved Employees with any rest
breaks. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff
and the Aggrieved Employees with rest and/or meal periods as provided by California law.

15. Defendants also required Plaintiff and the Aggrieved Employees to incur certain



1 business expenses in the course of performing their duties. Defendants required Plaintiff and the
2 Aggrieved Employees to use their personal mobile telephones to communicate with their
3 managers during their shifts or to verify their work schedule. Defendants also failed to reimburse
4 Plaintiff and the Aggrieved Employees for internet and other related expenses when they worked
5 from home.

6 16. Further, Defendants failed to pay Plaintiff and the Aggrieved Employees' wages
7 on a weekly basis.

8 17. At all relevant times, Defendants knowingly and intentionally failed to provide
9 Plaintiff and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved
10 Employee's gross wages earned, net wages earned, total hours worked, corresponding number of
11 hours worked at each rate by the Aggrieved Employees and other requirements of California
12 Labor Code Section 226.

13 18. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
14 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 15 A. Not provided with all off duty meal periods;
- 16 B. Not provided with all rest break periods as required by law;
- 17 C. Not paid one hour's pay for each workday in which Defendants failed to
18 provide them with one or more timely rest periods;
- 19 D. Not paid one hour's pay for each workday in which Defendants failed to
20 provide them with one or more timely meal periods;
- 21 E. Not paid all wages earned, including, but not limited to, regular and
22 overtime wages at the correct rates of pay;
- 23 F. Not indemnified for all necessary business expenditures incurred during
24 the discharge of their duties;
- 25 G. Not provided with accurate and complete wage statements;
- 26 H. Not issued all wages on a weekly basis; and
- 27 I. Not timely paid all earned and unpaid wages during their employment with
28 Defendants and at the time such employment ended.

IV. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, et seq.)



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(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all
Defendants)

19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

21. In relevant part, California Labor Code § 1198 states:

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

22. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

23. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. In the case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without



1 providing the employee with a second meal period of not less
2 than 30 minutes, except that if the total hours worked is no
3 more than 12 hours, the second meal period may be waived
4 by mutual consent of the employer and the employee only if
5 the first meal period was not waived.

6 ...

7 (D) If an employer fails to provide an employee a meal
8 period in accordance with the applicable provisions of this
9 order, the employer shall pay the employee one (1) hour of
10 pay at the employee's regular rate of compensation for each
11 workday that the meal period is not provided.

12 24. In relevant part, Section 12 of the Wage Order states:

13 **Rest Periods**

14 (A) "Every employer shall authorize and permit all
15 employees to take rest periods, which insofar as practicable
16 shall be in the middle of each work period. The authorized
17 rest period time shall be based on the total hours worked
18 daily at the rate of ten (10) minutes net rest time per four (4)
19 hours or major fraction thereof. However, a rest period need
20 not be authorized for employees whose total daily work time
21 is less than three and one-half (3 1/2) hours. Authorized rest
22 period time shall be counted as hours worked for which there
23 shall be no deduction from wages."

24 (B) If an employer fails to provide an employee a rest
25 period in accordance with the applicable provisions of this
26 Order, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each
28 work day that the rest period is not provided."

29 25. In addition, California Labor Code § 226.7 states:

30 (b) An employer shall not require an employee to work during a meal or rest
31 period mandated pursuant to an applicable statute, or applicable regulation,
32 standard, or order of the Industrial Welfare Commission, the Occupational
33 Safety and Health Standards Board, or the Division of Occupational Safety
34 and Health.

35 (c) If an employer fails to provide an employee a meal period or rest period
36 in accordance with a state law, including, but not limited to, an applicable
37 statute or applicable regulation, standard, or order of the Industrial Welfare



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Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

26. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they worked more than ten hours.

27. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

28. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty-free meal periods and 10-minute rest periods in accordance with the Wage Order.

29. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely 30-minute duty-free meal periods within the first five hours of work. Defendants also failed to provide Plaintiff and the Aggrieved Employees with a second 30-minute meal period when they worked more than 10 hours in a workday. Defendants also failed to authorize and permit Plaintiff and the Aggrieved Employees to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with timely meal and rest periods.

30. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

B. FAILURE TO INDEMNIFY

31. In pertinent part, California Labor Code section 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."



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32. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses which they failed to indemnify them for both during and after their employment ended. At all relevant times, as a condition for employment, Defendants required Plaintiff and the Aggrieved Employees to use their personal mobile phones for business purposes, and their internet when they worked from home, without reimbursing them for such expenses.

33. Therefore, Defendants failed to indemnify them for expenditures incurred as a direct consequence of discharging their duties.

34. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they incurred during the course of performing their duties.

C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

35. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]"

36. Section 4 of the Wage order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

37. In relevant part, California Labor Code § 510 states,

Any 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. 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. In addition, 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.

38. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such



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employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

39. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

40. Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

41. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

42. In conjunction, these provisions of the Labor Code require employers to compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

43. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not



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1 limited to overtime wages for all overtime hours they worked at the correct rates of pay, and for
2 all off-the-clock hours they worked at the correct rates of pay.

3 44. Plaintiff is informed and believes that, at all relevant times, Defendants have
4 applied centrally devised policies and practices to him and the Aggrieved Employees with respect
5 to working conditions and compensation arrangements.

6 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
8 failure to compensate the Aggrieved Employees for all hours worked, including but not limited
9 to, regular and overtime hours at the correct rates of pay.

10 **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

11 46. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
12 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an
13 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
14 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours
15 worked at each hourly rate by the employee.

16 47. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
17 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
18 if the employer fails to provide accurate and complete information as required by California
19 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
20 statement alone one or more of the following:

21 A. The amount of the gross wages or net wages paid to the employee during
22 the pay period or any of the other information required to be provided on the itemized wage
23 statement pursuant to California Labor Code § 226(a);

24 B. Which deductions the employer made from gross wages to determine the
25 net wages paid to the employee during the pay period;

26 C. The name and address of the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
28 and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.



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1 48. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
2 means a reasonable person would be able to readily ascertain the information without reference
3 to other documents or information.

4 49. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
5 Employees with all meal and rest periods in compliance with California law. They also failed to
6 provide them with premium wages on workdays they failed to provide them with one or more
7 meal and/or rest periods in compliance with California law. Further, Defendants failed to
8 compensate Plaintiff and the Aggrieved Employees for all hours worked. As a result, Defendants
9 have failed to properly itemize Plaintiff and the Aggrieved Employees’ gross and net wages
10 earned, total hours worked, hourly rate of pay, the corresponding number of hours worked at each
11 hourly rate, and other requirements of California Labor Code § 226.

12 50. As a result of the above describe violations, Defendants violated California Labor
13 Code §§ 226 in that they failed to properly and accurately itemize each employee’s gross wages
14 earned, net wages earned, the total hours worked, the corresponding number of hours worked at
15 each rate by the employee, and other requirements of California Labor Code § 226.

16 51. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with
17 accurate wage statements was knowing and intentional. Defendants had the ability to provide
18 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
19 wage statements that Defendants knew were not accurate.

20 52. As a result of being provided with inaccurate wage statements by Defendants,
21 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
22 accurate wage statements were violated and they were misled about the amount of wages they
23 had actually earned and were owed. In addition, the absence of accurate information on their
24 wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has
25 required discovery and mathematical computations to determine the amounts of wages owed, has
26 caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to
27 the submission of inaccurate information about wages to state and federal government agencies.
28 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
statements whether Defendants complied with their obligations under California Labor Code
§ 226(a).

E. UNTIMELY WAGES DURING EMPLOYMENT



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53. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

54. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages at the correct rates of pay. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

F. FAILURE TO PAY ALL WAGES ON A WEEKLY BASIS

55. Labor Code § 201.3 requires temporary services employers to pay the employee's wages on a weekly basis. Defendants paid Plaintiff and the Aggrieved Employees on a bi-weekly basis.

56. Plaintiff is informed and believes that Defendants' failures to weekly and timely



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1 pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful
2 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
3 violate the requirements of the Labor Code and the Wage Order even though, at all relevant times,
4 they have had the ability to comply with those legal requirements.

4 **G. UNTIMELY FINAL WAGES**

5 57. Labor Code § 201 provides that all earned and unpaid wages of an employee who
6 is discharged are due and payable immediately at the time of discharge.

7 58. Labor Code § 202 provides that all earned and unpaid wages of an employee who
8 quits after providing at least 72-hours notice before quitting are due and payable at the time of
9 quitting and that all earned and unpaid wages of an employee who quits without providing at
10 least 72-hours notice before quitting are due and payable within 72 hours.

11 59. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and
12 overtime wages at the correct rates of pay and 2) premium wages for all late or missed rest breaks
13 and/or meal periods, Defendants failed to timely pay them all earned and unpaid wages in
14 violation of Labor Code § 201 and 202.

15 60. Labor Code § 203 provides that the wages of an employee continue on a daily
16 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
17 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

18 61. Plaintiff is informed and believes that Defendants' failures to weekly and timely
19 pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful
20 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
21 violate the requirements of the Labor Code and the Wage Order even though, at all relevant times,
22 they have had the ability to comply with those legal requirements.

22 **H. CIVIL PENALTIES SOUGHT**

23 62. During the applicable time period, Defendants violated California Labor Code
24 §§ 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

25 63. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
26 behalf of themselves and other current or former employees, to bring a civil action to recover
27 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

28 64. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
Employees are entitled to recover civil penalties for each of the Defendants' violations of



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

California Labor Code §§ 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § § 201.3 and 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

65. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated March 4, 2021, and June 24, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of



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1 Plaintiff's letters to the LWDA dated March 4, 2021, and June 24, 2021, are attached hereto as
2 Exhibit A. The LWDA has not responded to Plaintiff's letter.

3 66. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 67. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
8 prays for relief and judgment against Defendants as follows:

- 9 A. Civil penalties;
10 B. Costs of suit;
11 C. Reasonable attorneys' fees; and
12 D. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

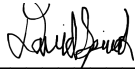
14 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury
15 trial on all issues so triable.

16 Respectfully submitted,

17 THE SPIVAK LAW FIRM

18 Dated: August 27, 2021

19 By: _____

20 
21 DAVID SPIVAK,
22 CAROLINE TAHMASSIAN,
23 MAYA CHEAITANI, Attorneys for Plaintiff,
24 YOUSSEF GAYED, the State of California,
25 and the Aggrieved Employees
26
27
28



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

June 24, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
[Attn: PAGA Administrator
http://dir.tflaforms.net](http://dir.tflaforms.net)
Via Electronic Submission

RE: *Youssif Gayed/ 22ND Century*
LWDA Case No. LWDA-CM-823724-21

To Whom It May Concern:

This is a supplemental notice and incorporates the original notice dated March 4, 2021 (enclosed) in its entirety.

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Youssif Gayed (hereafter “Gayed”) provides notice on behalf of himself and of all individuals currently and formerly employed in California, regardless of their classification as exempt or non-exempt employees or their pay structure (hereafter referred to as “Aggrieved Employees”), by 22nd Century Technologies, Inc., a New Jersey corporation (hereafter referred to as “22nd Century”), for violations of California Labor Code §§ 201, 201.3, 202, and 203.

At all relevant times, 22nd Century has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Gayed and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order” or “Wage Order 1”), paragraph 2.E, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about August 28, 2019, 22nd Century first employed Gayed to work in California as an Associate Manufacturing Process Technician with one of its clients, Amgen. Amgen is a biotechnology company that manufactures pharmaceuticals. Gayed continuously worked with Amgen until June 27, 2020. Gayed's employment with 22ND Century ended in July of 2020.

At all relevant times, 22nd Century compensated Gayed and the other Aggrieved Employees with an hourly rate of pay and issued their wages on a bi-weekly basis.

22nd Century failed to compensate Gayed and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, 22nd Century instructed Gayed and the other Aggrieved Employees to record their hours in an electronic timesheet available through Fieldglass, a workforce application. In order to access their timesheets, Gayed and the Aggrieved Employees had to log into their computers and this software, which took approximately three (3) minutes. 22nd Century, however, instructed Gayed and the Aggrieved Employees to record the start of their shifts only after they had logged into their computers and were ready to start work. As such, 22nd Century failed to compensate Gayed and the Aggrieved Employees for the time they spent logging into their computers and the time keeping software. Further, 22nd Century required Gayed and the Aggrieved Employees to transport specimens to a different building after the end of their shifts and off-the-clock. Additionally, 22nd Century required Gayed and the Aggrieved Employees to submit to a temperature check before clocking in for work. During the COVID-19 pandemic, 22nd Century assigned Gayed and the Aggrieved Employees to a different parking structure. 22nd required Gayed and the Aggrieved Employees to arrive approximately eight (8) to ten (10) minutes before the start of their scheduled shifts to walk from the parking structure, wait for a temperature check, and issuance of personal protective equipment such as masks. 22nd Century did not pay Gayed and the Aggrieved Employees for the time spent in these activities.

At all relevant times, 22nd Century failed to provide Gayed and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. 22nd Century instructed Gayed and the Aggrieved Employees to obtain their supervisors' permission before they could take their meal periods. Gayed and the aggrieved Employees' supervisors often authorized the meal periods after Gayed and the Aggrieved Employees had already worked more than five (5) hours in a workday. Gayed and the Aggrieved Employees' supervisors also often interrupted their meal periods by calling them on their personal cellphones to discuss work related matters. 22nd Century also failed to provide Gayed and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. Additionally, 22nd Century failed to provide Gayed and the other Aggrieved Employees with any rest breaks. 22nd Century failed to pay premium wages for days on which it failed to provide Gayed and the Aggrieved Employees with rest and/or meal periods as provided by California law.

22nd Century also required Gayed and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. 22nd Century required Gayed and the Aggrieved Employees to use their personal mobile telephones to communicate with their managers during their shifts or to verify their work schedules. 22nd Century also failed to reimburse Gayed and the Aggrieved Employees for internet and other related expenses when they worked from home.

Further, 22nd Century failed to pay Gayed and the Aggrieved Employees' wages on a weekly basis.

At all relevant times, 22nd Century knowingly and intentionally failed to provide Gayed and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226.

For the reasons stated herein, Gayed alleges the following violations of the California Labor Code and the Wage Order 1 on behalf of himself and the Aggrieved Employees:

- a) 22nd Century failed to provide Gayed and the Aggrieved Employees with all rest breaks and meal periods;
- b) 22nd Century failed to pay Gayed and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) 22nd Century failed to pay Gayed and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely meal periods;
- d) 22nd Century failed to pay Gayed and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) 22nd Century failed to indemnify Gayed and the Aggrieved Employees for all business expenses;
- f) 22nd Century failed to provide Gayed and the Aggrieved Employees with accurate wage statements;
- g) 22nd Century failed to timely and weekly pay Gayed and the Aggrieved Employees all earned and unpaid wages during their employment with 22nd Century; and
- h) 22nd Century failed to timely pay Gayed and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with 22nd Century.

Accordingly, Gayed now seeks civil penalties on behalf of himself and the Aggrieved Employees based on 22nd Century's alleged violations of the California Labor Code and Wage Order 1.

Wage Order 1

The Wage Order applies to "all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The term "Manufacturing Industry " means "any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry." §2(H). At all relevant times during the applicable limitations period, 22nd Century employed Gayed and the other Aggrieved Employees in the manufacturing industry. Accordingly, Gayed and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Timely Pay Wages Upon Termination **(Lab. Code §§ 201, 201.3, 202, and 203)**

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. Due to the violations described above, 22ND Century failed to pay final wages in a timely manner to Gayed and the Aggrieved Employees.

By willfully failing to pay wages to Gayed and other Aggrieved Employees as set forth above, at the time of termination of employment, 22ND Century is liable for violations of Labor Code §§ 201, 202, and 203. Further, California Labor Code § 201.3 requires temporary services employers to pay the employees' wages on a weekly basis. 22ND Century, however, paid Gayed and the Aggrieved Employees on a bi-weekly basis. Accordingly, on behalf of himself and other Aggrieved Employees, Gayed seeks civil penalties from 22ND Century as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 201.3, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201.3 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201.3 occurred (penalties set by Labor Code § 210);
3. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

4. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

Encl. as stated

cc: Youssif Gayed

22nd Century Technologies, Inc.

c/o Alexander Chemers, Esq.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

400 South Hope Street, Suite 1200

Los Angeles, CA 90071

zander.chemers@ogletree.com



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 4, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Youssif Gayed/ 22nd Century*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Youssif Gayed (hereafter “Gayed”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to Associate Manufacturing Process Technicians and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by 22nd Century Technologies, Inc., a New Jersey corporation (hereafter referred to as “22nd Century”), for violations of California Labor Code §§ 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

At all relevant times, 22nd Century has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Gayed and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order” or “Wage Order 1”), paragraph 2.E, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about August 28, 2019, 22nd Century first employed Gayed to work in California as an Associate Manufacturing Process Technician with one of its clients, Amgen. Amgen is a biotechnology company that manufactures pharmaceuticals. 22nd Century continuously employed Gayed from his hire date until June 27, 2020 when his employment ended.

At all relevant times, 22nd Century compensated Gayed and the other Aggrieved Employees with an hourly rate of pay and issued their wages on a bi-weekly basis.

22nd Century failed to compensate Gayed and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, 22nd Century instructed Gayed and the other Aggrieved Employees to record their hours in an electronic timesheet available through Fieldglass, a workforce application. In order to access their timesheets, Gayed and the Aggrieved Employees had to log into their computers and this software, which took approximately three (3) minutes. 22nd Century, however, instructed Gayed and the Aggrieved Employees to record the start of their shifts only after they had logged into their computers and were ready to start work. As such, 22nd Century failed to compensate Gayed and the Aggrieved Employees for the time they spent logging into their computers and the time keeping software. Further, 22nd Century required Gayed and the Aggrieved Employees to transport specimens to a different building after the end of their shifts and off-the-clock. Additionally, 22nd Century required Gayed and the Aggrieved Employees to submit to a temperature check before clocking in for work. During the COVID-19 pandemic, 22nd Century assigned Gayed and the Aggrieved Employees to a different parking structure. 22nd required Gayed and the Aggrieved Employees to arrive approximately eight (8) to ten (10) minutes before the start of their scheduled shifts to walk from the parking structure, wait for a temperature check, and issuance of personal protective equipment such as masks. 22nd Century did not pay Gayed and the Aggrieved Employees for the time spent in these activities.

At all relevant times, 22nd Century failed to provide Gayed and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. 22nd Century instructed Gayed and the Aggrieved Employees to obtain their supervisors' permission before they could take their meal periods. Gayed and the aggrieved Employees' supervisors often authorized the meal periods after Gayed and the Aggrieved Employees had already worked more than five (5) hours in a workday. Gayed and the Aggrieved Employees' supervisors also often interrupted their meal periods by calling them on their personal cellphones to discuss work related matters. 22nd Century also failed to provide Gayed and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. Additionally, 22nd Century failed to provide Gayed and the other Aggrieved Employees with any rest breaks. 22nd Century failed to pay premium wages for days on which it failed to provide Gayed and the Aggrieved Employees with rest and/or meal periods as provided by California law.

22nd Century also required Gayed and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. 22nd Century required Gayed and the Aggrieved Employees to use their personal mobile telephones to communicate with their managers during their shifts or to verify their work schedules. 22nd Century also failed to reimburse Gayed and the Aggrieved Employees for internet and other related expenses when they worked from home.

Further, 22nd Century failed to pay Gayed and the Aggrieved Employees' wages on a weekly basis.

At all relevant times, 22nd Century knowingly and intentionally failed to provide Gayed and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226.

For the reasons stated herein, Gayed alleges the following violations of the California Labor Code and the Wage Order 1 on behalf of himself and the Aggrieved Employees:

- a) 22nd Century failed to provide Gayed and the Aggrieved Employees with all rest breaks and meal periods;
- b) 22nd Century failed to pay Gayed and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) 22nd Century failed to pay Gayed and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely meal periods;
- d) 22nd Century failed to pay Gayed and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) 22nd Century failed to indemnify Gayed and the Aggrieved Employees for all business expenses;
- f) 22nd Century failed to provide Gayed and the Aggrieved Employees with accurate wage statements;
- g) 22nd Century failed to timely and weekly pay Gayed and the Aggrieved Employees all earned and unpaid wages during their employment with 22nd Century; and
- h) 22nd Century failed to timely pay Gayed and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with 22nd Century.

Accordingly, Gayed now seeks civil penalties on behalf of himself and the Aggrieved Employees based on 22nd Century's alleged violations of the California Labor Code and Wage Order 1.

Wage Order 1

The Wage Order applies to "all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The term "Manufacturing Industry " means "any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry." §2(H). At all relevant times during the applicable limitations period, 22nd Century employed Gayed and the other Aggrieved Employees in the manufacturing industry. Accordingly, Gayed and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with

a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 1 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. In the case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) ...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of Wage Order 1 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states in relevant part:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

22nd Century intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Gayed and other Aggrieved Employees as required by law. In failing to do so, 22nd Century violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Gayed seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay (penalties set by Labor Code §558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every 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.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any 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. 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. In addition, 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.

At all relevant times during the applicable limitations period, 22nd Century failed to compensate Gayed and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Gayed seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1);
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
5. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Reimburse for Expenses

(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As discussed above, 22nd Century required Gayed and the other Aggrieved Employees to incur certain business expenses. 22nd Century failed to indemnify Gayed and the other Aggrieved Employees for such expenses both during and after their employment ended.

Accordingly, Gayed seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, 22nd Century violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Gayed seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failures to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by

the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of 22nd Century's failure to pay Gayed and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, 22nd Century failed to timely pay all wages due during employment. Accordingly, Gayed seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201, 201.3, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201, 201.3, and 202, any wages of an employee

who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. Due to the violations described above, 22nd Century failed to pay final wages in a timely manner to Gayed and the Aggrieved Employees.

California Labor Code § 201.3 requires temporary services employers to pay the employees' wages on a weekly basis. 22nd Century paid Gayed and the aggrieved Employees on a bi-weekly basis

By willfully failing to pay wages to Gayed and other Aggrieved Employees as set forth above, at the time of termination of employment, 22nd Century is liable for violations of Labor Code §§ 201, 201.3, 202, and 203. Further, Accordingly, on behalf of himself and other Aggrieved Employees, Gayed seeks civil penalties from 22nd Century as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 201.3, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201.3 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201.3 occurred (penalties set by Labor Code § 210);
3. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

4. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Youssif Gayed

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