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Attorneys for Plaintiff Alexandra Rios

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Superior Court of California,
County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ALEXANDRA RIOS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TSM CORPORATION, a Tennessee
corporation; TAD PGS, INC., a Delaware
corporation; XATOR CORPORATION, a
Virginia corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00038991-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties for Failure to Pay All Regular and Minimum Wages
2. Civil Penalties for Failure to Pay All Overtime Wages
3. Civil Penalties for Meal Period Violations
4. Civil Penalties for Rest Period Violations
5. Civil Penalties for Untimely Payment of Wages
6. Civil Penalties for Wage Statement Violations
7. Civil Penalties for Failure to Timely Pay All Wages Upon Separation
8. Civil Penalties for Failure to Reimburse Business Expenses
9. Civil Penalties for Recordkeeping Violations
10. Civil Penalties for Paid Sick Leave Violations

1 Plaintiff ALEXANDRA RIOS (“Plaintiff”), as the State of California’s designated proxy
2 under the Private Attorneys General Act (“PAGA”) and on behalf of other current and former
3 California employees, brings this representative action against Defendants TSM CORPORATION,
4 a Tennessee corporation; TAD PGS, INC., a Delaware corporation; XATOR CORPORATION, a
5 Virginia corporation; and DOES 1 through 50 (collectively, “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This case is filed by Plaintiff, an aggrieved employee, seeking civil penalties against
8 Defendants for violations of the California Labor Code under the PAGA.

9 2. Plaintiff worked at the San Diego Convention Center for Defendants in connection
10 with the emergency housing of unaccompanied minors who crossed into the United States via the
11 Southern Border.

12 3. In connection with Plaintiff’s employment and the employment of others within the
13 State of California, Defendants committed numerous systemic Labor Code violations for which
14 Plaintiff now seeks to receive civil penalties.

15 **JURISDICTION & VENUE**

16 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
17 California Constitution.

18 5. Venue as to each defendant is proper in this judicial district under Code of Civil
19 Procedure sections 395 and 395.5 because Defendants committed some of the alleged Labor Code
20 violations in this county.

21 **PARTIES**

22 6. Plaintiff worked for Defendants in San Diego County at the San Diego Convention
23 Center from April 10, 2021 to July 1, 2021 as an hourly, non-exempt employee. Her job title was
24 Youth Care Monitor.

25 7. Plaintiff is informed, believes, and alleges that Defendants TSM CORPORATION;
26 TAD PGS, INC. and XATOR CORPORATION do business and employ aggrieved employees
27 throughout California, including San Diego, California.

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8. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown or uncertain to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the factiously named defendants is responsible in some manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

9. Plaintiff is informed, believes, and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein.

10. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

11. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

PAGA ALLEGATIONS

12. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on behalf of the State of California and all other current and former non-exempt employees of Defendants who work or worked within the State of California within the one-year period prior to the date on which Plaintiff first provided written notice to the LWDA and Defendants in this action

1 and continuing through the present (the “aggrieved employees” and the “PAGA Period”). The
2 aggrieved employees for the First through Ninth Causes of Action are limited to those aggrieved
3 employees who worked at or were associated with the emergency intake sites in California. The
4 aggrieved employees for the Tenth Cause of Action (Paid Sick Leave Violations) are not so limited,
5 and expressly includes all non-exempt employees in California entitled to receive Paid Sick Leave
6 in accordance with California laws.

7 13. The State of California, via the Labor and Workforce Development Agency
8 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v.*
9 *Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the
10 plaintiff files suit is always the real party in interest.”])

11 14. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
12 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
13 suited to act on behalf of the State of California and collect civil penalties for all violations
14 committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff*
15 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
16 “aggrieved employee”—a person affected by one Labor Code violation committed by an
17 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

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

24 16. On July 1, 2021, Plaintiff gave written notice by online filing with the LWDA and
25 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
26 violated, including the facts and theories to support the alleged violations. Plaintiff paid the
27 requisite filing fee to the LWDA.

28 17. The PAGA Notice is attached hereto as **Exhibit 1**.

1 18. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
2 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
3 actions taken to cure the alleged violations.

4 19. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
5 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
6 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
7 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

8 20. All allegations regarding violations of the IWC Wage Orders are enforceable as
9 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.”

12 **GENERAL ALLEGATIONS**

13 21. The facts and theories set forth in the PAGA Notice, attached hereto as **Exhibit 1**,
14 are incorporated herein by reference as though fully set forth herein.

15 22. Defendants failed to pay all regular and minimum wages owed to the aggrieved
16 employees as a result of uncompensated time spent waiting in mandatory security lines. Plaintiff
17 and other aggrieved employees were required to arrive prior to their scheduled shift so that they
18 could spend approximately 10 minutes in line without compensation before clocking in for work at
19 the scheduled time. Plaintiff and the aggrieved employees were under Defendants’ control, but not
20 paid for this time in security lines, even though it was an employer requirement. Plaintiff and other
21 aggrieved employees were not allowed to clock in such that their time in these employer-mandated
22 security lines was compensated. (*See, e.g., Frlekin v. Apple, Inc.* (2020) 8 Cal. 5th 1038 [holding
23 under California law that employee time spent in security check lines must be compensated as
24 hours worked].) This policy and practice resulted in unpaid minimum wage and unpaid overtime
25 hours to the aggrieved employees.

26 23. Additionally, Plaintiff and the aggrieved employees were prohibited from leaving
27 the premises for meal or rest periods. The meal periods were unpaid, but Plaintiff and the
28 aggrieved employees remained under the direction and control of Defendants. Defendants required

1 Plaintiff and the aggrieved employees to take their meal periods in the lunch room at the worksite.
2 Plaintiff and the aggrieved employees were required to walk to the designated break room from
3 their work location, which took approximately 10-15 minutes. However, meal periods were limited
4 to 30 minutes in length, therefore the actual time spent on meal periods was consistently less than
5 the 30 minute minimum required by California law. Because Defendants prohibited aggrieved
6 employees from leaving the worksite due to the security requirements of each respective worksite—
7 at the San Diego Convention location and other California locations—aggrieved employees were
8 not free from the control of their employer and thus the time should have been paid as hours
9 worked. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 974–975 [meal periods
10 are on duty if employees required to remain at worksite during meal periods].)

11 24. Additionally, separate and apart from the uncompensated meal period hours,
12 Defendants did not provide timely, duty-free meal periods or make all required premium payments
13 in lieu thereof. Additionally, Defendants did not authorize 10-minute duty-free rest periods or
14 make all required premium payments in lieu thereof. This was due to the same practice and policy
15 whereby Defendants required Plaintiff and other aggrieved employees to remain at the worksite and
16 not leave the premises during meal and rest periods, as well as the requirement to walk to/from the
17 break room yet be back at their respective post within 30 minutes. (*Augustus v. ABM Security*
18 *Services, Inc.* (2016) 2 Cal. 5th 257.)

19 25. Plaintiff and other aggrieved employees used their personal cell phones for work-
20 related purposes, including communications with coworkers and clocking in and out via the
21 Connecteam app, without reimbursement. Plaintiff and the other aggrieved employees did not have
22 an alternative mechanism provided by the employer and thus incurred expenses in direct
23 consequence of the discharge of their respective job duties. (*See generally Cochran v. Schwan's*
24 *Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140).

25 26. Defendants violated California's paid sick leave law in numerous respects due to
26 non-compliant, deficient accrual rates, failure to permit immediate accrual of sick leave, the
27 inability to use paid sick leave, and, on information and belief, failure to maintain paid sick leave
28 records. According to Defendants' records, Plaintiff and other aggrieved employees did not

1 immediately begin accruing paid sick leave when they commenced employment. Instead, the
2 accrual was at a rate of less than one hour for every thirty hours worked, as evident on Plaintiff's
3 paystub with the check date of 5/27/2021 (5/17/2021 to 5/23/2021). In this pay period, as an
4 illustrative example, Plaintiff only accrued 1 hour of paid sick leave when she should have accrued
5 1.33 based on the number of hours worked.

6 27. Additionally, Defendants did not allow Plaintiff or other aggrieved employees to use
7 accrued paid sick leave after 90 days of employment, as evident from wage statements showing no
8 available paid sick leave hours available at the threshold pay period.

9 28. Plaintiff further alleges that Defendants failed to maintain paid sick leave records as
10 required by California law.

11 29. Because Defendants did not pay Plaintiff and the aggrieved for all wages/premiums
12 owed each pay period their employment, Defendants failed to timely pay all wages owed each pay
13 day or upon separation of employment (or within 72 hours thereof).

14 30. Defendants failed to provide Plaintiff and the aggrieved employees with accurate
15 itemized wage statements containing all information set forth in Labor Code section 226(a)(1)
16 through (9). Defendants did not pay for all wages or premiums earned, and therefore the wage
17 statements do not accurately include all gross or net wages, total hours worked, and all hourly rates
18 in effect with the accurate number of corresponding hours worked. Furthermore, Defendants did
19 not provide Plaintiff or other aggrieved employees with a final wage statement upon separation of
20 employment.

21 31. Lastly, because of Defendants' payroll and employment practices, including
22 Defendants' failure to accurately maintain accurate records in accordance with Labor Code section
23 1174 and the IWC Wage Orders.

24 **FIRST CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR FAILURE TO PAY**

26 **ALL REGULAR AND MINIMUM WAGES**

27 **Labor Code §§ 1182.12, 1194, 1197**

28 32. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

7 34. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
8 of an employer who violates, or causes to be violated, a section of this chapter or any provision
9 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
10 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
11 underpaid employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages.”

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR FAILURE TO PAY**

7 **ALL OVERTIME WAGES**

8 **Labor Code §§ 510 and 1194**

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

10 39. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
11 employees no less than one and one-half times their respective "regular rate of pay" for all hours
12 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
13 the seventh day of work in any one workweek, and no less than twice their respective "regular rate
14 of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
15 day of a workweek in violation of Labor Code sections 510, 1194, 1198 and the IWC Wage Orders
16 (the "Hours and Days of Work" sections of the applicable orders).

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

21 **THIRD CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS**

23 **Labor Code §§ 226.7 and 512**

24 41. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 42. Defendants willfully failed in their affirmative obligation to consistently provide
26 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
27 beginning before the fifth hour of hour for each work period of more than five hours per day and a
28 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of

1 work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the “Meal
2 Periods” sections of the applicable orders).

3 43. Further, Defendants willfully failed in their affirmative obligation to consistently pay
4 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
5 compensation for each workday that a fully compliant meal period was not provided, in violation of
6 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

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

11 **FOURTH CAUSE OF ACTION**

12 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS**

13 **Labor Code §§ 226.7 and 516**

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

15 46. Defendants willfully failed in their affirmative obligation to consistently authorize
16 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
17 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
18 Code sections 226.7, 516, 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
19 applicable orders).

20 47. Further, Defendants willfully failed in their affirmative obligation to consistently pay
21 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
22 compensation for each workday that a fully compliant rest period was not provided, in violation of
23 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

24 48. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
25 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
26 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
27 to the extent permitted by law, including under Labor Code section 2699(g).

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1 **FIFTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES**

3 **Labor Code § 204**

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS**

17 **Labor Code §§ 226 and 226.3**

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

19 53. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of
20 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
21 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a
23 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
24 The civil penalties provided for in this section are in addition to any other penalty provided by law."

25 54. Defendants failed in their affirmative obligation provide accurate itemized wage
26 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because
27 Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and

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1 the wage statements reflected inaccurate totals, including gross and net wages earned, total hours
2 worked, applicable rates in effect and corresponding number of hours worked.

3 55. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and
6 costs to the extent permitted by law, including under Labor Code section 2699(g).

7 **SEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR FAILURE TO TIMELY PAY** 9 **ALL WAGES UPON SEPARATION OF EMPLOYMENT**

10 **Labor Code §§ 201 through 203**

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

12 57. Defendants willfully failed in their affirmative obligation to pay all wages earned
13 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
14 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
15 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
16 Labor Code sections 201 through 203 and the IWC Wage Orders.

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

21 **EIGHTH CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR FAILURE TO** 23 **REIMBURSE BUSINESS EXPENSES**

24 **Labor Code § 2802**

25 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 60. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
27 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in
28 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

61. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

NINTH CAUSE OF ACTION

CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS

Labor Code § 1174

62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

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

65. Defendants willfully failed in their affirmative obligation to maintain accurate records showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the applicable orders).

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

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CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS

Labor Code §§ 246 and 246.5

67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

68. Defendants knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave to Plaintiff and the aggrieved employees in violation of Labor Code section 246.

69. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

70. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

71. 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 either be on the employees’ wage statements or a separate written notice.

72. As described herein, Plaintiff and the aggrieved employees did not immediately begin accruing sick leave at the commencement of employment and were not allowed to use accrued sick leave beginning on the 90th day of employment. They also accrued sick leave at a rate

1 of less than 1 hour for every 30 hours worked. Defendants also failed to provide the requisite
2 notice of paid sick leave in violation of Labor Code section 246.5 or maintain records thereof in
3 violation of Labor Code section 247.5.

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

8 **PRAYER FOR RELIEF**

9 Plaintiff prays for judgment as follows:

- 10 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 11 b. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
12 permitted by law, including under Labor Code sections 226, 1194, 2802, and 2699,
13 along with Code of Civil Procedure section 1021.5;
- 14 c. For any recoverable pre- and post-judgment interest; and
- 15 d. For such other relief the Court deems just and proper.
- 16

17 Dated: September 13, 2021

Ferraro Vega Employment Lawyers, Inc.

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20 Nicholas J. Ferraro

21 Attorney for Plaintiff Alexandra Rios
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Exhibit 1
LWDA Notice

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com

July 1, 2021

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

PAGA NOTICE/FEE VIA ONLINE FILING

California Labor and Workforce Development Agency

PAGA NOTICE VIA EMAIL & CERTIFIED U.S. MAIL

TAD PGS, Inc.
1001 3rd Avenue West, Suite 460
Bradenton, Florida 34205

TSM Corporation
1835 Alexander Bell Dr., Suite 210
Reston, Virginia 20191

Xator Corporation
1835 Alexander Bell Dr., Suite 210
Reston, Virginia 20191

Adecco Government Solutions
10151 Deerwood Park Blvd, Bldg 200
Ste 400
Jacksonville, Florida 32256

Adecco USA, Inc.
10151 Deerwood Park Blvd, Bldg 200
Ste 400
Jacksonville, Florida 32256

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as Claimant ALEXANDRA RIOS's ("Claimant") written notice under California Labor Code section 2699.3 of prior and ongoing violations of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders committed by TSM CORPORATION, XATOR CORPORATION, ADECCO USA, INC., TAD PGS, INC., and ADECCO GOVERNMENT SOLUTIONS, who are collectively referred to hereinafter as "Defendants."

If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations and violations set forth in this notice within the statutorily-prescribed 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 Defendants. *See e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

FACTUAL STATEMENT

Claimant has been employed by Defendants as a Youth Care Monitor at the San Diego Convention Center from April 10, 2021 to July 1, 2021. Claimant was classified as a non-exempt employee and paid on an hourly basis of \$25.00 per hour, plus overtime. The Convention Center was one of the emergency intake sites designated in California to house unaccompanied minors who have crossed into the United States through the Southern Border.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein, and will represent all current and former employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”). The aggrieved employees include all non-exempt individuals in the PAGA Period who worked at or were associated with the emergency intake sites in California and were subjected to Defendants’ policies, practices and/or violations described in this notice. Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered which will relate back to the core nucleus of allegations set forth herein.

Violation of Labor Code §§ 204, 510, 558, 1194, 1198 – Overtime and Minimum Wage Violations

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 204, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198 and the related sections of the applicable IWC Wage Orders. 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.

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.”

Prior to the start of their shifts, Claimant and the aggrieved employees were required to spend uncompensated time walking to a security/check-in area and getting cleared by security prior to entering the building and clocking in for work. Claimant and the aggrieved employees would spend approximately 10 minutes reaching the security area, having their parking validated, checking-in, waiting in the security line, going through the security line, and having their bags searched by security prior to the start of the scheduled shift. Employees were not allowed and were unable to clock-in for work until they validated their parking, passed through security, completed the check-in process, and entered the building. Claimant and the aggrieved employees were required to arrive early to complete the security/check-in process so they could be at their designated work location at their scheduled start time. During this entire time, Claimant and the aggrieved employees were under Defendants' control, but employees were not compensated for the time. Claimant was subject to Defendants' policies and practices and direction and control during this time.

Furthermore, Claimant and the aggrieved employees were prohibited from leaving the premises for their meal periods. The meal periods were unpaid although Claimant and the aggrieved employees at all times remained under the direction and control of Defendants. Defendants required employees to take their meal periods in a lunch room inside the worksite that was located a significant distance away from the worksite. Claimant was only allowed to take a 30-minute lunch *inclusive* of the approximately 10-15 minutes that it took her to walk to and from the designated break room. Employees who did not return to their work area within 30 minutes would be disciplined. The lunch room available to employees had no microwave and a refrigerator that employees were informed was for drinks only and not food. Given the control and direction that Defendants exerted over Claimant and the aggrieved employees during the "meal periods," the time is considered "hours worked" and should have been compensated.

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

Defendants 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. Defendants 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.

As described above, Claimant and the aggrieved employees were prohibited from leaving the worksite for their unpaid meal period, were not permitted to store food in the refrigerator, and were required to take their meal periods in a break room away from the worksite that had no microwave. Approximately 10-15 minutes of employees' 30-minute meal period would be spent walking to and from the break room. Employees had no choice but to spend a significant portion of their meal period walking the distance to and from the break room. In other words, Defendants did not relinquish all control over the employees during this time. Due to Defendants' strict requirements and exercise of control over the meal periods, the meal periods taken under these conditions were not duty free. Even if employees disobeyed Defendants' requirement to remain onsite and left the premises for the meal period, they would have to pass through security again and were never permitted to take a lunch longer than 30 minutes. Because of these security constraints, Defendants never provided employees with the unfettered opportunity to take a 30-minute duty-free meal period.

Claimant and the aggrieved employees also took many of their "meal periods" after the fifth hour of work and were unable to take them sooner because of the demands of work. Claimant is informed, believes and alleges that these violations are evident based on the records maintained by Defendants.

When Defendants did not provide fully-compliant meal periods, Defendants 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 was never paid a meal period premium despite receiving non-compliant meal periods that were evident from the face of the records. Claimant is informed, believes and alleges that Defendants' 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 Defendants paid *any* meal period premiums (in lieu of providing compliant meal periods), Claimant is informed, believes and alleges (based on Defendants' regular rate overtime violations) that Defendants 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

Defendants 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.

Defendants 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 were not permitted to leave the worksite for their rest periods. Defendants' policy and practice of controlling where Claimant and the aggrieved employees were allowed to take a rest period (*i.e.*, on premises), among other factors, rendered the rest period subject to Defendants' control. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Even if employees wanted to leave the worksite for the rest period or take a break in their vehicle, they would be required to pass through security again, thereby depriving employees of the ability to take a full 10 minute rest period.

When Defendants did not provide a fully-compliant rest period to Claimant or other aggrieved employees, Defendants failed to pay Claimant and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. Defendants 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.

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 § 2802 – Failure to Reimburse Necessary Expenses

Defendants failed in its affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants require their employees to use their personal cell phones for work-related purposes without reimbursement. At the outset of employment, Claimant and the aggrieved employees were required and instructed by Defendants to download the Connecteam app on their personal cell phones. Connecteam was used by employees to notify Defendants that they had cleared the security and entered the worksite. Employees were required to use the Connecteam app on their phones every day and no other alternative was provided by Defendants. In direct consequence of their remote work job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not reimburse as a matter of policy and practice. At all relevant

times, Defendants were required to comply with the reimbursement mandate of Labor Code section 2802.

It is a matter of undisputed law that California employers must reimburse actual costs incurred and a reasonable percentage of *reoccurring costs* that are necessarily incurred by an employee at work. See generally *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140. Defendants were fully aware of the nature of necessary costs being incurred by Claimant and the aggrieved employees. To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." In other words, if—as here—employees incur "necessary expenses" or "losses" for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney's fees and costs of suit.

Violation of Labor Code § 246 and 246.5 – Failure to Provide Paid Sick Leave

Defendants violated Labor Code section 246 because they failed to provide Claimant and the aggrieved employees with paid sick leave in the amounts required by law. California employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

Defendants failed to provide Claimant and the aggrieved employees with paid sick leave in the manner required by statute. Claimant and the aggrieved employees did not immediately begin accruing paid sick leave when they commenced employment. Once employees began accruing

sick leave, the accrual was at a rate of less than one hour for every thirty hours worked. For example, for the pay period of 5/17/2021 to 5/23/2021 (with the check date of 5/27/2021), Claimant worked a total of 40.01 hours. She only accrued 1 hour of paid sick leave although she should have accrued 1.33 hours based on the number of hours that she worked.

Additionally, Defendants did not allow Claimant or other employees to use accrued leave after 90 days of employment as evident from wage statements showing no available paid sick leave available on or after 90 days of employment. This violates Labor Code § 246(b)(1)(c).

Claimant has information and belief to believe that Defendant further failed to maintain paid sick leave records as required by Labor Code § 247.5, given the discrepancies addressed herein.

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 §§ 204 and 204b – Failure to Timely Pay Wages Owed Each Payday

Defendants 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 overtime wages owed on time each pay period.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), 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, Defendants failed to pay Claimant and other aggrieved employees for the time spent (1) validating parking and passing through security, (2) time spent walking to and from the lunch room for unpaid meal periods (as required by Defendants), and (3) for the full length of the meal period because Defendants failed to relinquish control over employees by requiring them to remain onsite. As a result, Defendants are 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 himself, 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

Defendants 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. This is because Defendants failed to pay for all hours worked by Claimant and other aggrieved employees during the PAGA Period and therefore left them with underpaid wages upon separation of employment, resulting in waiting time penalties and the associated PAGA penalties addressed herein.

Because Defendants failed to pay for all hours worked by Claimant and other aggrieved employees during their employment, Defendants 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, Defendants routinely failed to pay for all hours worked by Claimant and other aggrieved employees. As a result, Claimant may recover civil penalties on behalf of himself, 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

Defendants 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

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)”);

Defendants violated Labor Code section 226 because the wage statements did not accurately reflect the wages and hours of Claimant and other aggrieved employees because Defendants failed to pay employees for all hours worked. As a result, the wage statements incorrectly list the gross wages, net wages, total hours worked, and all applicable hourly rates.

For each aggrieved employee who was terminated or separated from employment during the PAGA Period, Claimant alleges on information and belief that Defendants failed to provide a final wage statement showing the wages owed and the information required by Labor Code section 226(a). As a result, Defendants committed an additional violation of Labor Code section 226 with respect to every employee who separated from employment during the PAGA Period.

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. 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 himself, 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 Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders 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, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5. As mentioned, Defendants also violated Labor Code section 1776 with respect to the prevailing wage recordkeeping.

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

See also See 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).

penalties owed by Defendants. 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).

Notice of Demand for Defendants to Change Policy and Practice

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA, and that any and all settlements releasing liability require Court approval in connection with Claimant and his counsel. Claimant will establish that (1) his lawsuit was a catalyst in motivating Defendants to change its policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of its notice of the violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against Defendants).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity and will do so in San Diego County Superior Court. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

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,



Nicholas J. Ferraro, Esq.

Cc Claimant Alexandra Rios

Lauren N. Vega, Esq. (lauren@ferrarovega.com)