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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**

DANIEL PEREZ, on behalf of all other
aggrieved employees and the State of California,

Plaintiff,

v.

THE GEO GROUP, INC. D/B/A GEO GROUP
CALIFORNIA, INC.; GEO SECURE
SERVICES, LLC; GEO CORRECTIONS AND
DETENTIONS, LLC; GEO CORRECTIONS
HOLDINGS, INC.; DOES 1 through 50,

Defendants.

Case No. 37-2022-00000670-CU-OE-CTL

Representative Action Complaint

1. Civil Penalties for Failure to Pay All Overtime Wages
2. Civil Penalties for Failure to Pay All Meal and Rest Period Premiums
3. Paid Sick Leave Violations
4. Supplemental Paid Sick Leave 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 Recordkeeping Violations

1 Plaintiff DANIEL PEREZ (“Plaintiff”), as the State of California’s designated proxy under
2 the Private Attorneys General Act (“PAGA”) and on behalf of other current and former California
3 employees, brings this representative action against Defendants THE GEO GROUP, INC. which
4 does business in California as GEO GROUP CALIFORNIA, INC.; GEO SECURE SERVICES,
5 LLC; GEO CORRECTIONS AND DETENTIONS, LLC; and GEO CORRECTIONS HOLDINGS,
6 INC.; and DOES 1 through 50 (collectively, “GEO” or “Defendants”), alleging as follows:

7 **INTRODUCTION**

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

10 2. During his employment, and within the PAGA Period, GEO failed to include cash-
11 in-lieu of benefits payments made to Plaintiff and other aggrieved employees in the regular rate of
12 pay used to lawfully calculate and pay respective wages and premiums paid to Plaintiff and other
13 aggrieved employees.

14 3. As a result of this practice, GEO has committed a series of Labor Code violations
15 and is subject to civil penalties under the PAGA.

16 **JURISDICTION & VENUE**

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

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

22 **PARTIES**

23 6. Plaintiff was employed by GEO as a corrections officer from 1998 through
24 December 2020. He worked in San Diego County as an hourly, non-exempt employee.

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

1 8. Plaintiff is informed, believes, and alleges that Defendants THE GEO GROUP, INC.
2 which does business in California as GEO GROUP CALIFORNIA, INC.; GEO SECURE
3 SERVICES, LLC; GEO CORRECTIONS AND DETENTIONS, LLC; and GEO CORRECTIONS
4 HOLDINGS, INC. do business and employ aggrieved employees throughout California, including
5 San Diego, California.

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

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

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

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

PAGA ALLEGATIONS

13. 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 GEO who [1] who worked in the State of California at any time on or after October 25, 2020, and [2] who were paid overtime wages and/or Labor Code § 226.7 premiums and/or paid sick leave (including supplemental paid sick leave) in the same pay period in which they were also paid cash-in-lieu of benefits (including but not limited to “HEALTH & WEL” payments) (the “aggrieved employees” and the “PAGA Period”).

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

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

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

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, are
14 incorporated herein by reference as though fully set forth herein.

15 22. GEO paid cash in lieu of benefits payments to Plaintiff and other aggrieved
16 employees during the PAGA Period. Some of these cash in lieu of benefits payments are
17 designated as line items on wage statements for aggrieved employees, including Plaintiff, with the
18 label “HEALTH & WEL.”

19 23. “HEALTH & WEL” is an abbreviation of health and welfare benefit payments. An
20 example of the “HEALTH & WEL” payment appears on Plaintiff’s wage statement for the pay
21 period of 11/15/2020 to 11/28/2020. GEO may have paid these health and welfare payments to
22 Plaintiff and aggrieved employees to discharge its obligation to furnish fringe benefits to Plaintiff
23 under the Service Contract Act. Instead of furnishing the fringe benefits to Plaintiff and other
24 aggrieved employees, GEO instead elected to furnish the cash equivalent, which is calculated by
25 multiplying certain hours worked by the hourly rate for such “HEALTH & WEL” payments (e.g.,
26 80 Hours * \$4.2200 Rate = \$337.60).

27 24. GEO was required to include cash in lieu of benefits such as “HEALTH & WEL”
28 payments in the regular rate of pay for purposes of calculating and paying overtime to Plaintiff and

1 the aggrieved employees during the PAGA Period. *See, e.g., Flores v. City of San Gabriel*, 824 F.
2 3d 890, 901 (9th Cir. 2016) (affirming “cash-in-lieu of benefits payments are not properly
3 excluded” from the regular rate of pay); *Bonner v. Metropolitan Security Services, Inc.*, 2011 U.S.
4 Dist. LEXIS 26251, Case No. SA-10-CV-937-XR (W.D. Tex., Mar. 15, 2011).

5 25. However, as illustrated on Plaintiff’s 11/15/2020 to 11/28/2020 wage statement from
6 ADP, Plaintiff was paid overtime at a rate of \$51.69, a one and one-half time multiple of Plaintiff’s
7 *straight time* hourly rate of \$34.46, which Plaintiff was paid for regular hours (i.e., \$34.46 x. 1.50 =
8 \$51.96). GEO excluded the “HEALTH & WEL” remuneration on this wage statement from the
9 regular rate calculation, which would have increased Plaintiff’s overtime rate above a simple
10 straight time 1.5x multiple of the base rate. GEO engaged in this policy and practice with respect
11 to other aggrieved employees during the PAGA Period, resulting in overtime underpayments.

12 26. GEO was also required to include cash in lieu of benefits such as “HEALTH &
13 WEL” payments in the hourly rate for paid sick leave and for supplemental paid sick leave, as
14 required by Labor Code sections 246(l)(1)-(3), 248.1, and 248.2. However, as illustrated on
15 Plaintiff’s ADP Wage Statement for the pay period 12/07/2020 to 12/09/2020, Defendants paid
16 aggrieved employees paid sick leave at the base rate, rather than pursuant to the lawful methods
17 required by Labor Code sections 246(l)(1)-(3), 248.1, and 248.2, which states it must be
18 “[c]alculated in the same manner as the regular rate of pay[.]”

19 27. GEO was required to include cash in lieu of benefits such as “HEALTH & WEL”
20 payments in the regular rate of compensation for purposes of calculating and paying meal and rest
21 period premiums to Plaintiff and the aggrieved employees during the PAGA Period. *See, e.g.,*
22 *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 862 (2021) (“We hold that the terms are
23 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
24 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). In pay
25 periods when Plaintiff earned overtime or Labor Code § 226.7 premiums, GEO calculated and paid
26 Plaintiff and aggrieved employees based only on their respective straight time base hourly rates, not
27 their respective regular rate of pay, which includes the “HEALTH & WEL” payments, cash
28 payments, cash in-lieu of benefits payments, shift differentials, bonuses, among other sums. As

1 illustrated on Plaintiff's 11/15/2020 to 11/28/2020 wage statement from ADP, Plaintiff was paid a
2 "CA MEAL PENA," an abbreviation for California Meal Period Penalty, for one hour at a rate of
3 \$34.46, which was a simple *straight time* hourly rate. GEO excluded the "HEALTH & WEL"
4 remuneration on this wage statement from the regular rate calculation, which would have increased
5 Plaintiff's premium pay above a simple straight time hourly rate of \$34.46. Accordingly, GEO
6 underpaid premiums due under Labor Code § 226.7 to Plaintiff and other aggrieved employees by
7 not including all required forms of non-excludable remuneration in the regular rate of compensation
8 during the PAGA Period.

9 28. In sum, GEO did not include cash in lieu of benefits such as "HEALTH & WEL"
10 payments in the "regular rate of pay" for purposes of calculating and paying overtime wages or paid
11 sick leave (incl. supplemental) to Plaintiff or aggrieved employees during the PAGA Period. GEO
12 also did not include cash in lieu of benefits such as "HEALTH & WEL" payments in the "regular
13 rate of compensation" for purposes of calculating and paying meal or rest period premiums to
14 Plaintiff or aggrieved employees during the PAGA Period. GEO excluded from these amounts the
15 regular rate calculation without a legal basis, in violation of California and federal wage and hour
16 laws.

17 29. The cash payments were paid directly by GEO to Plaintiff and not by a third party or
18 trustee and are not excluded from the regular rate of pay calculation under California or federal law.
19 *See Bonner v. Metropolitan Security Services, Inc.* (W.D. Tex. Mar. 15, 2011) Case No. SA-10-CV-
20 937-XR (holding that cash health and welfare payments made directly by an employer to an
21 employee under a contract governed by the Service Contract Act are not excludable from the
22 "regular rate of pay").

23 30. Plaintiff is informed, believes, and alleges the aggrieved employees can be readily
24 identified by records that GEO is required to maintain in connection with their state and federal
25 legal recordkeeping obligations.

26 31. As a result of the foregoing regular rate violations, GEO failed to pay all overtime
27 wages and premiums in each pay period in which they were earned by Plaintiff and aggrieved
28

employees. GEO has thus violated Labor Code § 204 and/or 204b (for any weekly employees), which requires timely payment of all wages each regularly scheduled pay period.

32. As a further result of the foregoing regular rate violations, GEO failed to pay all overtime wages and Labor Code § 226.7 premiums due to Plaintiff and aggrieved employees upon separation of employment, or within 72 hours thereof. GEO has thus violated Labor Code § 201, which requires that if an employer fires an employee all wages must be paid immediately; and, Labor Code § 202, which requires that if an employee quits without providing at least 72 hours' notice, his or her final wages must be paid no later than 72 hours thereafter; or, if at least 72 hours' notice is provided, then the employer must pay the wages immediately upon the employee's final day of employment. GEO has thus violated Labor Code §§ 201 and 202 because it failed to pay all overtime wages and premium pay during the PAGA Period at the "regular rate" resulting in underpayments. As a result, GEO was liable for waiting time penalties set forth in Labor Code § 203, but did not pay those penalties, and is liable for the associated civil penalties.

33. Furthermore, GEO issued wage statements to Plaintiff and, on information and belief, other aggrieved employees, which contain at least four distinct types of violations.

34. First, on each wage statement furnished to Plaintiff and, on information and belief, the aggrieved employees, GEO failed to accurately state "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1), and (5), as Plaintiff and aggrieved employees earned overtime at the regular rate of pay/compensation, but were instead paid based on a straight time multiple, resulting in an inaccurate itemization of "gross wages" and "net wages" on those wage statements.

35. Second, on each wage statement furnished to Plaintiff and, on information and belief, the aggrieved employees, GEO failed to accurately state "all applicable hourly rates in effect during the pay period" in violation of Labor Code § 226(a)(9), as Plaintiff and the aggrieved employees earned overtime at the regular rate of pay, but were instead paid based on a straight time multiple, resulting in an inaccurate itemization of the "applicable hourly rates in effect during the pay period" on those wage statements.

1 36. These wage statement defects are the result of GEO's failure to pay overtime at the
2 "regular rate of pay," thus rendering the wage statement total amounts inaccurate.

3 37. Third, GEO failed to pay Labor Code § 226.7 premiums at the lawful regular rate of
4 compensation, rendering the wage statements an inaccurate reflection of the gross and net wages
5 earned, and applicable hourly rates in effect with respect to Plaintiff and the aggrieved employees,
6 in further violation of Labor Code § 226(a)(1), (5), (9) in each pay period with a Labor Code
7 § 226.7 premium listed.

8 38. An example of the foregoing wage statement violations payments appears on
9 Plaintiff's wage statement for the pay period of 11/15/2020 to 11/28/2020.

10 39. Fourth, GEO failed to pay paid sick leave at the lawful regular rate of pay, rendering
11 the wage statements an inaccurate reflection of the gross and net wages earned, and applicable
12 hourly rates in effect with respect to Plaintiff and the aggrieved employees, in further violation of
13 Labor Code § 226(a)(1), (5), (9) in each pay period where paid sick leave (or supplemental paid
14 sick leave) was paid.

15 40. GEO's wage statement issues described above rendered the wage statements
16 inaccurate and confusing to Plaintiff and the aggrieved employees, concealing the regular rate
17 underpayments and presenting a false portrayal of accuracy on the wage statements relied upon by
18 Plaintiff and the aggrieved employees as the sole documentary evidence of their respective
19 earnings.

20 41. Plaintiff and the aggrieved employees suffered injury in the form of confusion
21 regarding amounts paid for hours worked, and in the form of concealment of the common payroll
22 practices causing the violations and underpayment of wages and wage statement deficiencies as
23 addressed in this Complaint.

24 42. GEO's wage statement violations were knowing and intentional as a matter of law
25 with respect to Plaintiff and the aggrieved employees given that the legal obligation was not
26 disputed, the wage statement and overtime, meal premium, and paid sick leave laws are clear and
27 unambiguous as written, and because GEO nevertheless failed to comply despite the means and
28 ability to do so.

43. Plaintiff is informed and believes, and alleges, that GEO knew or should have known that the cash in lieu of benefits payments should have been included in the regular rate of pay/compensation. However, notwithstanding the plain language of the respective statutes, GEO failed to comply, resulting in underpayments of wages and premiums to the aggrieved employees.

FIRST CAUSE OF ACTION

Labor Code §§ 510, 1194, 1198

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

47. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

CIVIL PENALTIES FOR PAY ALL MEAL AND REST PERIOD PREMIUMS

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

(the “Meal Periods” and “Rest Periods” sections of the applicable orders) by failing to pay meal and rest period premiums at the regular rate of compensation to the aggrieved employees during the PAGA Period. On days in which Plaintiff and the aggrieved employees received a meal or rest period premium under Labor Code § 226.7, GEO failed to pay the corresponding meal or rest period premium at one hour their regular rate of compensation.

50. As a result of this common practice, GEO failed to provide Plaintiff and the aggrieved employees all Labor Code § 226.7 premiums due at the lawful regular rate of compensation in violation of Labor Code §§ 226.7, 512, and 516, and the IWC Wage Orders.

51. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

THIRD CAUSE OF ACTION

PAID SICK LEAVE VIOLATIONS

Labor Code §§ 246 *et seq.*

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

53. 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.

54. 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.

55. 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

1 which the employee uses paid sick time, whether or not the
2 employee actually works overtime in that workweek.

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

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

10 56. Defendants failed to pay Plaintiff and aggrieved employees paid sick leave at one of
11 the lawful rates set forth in the statute due to the regular rate underpayments.

12 57. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
13 aggrieved employees and the State of California for civil penalties as required by Labor Code
14 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
15 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
16 Labor Code section 248.5.

17 **FOURTH CAUSE OF ACTION**

18 **SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS**

19 **Labor Code §§ 246 *et seq.***

20 58. Defendants knowingly and intentionally failed in their affirmative obligation to
21 provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the aggrieved employees in
22 violation of Labor Code sections 246, 247.5, 248.1, and 248.2.

23 59. Labor Code section 248.1 requires Covid-19 Supplemental Paid Sick Leave to be
24 paid at the *highest of* the following methods:

- 25 (1) the regular rate of pay for the workweek in which leave is taken
26 (2) state minimum wage; or
27 (3) local ordinance minimum wage
28

1 60. Labor Code section 248.2 requires Covid-19 Supplemental Paid Sick Leave to be
2 paid at the *highest of* the following methods:

3 (1) the regular rate of pay for the workweek in which leave is taken

4 (2) state minimum wage

5 (3) local ordinance minimum wage; or

6 (4) average hourly pay for preceding 90 days (excluding overtime pay).

7 61. Defendants failed to provide and pay paid sick leave in the manner described above,
8 due to the failure to include all forms of remuneration in the regular rate of pay.

9 62. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
10 aggrieved employees and the State of California for civil penalties as required by Labor Code
11 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
12 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
13 Labor Code section 248.5.

14 **FIFTH CAUSE OF ACTION**

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

16 **Labor Code § 204**

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

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

24 65. 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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CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS

Labor Code §§ 226 and 226.3

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

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

68. Defendants failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and the wage statements reflected inaccurate totals, including gross and net wages earned, total hours worked, applicable rates in effect and corresponding number of hours worked.

69. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 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).

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO TIMELY PAY

ALL WAGES UPON SEPARATION OF EMPLOYMENT

Labor Code §§ 201 through 203

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

71. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or

1 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
2 Labor Code sections 201 through 203 and the IWC Wage Orders.

3 72. 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 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **EIGHTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS**

9 **Labor Code § 1174**

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

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

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

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

26 77. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
27 aggrieved employees and the State of California for civil penalties as required by Labor Code
28

1 section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law,
2 including under Labor Code section 2699(g).

3 **PRAYER FOR RELIEF**

4 Plaintiff prays for judgment as follows:

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

11
12 Dated: January 6, 2022

13 Ferraro Vega Employment Lawyers, Inc. /
14 Rick Waltman Law, APC

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16 _____
17 Nicholas J. Ferraro

18 Attorneys for Plaintiff Daniel Perez
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EXHIBIT 1
PAGA Notice

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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October 25, 2021

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

VIA CERTIFIED U.S. MAIL & EMAIL

**The GEO Group Inc., which will do
Business as Geo Group California, Inc.**
4955 Technology Way
Boca Raton, FL 33431

GEO Secure Services, LLC
4955 Technology Way
Boca Raton, FL 33431

GEO Corrections and Detention, LLC
4955 Technology Way
Boca Raton, FL 33431

GEO Corrections Holdings, Inc.
4955 Technology Way
Boca Raton, FL 33431.

PAGA Notice & Filing Fee
Submitted electronically to the California
Labor and Workforce Development
Agency on **10/25/2021**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of DANIEL PEREZ (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against THE GEO GROUP, INC. dba GEO CALIFORNIA, INC.; GEO SECURE SERVICES, LLC; GEO CORRECTIONS AND DETENTION, LLC; GEO CORRECTIONS HOLDINGS, INC.; and all related employer entities (“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 period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants operate private prisons and other facilities throughout California and the United States, including in San Diego County under federal and other non-federal contracts. Defendants employ individuals throughout the State of California in hourly, non-exempt positions where employees are entitled to overtime, paid sick leave, and meal and rest period premiums, along other wage and hour protections under applicable state and local law.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and or ostensible agent of each other and the joint employer of Claimant and other aggrieved employees. Defendants comprise the integrated enterprise known as The GEO Group and constitute an “employer” of Claimant and other aggrieved employees for purposes of this civil action.

Claimant was employed by Defendants as a corrections officer from 1998 through December 9, 2020. He worked in San Diego County for Defendants as an hourly, non-exempt employee.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

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

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. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Underpaid Overtime

Violation of Labor Code §§ 510, 558, 1194, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay overtime wages at the lawful regular rate of pay to Claimant and other aggrieved employees in violation of Labor Code sections 510, 558, 1194, 1197.1, 1198, 1199, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee; ” and “any work in excess of

12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee,” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Like federal law, under the California Labor Code, the “regular rate” is not simply a straight time multiple of an employee’s base rate, but rather must include “all remuneration for employment paid to ... the employee,” except the eight items specifically enumerated in 29 U.S.C. § 207(e)(1)-(8). Remuneration like bonuses and incentives must be included in the hourly overtime rate. *See, e.g., Howell v. Advantage RN, LLC* (S.D. Cal. 2019) 401 F. Supp. 3d 1078, 1093 (“Such non-discretionary bonuses ... cannot be lawfully excluded from the regular rate”). Additionally, shift differentials and on-call pay (i.e. work paid at different rates) must also be factored in to the regular rate of pay used to calculate overtime for employees. *See, e.g., Bay Ridge Operating Co. v. Aaron* (1948) 334 U.S. 446, 469.

Most relevant here, cash payments in lieu of benefits must also be included in the regular rate of pay used to calculate overtime wages. *See, e.g., Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901 (affirming “cash-in-lieu of benefits payments are not properly excluded” from the regular rate of pay). Case law is clear that employers who pay cash in lieu of benefits must include such payments in the regular rate of pay. *Id.*; *see also Local 246 Util. Workers Union v. Southern California Edison Co.*, (9th Cir. 1996) 83 F. 3d 292, 296 (holding cash payments made directly to employees were not excepted from the regular rate under the Health Insurance Exception because such payments were not made to a third party); *Bonner v. Metropolitan Security Services, Inc.* (W.D. Tex., Mar. 15, 2011) 2011 U.S. Dist. LEXIS 26251, Case No. SA-10-CV-937-XR (holding that cash health and welfare payments made directly by an employer to an employee under a contract governed by the Service Contract Act are not are not excludable from the “regular rate of pay”).

Defendants failed to include all forms of remuneration in the regular rate of pay when calculating the overtime rate for Claimant and other aggrieved employees, as illustrated on Claimant’s 11/15/2020 to 11/28/2020 ADP Wage Statement:

For inquiries on this statement please call: 561-893-0101
Total Hours Worked: 76.65
Basis of Pay: HOURLY

Earnings	Hours	Rate	Current	YTD
REGULAR	71.92	34.4600	2,478.36	56,084.02
OT HOURS	4.73	51.6900	244.49	1,313.97
VACATION			.00	5,927.12
SICK			.00	2,196.83
HOLIDAY	8.00	34.4600	275.68	2,756.80
TRAINING PAY			.00	505.53
HEALTH & WEL	80.00	4.2200	337.60	8,440.00
CA MEAL PENA	1.00	34.4600	34.46	68.92
TOTAL PAY			3,370.59	77,293.19

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Defendants instead paid Claimant a simple 1.5x multiple of his base rate of \$34.46 (\$34.46 x 1.50) to arrive at the overtime rate paid of \$51.69. Defendants excluded the remuneration itemized as HEALTH & WEL, which is an abbreviation for Health and Welfare Benefits paid directly by Defendants to Claimant in connection with his employment. This company-wide policy and practice of not including HEALTH & WEL payments—or other cash in lieu of benefits payments or forms of non-excludable remuneration—was applied to other aggrieved employees and is a matter of common payroll administration.

Defendants have thus violated the foregoing sections of the Labor Code in each pay period in which aggrieved employees like Claimant have worked overtime hours in pay periods where they earned these forms of non-excludable remuneration (including health and welfare benefits) but were not properly paid 1.5x or 2.0x their regular rate of pay for those overtime hours.

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 §§ 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”

under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

In pay periods where Defendants paid one or meal period premiums to Claimant or the aggrieved employees, Defendants did not pay those premiums at the regular rate of compensation. As explained with respect to the “regular rate” allegations of the overtime section, and for the same reasons, Defendants did not include all required forms of remuneration when calculating the regular rate at which meal premiums must be paid. Specifically, Defendant did not include the HEALTH & WEL payments in the regular rate of compensation for purposes of the meal period premiums. Instead, Defendants paid the meal period premiums to Claimant and aggrieved employees at the same hourly rate as their respective base hourly rates. As a result, Defendants violated the foregoing sections of the Labor Code and IWC Wage Orders and underpaid Claimant and the aggrieved employee meal period premiums.

This violation is illustrated on Claimant’s ADP Wage Statement for the pay period 11/15/2020 to 11/28/2020:

For inquiries on this statement please call: 561-893-0101				
Total Hours Worked:	76.65			
Basis of Pay:	HOURLY			
Earnings	Hours	Rate	Current	YTD
REGULAR	71.92	34.4600	2,478.36	56,084.02
OT HOURS	4.73	51.6900	244.49	1,313.97
VACATION			.00	5,927.12
SICK			.00	2,196.83
HOLIDAY	8.00	34.4600	275.68	2,756.80
TRAINING PAY			.00	505.53
HEALTH & WEL	80.00	4.2200	337.60	8,440.00
CA MEAL PENA	1.00	34.4600	34.46	68.92
TOTAL PAY			3,370.59	77,293.19

Bates # GEO Perez OR 000094

Defendants paid Claimant the CA MEAL PENA, abbreviated from California Meal Period Premium, at the same rate as his base rate, instead of the regular rate of compensation which in this pay period should have included the cash in lieu of benefits payments. This common policy and practice of underpaying premiums by not including all forms of pay (including but not limited to the HEALTH & WEL payments) applied as a matter of common payroll administration with respect to the 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 section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

For the same reasons as set forth above in the meal period section, and on information and belief, the aggrieved employees were underpaid rest period premiums, to the extent they received any, as a result of Defendants' policy and practice of not including all forms of remuneration in the regular rate of compensation at which such rest period premiums must be paid.

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, along with all other civil penalties permitted by law.

Underpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3).

Under Labor Code section 246 *et seq.*, 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).

Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code § 246(l)(1)-(3):

(l) For the purposes of this section, an 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.

The third option is not applicable because this case involves non-exempt employees. Therefore, Defendants were required to pay paid sick time under the method set forth in options one or two. However, Defendants failed to pay sick leave using method one or two described above because when they paid sick leave to aggrieved employees, they failed to factor in bonuses and other forms of remuneration.

As illustrated on Claimant's ADP Wage Statement for the pay period 11/01/2020 to 11/14/2020, Defendants paid Claimant, like other aggrieved employees, paid sick leave hours at the base rate, rather than methods one or two above:

For inquiries on this statement please call: 561-893-0101				
Total Hours Worked:	58.78			
Basis of Pay:	HOURLY			
Earnings	Hours	Rate	Current	YTD
REGULAR	54.78	34.4600	1,887.72	53,605.66
OT HOURS	4.00	51.6900	206.76	1,069.48
VACATION	8.00	34.4600	275.68	5,927.12
SICK	8.00	34.4600	275.68	2,196.83
HOLIDAY	8.00	34.4600	275.68	2,481.12
TRAINING PAY			.00	505.53
HEALTH & WEL	80.00	4.2200	337.60	8,102.40
CA MEAL PENALTY			.00	34.46
TOTAL PAY			3,259.12	73,922.60
PTO/Vacation & LTI/Sick Summary Balance				
PTO/Vacation				48.57
LTI/Sick				4.85
Floating Hol				
CA Supp Sick				80.00
Employees are eligible for PTO only after completing 90 days of service.				

This is because (1) Defendants did not pay paid sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek,” as the regular rate should have included the Health & Welfare wages for the reasons aforementioned. *See Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901. Additionally, (2) Defendants did not use method two by dividing the employee's total wages by total hours worked in the full pay periods of the prior

90 days, as such calculation would have resulted in a paid sick leave rate higher than the base rate of \$34.46 at which Claimant was paid.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned cash in lieu of benefits payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

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. Claimant is also entitled to penalties under Labor Code section 248.5.

Underpaid Covid Supplemental Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 248.1 and 248.2 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at the lawful hourly rate.

Under Labor Code section § 248.1, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2021. Under Labor Code § 248.2, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

Under Labor Code section 248.1, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following methods:

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

- (i) The covered worker's regular rate of pay for the covered worker's last pay period, including pursuant to any collective bargaining agreement that applies.
- (ii) The state minimum wage.
- (iii) The local minimum wage to which the covered worker is entitled.

Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following methods:

- (i) For nonexempt covered employees, by the highest of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered 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.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

As illustrated on Claimant's ADP Wage Statement for the pay period 12/07/2020 to 12/09/2020, Defendants paid Claimant, like other aggrieved employees, paid sick leave hours at the base rate, rather than methods the highest of the methods set forth in Labor Code sections 248.1 and 248.2.

For inquiries on this statement please call: 561-893-0101				
Total Hours Worked:	12.00			
Basis of Pay:	HOURLY			
Earnings	Hours	Rate	Current	YTD
REGULAR	12.00	34.4600	413.52	
VACATION	8.00	34.4600	275.68	
VACATION PAY	53.77	34.4600	1,852.91	
COVID LEAVE	40.00	34.4600	1,378.40	
HEALTH & WEL	80.00	34.4600	2,756.80	
TOTAL PAY			4,258.11	
Accrual Summary				Balance
PTO/Vacation				55.97
LTI/Sick				7.72
Floating Hol				
Supp Sick				

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.1 and 248.2 was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned cash in lieu of benefits payments, bonuses, commissions, or other forms of non-excludable remuneration and also received statutory Covid paid sick leave.

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. Claimant is also entitled to penalties under Labor Code section 248.5.

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

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 wages owed on the regular pay days scheduled each pay period. To the extent that

Defendants made or makes any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, 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. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees overtime, premium pay, and leave pay on account of the regular rate of pay underpayments. 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.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203**

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.

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.

Because Defendants failed to pay all wages owed to Claimant and other aggrieved employees during their employment and failed to properly pay overtime, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Indeed, Claimant is a former employee and like other former employees who have

left the company, they were not paid all wages owed on account of the ongoing, systemic “regular rate” underpayments that occurred throughout employment and, on information and belief, continues to this day.

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.

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

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

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—the regular rate of pay underpayments for overtime, premium pay, and paid sick leave—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned overtime, paid sick leave, and premiums at the “regular rate” or variation thereof, but were instead underpaid. Additionally, Defendants violated Labor Code section 226(a)(5) for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub. Furthermore, the hourly rates in effect for overtime, paid sick leave, and premiums are incorrect for the same reasons, as they are inaccurately stated as the base rate for Claimant and other aggrieved employees, whereas they earned and were entitled to pay at the regular rate of pay.

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

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. Indeed, 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. The

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.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

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.

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

Claimant was compelled to retain the services of counsel to file this court action to protect his interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

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. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) their lawsuit was a catalyst in motivating Defendants to change their 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 their 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. Diamler-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. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

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

Thank you for your attention to this matter.

Sincerely,

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

Nicholas J. Ferraro

Cc Claimant Daniel Perez

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