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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TAYLRE CHOWNING, as an individual and
on behalf of all others similarly situated;
THOMAS ARMALY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

FREEDOM MORTGAGE CORPORATION,
a corporation; RYAN PERUSSI, an individual;
and DOES 1 through 50,

Defendants.

Case No. 37-2022-00005613-CU-OE-CTL

Assigned to the Hon. Matthew C. Braner
Department: C-60

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Failure to Provide Paid Sick Leave
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Violations of the Unfair Competition Law
11. –22 Claims for Civil Penalties under the
Labor Code Private Attorneys General Act
of 2004 (PAGA)

Action Filed: February 10, 2022

CMC: September 2, 2022

Trial Date: Not Set Yet

Plaintiffs TAYLRE CHOWNING and THOMAS ARMALY (“Plaintiffs”), as individuals and on behalf of all other similarly situated current and former employees of the State of California, bring this class and representative action against Defendants FREEDOM MORTGAGE CORPORATION, RYAN PERUSSI, and DOES 1 through 50 (collectively, “Defendants”), alleging as follows¹:

INTRODUCTION

1. This is a class and representative action filed for wage and hour violations of the California Labor Code. Defendants maintained an unlawful practice requiring employees work off-the-clock during uncompensated meal periods, resulting in unpaid minimum wages and overtime for those hours worked. Defendants failed to pay overtime, meal and rest period premiums, and paid sick leave at the required regular rate calculation, instead paying those wages based on straight time hourly rates (and multiples). Defendants also maintained unlawful meal and rest period policies that rendered the statutory breaks late, short, missed, or interrupted, without payment of the corresponding meal or rest period premium. Defendants failed to reimburse employee expenses. As a result, Defendants failed to timely pay Plaintiffs and Class Members each pay period on paydays and upon separation of employment, failed to provide accurate itemized wage statements, and thus are liable for waiting time and other statutory penalties, in addition to the underlying wages, sick leave, premiums, attorney's fees, interest and reasonable litigation costs. Plaintiffs also seek to recover civil penalties under the PAGA for Defendants' violation of the California Labor Code.

2. Defendants' employment policies and practices and payroll administration enabled and facilitated these violations on a company-wide basis with respect to Class Members.

¹ Plaintiffs amend the original complaint without leave of court pursuant to Labor Code § 2699.3(a)(2)(C), which states “[n]otwithstanding any other provision of law [including C.C.P. § 472], a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part [Labor Code § 2698 et seq.] at any time within 60 days of the time periods specified in this part [i.e., after the 65-day notice period has expired].”

1
2 **JURISDICTION & VENUE**

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

5 4. Venue as to each defendant is proper in this judicial district under Code of Civil
6 Procedure sections 395 and 395.5 because Defendants conduct business in this county,
7 employed putative class members in this county, and committed some of the violations in this
8 county.

9 **PARTIES**

10 **A. Plaintiffs Taylre Chowning and Thomas Armaly**

11 5. Plaintiff Taylre Chowning is a California citizen over 18 years of age who
12 worked for Defendants in San Diego County as an hourly, non-exempt employee.

13 6. Plaintiff Thomas Armaly is a California citizen over 18 years of age who worked
14 for Defendants in San Diego County as an hourly, non-exempt employee.

15 **B. Defendants**

16 7. Plaintiffs are informed, believe, and allege that Defendant FREEDOM
17 MORTGAGE CORPORATION is a corporation registered to do business in the State of
18 California, doing business and employing labor throughout San Diego County.

19 8. Plaintiffs are informed, believe, and allege that Defendant RYAN PERUSSI is
20 a California citizen and Vice President of Regional Sales for Freedom Mortgage Corporation,
21 with his home residence in San Diego County. Defendant PERUSSI controlled the wages,
22 hours, and working conditions of the putative Class Members. (*See, e.g., Atempa v. Pedrazzani*
23 (2018) 27 Cal. App. 5th 809.)

24 9. The true names and capacities, whether individual, corporate, or otherwise, of
25 the parties sued as DOES 1 through 50, are presently unknown to Plaintiffs, who sue them by
26 such fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed,
27 believe, and allege that each of the factiously-named defendants is responsible in some manner
28

1 for the acts and omissions alleged herein. Plaintiffs may later seek leave to amend this
2 Complaint to reflect their true names and capacities.

3 10. Plaintiffs are informed, believe, and allege that all defendants in this action are
4 employers and/or joint employers and part of an integrated employer enterprise, as each
5 defendant exercises control over the wages, hours, and working conditions of Plaintiffs and the
6 aggrieved employees, suffers and permits them to work, and engages the workforce creating a
7 common law employment relationship.

8 11. Additionally, all defendants have common ownership, common management,
9 interrelationship of operations, and centralized control over labor relations and are therefore
10 part of an integrated enterprise and thus jointly and severally responsible for the acts and
11 omissions alleged herein.

12 12. Plaintiffs are informed, believe, and allege that each defendant acted in all
13 respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer,
14 co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all
15 other co-defendants, such that the acts and omissions of each defendant are legally attributable
16 to all others.

17 **GENERAL ALLEGATIONS**

18 13. Defendants failed to pay Class Members for all hours worked at the applicable
19 minimum, regular, overtime, and/or double time hourly rate, because of Defendants' policy and
20 practice of requiring employees to perform work duties during unpaid meal periods.
21 Defendants' Employee Handbook, p. 36, affirms the ongoing practice that "departments and
22 phones still need to be covered during meal breaks." Plaintiffs and Class Members covered
23 departments and phones during uncompensated meal breaks. The Employee Handbook also
24 required Class Members to "check with your supervisor or manager for your assigned meal
25 break[,] but meal periods were not scheduled or coordinated. Defendants' have failed to pay
26 for all hours worked and are liable accordingly for unpaid minimum wage, liquidated damages,
27 and any corresponding overtime wages owed.

1 14. When Defendants paid overtime to Plaintiffs and other Class Members,
2 Defendants failed to pay overtime using a correct calculation of the regular rate of pay.
3 Plaintiffs and Class Members regularly worked overtime and were paid non-excludable
4 earnings, such as sales commissions, in the same pay period. In those pay periods, however,
5 Defendants paid Class Members based on a multiple of the *straight time hourly rate*, rather than
6 “at the rate of no less than one and one-half times the regular rate of pay for an employee[.]” or
7 “at the rate of no less than twice the regular rate of pay for an employee” for any applicable
8 double time hours, as required by Labor Code section 510 and the IWC Wage Orders. An
9 illustrative example of the regular rate of pay violation is found on Plaintiff CHOWNING’s
10 11/07/2021 to 11/20/2022 wage statement (pay date: 11/26/2021), revealing an overtime rate of
11 \$28.8462 despite earning \$12,500 in commissions. The total damages are evident from
12 Defendants’ wage statements, pay records, and earning reports.

13 15. Defendants failed to consistently provide timely, off-duty 30-minute meal
14 periods to Class Members within the first five hours of work, and timely second off-duty 30-
15 minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor
16 Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*Donohue v.*
17 *AMN Services, LLC* (2021) 11 Cal. 5th 58, 61 [“[T]ime records showing noncompliant meal
18 periods raise a rebuttable presumption of meal period violations, including at the summary
19 judgment stage”].) This was the result of the aforementioned practice which resulted in late,
20 short, interrupted and missed meal periods.

21 16. When Defendants did not provide fully compliant meal periods, Defendants
22 failed to pay Plaintiffs and Class Members a meal period premium at the regular rate of
23 compensation, in violation of Labor Code section 226.7. (*See e.g., Ferra v. Loews Hollywood*
24 *Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are synonymous: “regular rate
25 of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a),
26 encompasses all nondiscretionary payments, not just hourly wages.”]) Akin to Defendants’
27 overtime underpayments, Defendants did not include commission earnings or other forms of
28 non-excludable remuneration in the “regular rate of compensation” at which meal period

1 premiums must be paid. Defendants' policy and practice of not paying all meal period
2 premiums at the lawful rate is a matter of common corporate policy and payroll administration
3 such that it applies and affected all other Class Members and are evident from the time records
4 and wage statements maintained by Defendants.

5 17. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for
6 every four hours of work or major fraction thereof as required by Labor Code section 226.7 and
7 516 and section 12 of the applicable IWC Wage Order. Defendants' written policy and
8 corporate practice effectively required Class Members to remain on site and on duty during rest
9 periods to meet work demands, respond to emails, and telephone calls, and perform other tasks,
10 such that rest periods were not free from all work responsibilities. Defendants' written policy
11 required employees "notify and coordinate the times of each work break and meal period with
12 their supervisory or manager[,]" but Class Members instead were authorized to take breaks and
13 routinely worked through them.

14 18. When Defendants did not provide a fully compliant rest period to Plaintiffs or
15 other Class Members, Defendants failed to pay Plaintiffs and other Class Members a rest period
16 premium at the lawful "regular rate of compensation" in violation of Labor Code section 226.7
17 based on a failure to include all forms of non-excludable remuneration, like sales commissions,
18 in the regular rate of compensation. Plaintiffs are informed, believe, and allege that Defendants
19 had a policy of not paying rest period premiums. To the extend Defendants paid any premiums,
20 Plaintiffs allege that they were underpaid because they were paid at the straight time rate and
21 not the regular rate of compensation. (*Loews Hollywood Hotel*, 11 Cal. 5th at 863.)

22 19. In pay periods where Defendants provided Plaintiffs and other Class Members
23 with remuneration in addition to their respective base hourly rate for hours worked (such as
24 sales commissions)—excluding any forms of pay subject to any applicable statutory exclusions
25 from the "regular rate"—Defendants failed to properly calculate and pay paid sick leave at the
26 appropriate regular rate of pay, in violation of Labor Code § 246. Defendants paid sick leave
27 at employees' straight time hourly rate instead of one of the methods authorized by statute,
28

1 which required Defendants to factor in employees additional remuneration, such as
2 commissions.

3 20. Furthermore, Defendants also failed to pay Covid-19 Supplemental Sick Leave
4 at a rate authorized by statute because when paying such leave, Defendants failed to factor in
5 employees' commissions, bonuses, incentives, and other compensation. On information and
6 belief, Defendants instead paid Supplemental Sick Leave at employees' straight time hourly
7 rate rather than by one of the methods authorized by Labor Code sections 248.1, 248.2, and
8 248.6.

9 21. Defendants' workforce worked from home for a significant part of the Class
10 Period, but Defendants did not maintain a lawful reimbursement policy, in violation of Labor
11 Code section 2802. Class Members incurred "work from home costs" associated with their use
12 of personal internet, data, cell phones, utilities, and home office supplies. In direct consequence
13 of their job duties, Plaintiffs and the Class Members unavoidably and necessarily incurred
14 losses, expenditures, costs and expenses that Defendants did not reimburse as a matter of policy
15 and practice.

16 22. Defendants also failed to provide written commission agreements to all
17 aggrieved employees, in violation of Labor Code section 2751. When Defendants changed their
18 commission structure, they failed to provide the updated agreements to all aggrieved employees
19 and/or provide copies of the new agreement signed by Defendants and employees. As one
20 example of this practice, in or around October 2021, Defendants unilaterally informed
21 employees that they would be paid under a new commission structure and began paying
22 employees (including Plaintiff Chowning) under the new structure without providing any new
23 written documents or having employees sign such documents.

24 23. With respect to the unpaid wages, paid sick leave, and premiums owed to
25 Plaintiffs and Class Members, Defendants failed to pay those wages on time each pay period or
26 upon separation of employment. Because Defendants did not pay Plaintiffs and the Class for
27 all wages/premiums owed each pay period their employment (*i.e.*, minimum wage, overtime,
28 sick leave pay, meal and rest period premiums, commission earnings), Defendants failed to

1 timely pay all wages owed on time each pay day or upon separation of employment (or within
2 72 hours thereof, as applicable), in violation of Labor Code sections 201 through 203 (waiting
3 time) and 204 and 204b (paydays).

4 24. Defendants equally failed in their affirmative obligation to provide accurate
5 itemized wage statements each pay period to Plaintiffs and Class Members. Defendants issued
6 wage statements to Plaintiffs and, on information and belief, other Class Members, which
7 contain at least several types of violations. First, on each wage statement furnished, Defendants
8 failed to accurately state the “gross wages earned” and “net wages earned” in violation of Labor
9 Code § 226(a)(1) and (5), as Plaintiffs and Class Members earned regular and overtime wages,
10 but were underpaid due to the regular rate violations and the off-the-clock hours worked, and
11 were deprived of all paid sick leave and meal and rest period premiums payments at the lawful
12 rate, resulting in an inaccurate itemization of gross and net wages earned on those wage
13 statements. Second, on each wage statement furnished to Plaintiffs and, on information and
14 belief, the Class Members, Defendants failed to accurately state “all applicable hourly rates in
15 effect during the pay period and the corresponding number of hours worked at each hourly rate
16 by the employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to
17 Plaintiffs and Class Members do not accurately list the actual hours worked by employees (due
18 to off the clock work), but instead list deflated hours and wages, and list the incorrect hourly
19 rates for paid sick leave, overtime, meal and rest period premiums, as such amounts were not
20 paid at the lawful regular rate of pay. Third, Defendants inaccurately listed total hours worked
21 during the pay period in violation of Labor Code § 226(a)(2), as Plaintiffs and Class Members
22 worked off-the-clock during times uncompensated meal periods.

23 25. Defendants’ wage statement issues described above rendered the wage
24 statements inaccurate and confusing to Plaintiffs and Class Members, concealing the
25 underpayments and presenting a false portrayal of accuracy on the wage statements relied upon
26 by Plaintiffs and Class Members as the sole documentary evidence of their respective earnings.
27 Plaintiffs and, on information and belief, Class Members were misinformed and misled by the
28 wage statements wages, hours, rates, and earnings. Defendants’ wage statement violations were

1 knowing and intentional as a matter of law with respect to Plaintiffs and Class Members given
2 that the legal obligation was not disputed, the wage statement and wage laws are clear and
3 unambiguous as written, and because Defendants nevertheless failed to comply despite the
4 means and ability to do so.

5 26. Because of the violations set forth in this Complaint, including Defendants’
6 failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates
7 of pay (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and
8 the IWC Wage Orders by failing to maintain records showing accurate daily hours worked at
9 the corresponding wage rate, and the wages paid to each employee.

10 27. Plaintiffs are informed, believe, and allege that Defendants’ acts and omissions
11 have knowingly and intentionally caused harm to Plaintiffs and the Class. Plaintiffs are
12 informed, believe, and allege that Defendants have engaged in systemic violations of the Labor
13 Code and IWC Wage Orders by maintaining practices, policies, and customs that are
14 inconsistent with their obligations under California law.

15 **CLASS ACTION ALLEGATIONS**

16 28. ***Class Definition.*** The named individual Plaintiffs seek class certification under
17 California Code of Civil Procedure section 382. Plaintiffs propose the following class:

18 a. All individuals currently or formerly employed by Defendants in the
19 State of California as hourly non-exempt employees at any time from
20 **February 10, 2018** through the date of trial in this action (the “Class” or
21 “Class Members” and the “Class Period”).

22 29. Further, Plaintiffs propose the following subclasses:

23 a. All Class Members who separated from employment with Defendants at
24 any time from **February 10, 2019** through the time of trial in this action
25 (“Waiting Time Subclass”).

26 b. All Class Members who received a wage statement from Defendants at
27 any time from **February 10, 2021** through the time of trial in this action
28 (“Wage Statement Subclass”).

- 1 c. All Class Members who received additional forms of compensation that are
2 non-excludable from the regular rate of pay, such as bonuses and
3 commissions, during pay periods in which they also worked overtime or
4 double-time hours (the “Regular Rate of Pay Subclass”).
- 5 d. All Class Members who worked shifts of five hours or more without a duty-
6 free meal period of at least 30 minutes or shifts of 10 hours or more without
7 a second 30-minute meal period and, who were not paid one hour of pay at
8 the regular rate of compensation for each of those days (“Meal Period
9 Subclass”).
- 10 e. All Class Members who worked shifts of four hours or major faction thereof
11 without being authorized or permitted an uninterrupted rest period of at least
12 10 minutes, who were not paid one hour at the regular rate of compensation
13 for each of those days (“Rest Period Subclass”).
- 14 f. All Class Members incurred work-related expenses and were not reimbursed
15 by Defendants for those expenses (“Reimbursement Subclass”).
- 16 g. All Class Members who during the Class Period were paid for sick leave or
17 Covid-19 supplemental sick leave and were not paid for such sick leave at a
18 rate authorized by one of the methods provided in the California Labor Code
19 (“Sick Leave Underpayment Subclass”).
- 20 h. All Class Members who were not paid all regular, overtime, or minimum
21 wages for all hours worked each pay period (“Unpaid Wage Subclass”).
- 22 i. All Class Members who were subject to Defendants’ unlawful or unfair
23 business acts or practices during the Class Period (“UCL Subclass”).

24 30. Plaintiffs reserve the right to amend or modify the class definitions and to
25 establish additional classes and subclasses. California Rule of Court 3.765(b).

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1 31. **Numerosity.** The members of the Class are so numerous that joinder of all
2 individuals is impracticable. The identity of the Class Members is readily ascertainable by
3 review of Defendants' employment and payroll records. Plaintiffs are informed, believe, and
4 allege there are more than 40 Class Members.

5 32. **Adequacy of Representation.** Plaintiffs are adequate class representatives.
6 Plaintiffs will take all necessary steps to adequately and fairly represent and protect the interest
7 of the Class. Plaintiffs are represented by attorneys who have substantial experience
8 prosecuting and resolving wage-and-hour class actions in California state and federal courts,
9 including as both plaintiff and defense counsel.

10 33. **Manageability.** This class action is manageable because the liability and
11 damages to Class Members can be ascertained by review of corporate and employer
12 timekeeping and payroll records, along with other evidence that Defendants maintained and are
13 required to maintain under the California Labor Code, IWC Wage Orders and federal law. This
14 class action is manageable because the contact information and identity of percipient
15 witnesses—namely, Defendants' employees (the putative class members)—is readily
16 maintained by Defendants.

17 34. **Superiority.** A class action is superior to other means for adjudication of the
18 claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment
19 will allow for the common issues to be resolved in a single forum, simultaneously and without
20 duplication of effort and expense.

21 35. **Commonality.** Common questions of law and fact and a community of interest
22 exists amongst Plaintiffs and the Class. These common issues arise from the employment
23 relationship with Defendants and predominate over any individual issues.

24 36. **Typicality.** Plaintiffs' claims are typical of the claims of the other Class
25 Members. Plaintiffs and Class Members were subject to the same policies and practices of
26 Defendants, which resulted in losses to Plaintiffs and Class Members.

37. Proof of common unlawful business practices, which Plaintiffs experienced and are adequate representatives of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

39. Plaintiffs seek to recover civil penalties as individual aggrieved employees, on behalf of the State of California and the “aggrieved employees,” defined as follows:

i. All current and former non-exempt hourly employees who worked for Defendants in the State of California during the period of **January 20, 2021** through the current date and the date of final judgment in this action at the time of trial (“PAGA Period”).

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

41. Plaintiffs are each an “aggrieved employee” because Plaintiffs were employed by Defendants and personally experienced one or more of the Labor Code violations committed by Defendants and alleged in this Complaint. Therefore, Plaintiffs are properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*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.”]).

42. 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)).

1 43. On **January 20, 2022**, Plaintiffs gave written notice by online filing with the
2 LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleges
3 to have been violated, including the facts and theories to support the alleged violations (the
4 “PAGA Notice”). Plaintiffs paid the requisite filing fee to the LWDA. A true and correct copy
5 of the PAGA Notice, incorporated by reference as though fully set forth herein, is attached hereto
6 as **Exhibit A**.

7 44. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs,
8 Defendants did not give written notice by certified mail to Plaintiffs providing a description of
9 any actions taken to cure the alleged violations.

10 45. Now that at least 65 days have passed from Plaintiffs notifying Defendants of
11 these violations, without any notice to cure from them or notice from the LWDA of its intent to
12 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiffs
13 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

14 46. Any allegations regarding violations of the IWC Wage Orders are enforceable as
15 violations of Labor Code section 1198, which states: “[t]he employment of any employee for
16 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful.”

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY ALL MINIMUM WAGES**

20 **Labor Code §§ 1194 and 1194.2**

21 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

22 38. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
23 herein.

24 39. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and
25 Class Members at least the lawful minimum wage for each hour worked in violation of Labor
26 Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
27 Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at
28 the lawful local and county minimum wage ordinances in effect.

40. As alleged, Defendants knew or should have known Class Members worked off-the-clock during uncompensated meal periods, resulting in unpaid hours worked and corresponding liability for minimum wages and overtime.

41. Defendants' unlawful acts and omissions deprived Plaintiffs and the Class of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and the Class are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Labor Code §§ 510 and 1194

42. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

43. Defendants failed in their affirmative obligation to pay Plaintiffs and Class Members no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

44. Defendants failed to pay overtime to Class Members at the required 1.5x multiple of the regular rate of pay or 2.0x multiple of the regular rate of pay for double time hours. This was due to Defendants' illegal policy and practice of including commissions and bonuses in the regular rate of pay.

45. Defendants' unlawful acts and omissions deprived Plaintiffs and the Class of overtime wages in amounts to be determined at trial. Plaintiffs and the Class are entitled to

1 recover to the full amount of the unpaid overtime wages, in addition to interest, attorneys' fees,
2 and costs to the extent permitted by law, including under Labor Code section 1194.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **Labor Code §§ 226.7 and 512**

6 46. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
7 herein.

8 47. Defendants willfully failed in their affirmative obligation to consistently provide
9 Plaintiffs and Class Members compliant, duty-free meal periods of not less than 30 minutes
10 beginning before the fifth hour of hour for each work period of more than five hours per day
11 and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour
12 of hour of work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders
13 (the "Meal Periods" sections of the applicable orders). This was a direct result of Defendants'
14 policy and practice of requiring Plaintiffs and Class Members to work without pay during
15 uncompensated meal periods, rendering the meal periods missed, late, short, and/or interrupted.

16 48. Further, Defendants willfully failed in their affirmative obligation to consistently
17 pay Plaintiffs and Class Members one additional hour of pay at the respective regular rate of
18 compensation for each workday that a fully compliant meal period was not provided, in
19 violation of Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the "Meal
20 Periods" sections of the applicable orders). This was a direct result of Defendants' failure to
21 include commission, bonus, and other non-excludable earnings in the regular rate for purposes
22 of meal period computation for Plaintiffs and Class Members.

23 49. Defendants' unlawful acts and omissions deprived Plaintiffs and the Class of
24 meal periods and meal period premiums in amounts to be determined at trial. Plaintiffs and the
25 Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest,
26 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil
27 Procedure section 1021.5.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Labor Code §§ 226.7 and 516**

4 50. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
5 herein.

6 51. Defendants willfully failed in their affirmative obligation to consistently
7 authorize and permit Plaintiffs and Class Members to receive compliant, duty-free rest periods
8 of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in
9 violation of Labor Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest
10 Periods” sections of the applicable orders). This was a direct result of Defendants’ policies and
11 practices requiring what amounted to effectively working rest periods.

12 52. Further, Defendants willfully failed in their affirmative obligation to consistently
13 pay Plaintiffs and Class Members one additional hour of pay at the respective regular rate of
14 compensation for each workday that a fully compliant rest period was not provided, in violation
15 of Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

16 53. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of rest
17 periods and rest period premiums in amounts to be determined at trial. Plaintiffs and the Class
18 are entitled to recover to the full amount of the unpaid premiums, in addition to interest,
19 attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil
20 Procedure section 1021.5.

21 **FIFTH CAUSE OF ACTION**

22 **UNTIMELY PAYMENT OF WAGES**

23 **Labor Code §§ 204, 204b and 210**

24 54. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
25 herein.

26 55. Defendants willfully failed in their affirmative obligation to timely pay all
27 wages, sick leave, and premiums earned by Plaintiffs and Class Members twice during each
28 calendar month on days designated in advance by the employer as regular paydays (for

employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

56. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of timely wages in amounts to be determined at trial. Plaintiffs and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code section 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Labor Code § 226

57. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

58. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiffs and Class Members in violation of Labor Code section 226(a).

59. As an initial matter, on information and belief, Plaintiffs allege that Defendants maintained a policy and practice of non-compliance with Labor Code section 226(a)’s statutory mandate by failing to issue or make available wage statements to Class Members each pay period that list any of the information required by Labor Code section 226.

60. Moreover, based on the wage statements issued by Defendants, Plaintiffs allege that these wage statements fail to correctly list (1) gross wages earned each pay period, (2) total hours actually worked each pay period, (5) net wages earned, (9) all hourly rates in effect and the total number of hours worked each pay period.

61. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of accurate itemized wage statements, causing confusion and concealing wage and premium

1 underpayments. As a result, Plaintiffs and the Class are entitled to recover the statutory penalty
2 of \$50 per employee for the initial pay period in which a violation occurred and \$100 per
3 employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000
4 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law,
5 including under Labor Code section 226(e).

6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE PAID SICK LEAVE & SUPP. PAID SICK LEAVE**

8 **Labor Code §§ 246 *et seq.***

9 62. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
10 herein.

11 63. Defendants knowingly and intentionally failed in their affirmative obligation
12 provide and pay paid sick leave and Covid-19 Supplemental Sick Leave to Plaintiffs and Class
13 Members in violation of Labor Code section 246.

14 64. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
15 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
16 entitles employees to use any accrued sick leave beginning on their 90th day of employment.
17 Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

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

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

24 (2) Paid sick time for nonexempt employees shall be calculated by
25 dividing the employee's total wages, not including overtime premium
26 pay, by the employee's total hours worked in the full pay periods of the
27 prior 90 days of employment.
28

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

4 67. Defendants failed to pay Plaintiffs and Class Members paid sick leave at one of
5 the lawful rates set forth in the statute because Defendants failed to include in their calculation
6 the commissions and additional remuneration received by Plaintiffs and the Class Members.

7 68. Furthermore, on information and belief, Defendants knowingly and intentionally
8 failed in their affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to
9 Class Members in violation of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6.

10 69. Labor Code section 248.1 requires employers to provide up to 80 hours of Covid-
11 19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December
12 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours of Covid-19
13 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021.
14 Labor Code section 248.6 extended Covid sick leave protections and requires employers to
15 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1,
16 2022 to September 30, 2022, and may be extended thereafter.

17 70. Under Labor Code section 248.1, employees must be paid for Covid-19
18 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
19 last pay period, (2) state minimum wage, (3) local minimum wage.

20 71. Under Labor Code section 248.2, non-exempt employees must be paid Covid-
21 19 supplemental paid sick leave according to the highest of the following four methods: (1) the
22 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
23 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked,
24 (3) the state minimum wage, or (4) the local minimum wage.

25 72. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
26 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's
27 total wages in a 90-day period divided by total hours worked.
28

1 73. On information and belief, Defendants failed to provide and pay Covid-19
2 supplemental paid sick leave in the manner described above because Defendants failed to pay
3 Plaintiffs and the Class Members such sick leave at one of the rates authorized by statute.

4 74. As a result, Defendants violated the Labor Code and are liable to Plaintiffs and
5 the Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

6 **EIGHTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **Violation of Labor Code §§ 201 through 203**

9 65. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
10 herein.

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

17 67. Defendants' unlawful acts and omissions deprived Plaintiffs and the Class of
18 timely wages upon separation of employment in amounts to be determined at trial. Plaintiffs
19 and the Class are entitled to recover to the wages of Plaintiffs and members of the Waiting Time
20 Subclass as a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys'
21 fees, and costs to the extent permitted by law.

22 ///

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 68. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
5 herein.

6 69. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs
7 and Class Members for all necessary expenditures, losses, expenses, and costs incurred by them
8 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

9 70. Defendants' unlawful acts and omissions deprived Plaintiffs and Class Members
10 of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiffs
11 and the Class are entitled to recover to amount of the unreimbursed expenses of Plaintiffs and
12 Class Members in addition to interest, attorneys' fees, and costs to the extent permitted by law,
13 including under Labor Code section 2802.

14 **TENTH CAUSE OF ACTION**

15 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

16 **Business and Professions Code §§ 17200, *et seq.***

17 71. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
18 herein.

19 72. Defendants willfully failed in their affirmative obligation to timely pay each
20 payday or at other required intervals all minimum, regular, and overtime wages, and meal and
21 rest period premium wages, and gratuities to Plaintiffs and Class Members. These failures
22 constitute unlawful, deceptive, and unfair business acts and practices in violation of Business
23 and Professions Code section 17200, *et seq.*

24 73. Because Plaintiffs are victims of Defendants' unfair and unlawful conduct, as
25 alleged throughout this Complaint, Plaintiffs, a individuals and on behalf of the Class seek
26 restitution of all monies, gratuities, and property withheld, acquired, or converted by Defendants
27 in violation of the Labor Code and IWC Wage Orders under Business and Professions Code
28 section 17202, 17203, 17204 and 17208.

74. Defendants' unlawful acts and omissions deprived Plaintiffs and Class Members of monies and property in amounts to be determined at trial. Plaintiffs and the Class are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiffs and the Class have an ownership interest and to prevent future damage under Business and Professions Code section 17200, et seq. in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

ELEVENTH CAUSE OF ACTION

**CIVIL PENALTIES FOR FAILURE TO PAY ALL REGULAR AND
MINIMUM WAGES (PAGA)**

Labor Code §§ 2698, *et seq.*

75. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

76. Labor Code section 2699(a) provides: “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 .”

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

78. Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days.

Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states 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.

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

80. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

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

1 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
2 underpaid regardless of whether the initial violation is intentionally committed.”

3 82. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and
4 aggrieved employees at least the lawful minimum wage for all hours worked in violation of
5 Labor Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days
6 of Work” and “Minimum Wages” sections of the applicable orders).

7 83. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
8 liable to Plaintiffs, the aggrieved employees and the State of California for civil penalties as
9 required by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest,
10 attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section
11 2699(g).

12 **TWELFTH CAUSE OF ACTION**

13 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME WAGES (PAGA)**

14 **Labor Code §§ 2698, *et seq.***

15 84. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
16 herein.

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

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

1 **THIRTEENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

3 **Labor Code § 226.7**

4 80. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
5 herein.

6 81. Defendants willfully failed in their affirmative obligation to consistently provide
7 Plaintiffs and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
8 beginning before the fifth hour of hour for each work period of more than five hours per day and
9 a second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour
10 of work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the
11 “Meal Periods” sections of the applicable orders)..

12 82. Further, Defendants willfully failed in their affirmative obligation to consistently
13 pay Plaintiffs and aggrieved employees one additional hour of pay at the respective regular rate
14 of compensation for each workday that a fully compliant meal period was not provided, in
15 violation of Labor Code sections 226.7 and the IWC Wage Orders.

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

20 **FOURTEENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

22 **Labor Code § 226.7**

23 84. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

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

9 **FIFTEENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

11 **Labor Code § 204, *et seq***

12 88. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

13 89. Defendants willfully failed in their affirmative obligation to timely pay all wages,
14 paid sick leave, and premiums earned by Plaintiffs and aggrieved employees twice during each
15 calendar month on days designated in advance by the employer as regular paydays (for employees
16 paid on a non-weekly basis) and on the regularly-scheduled weekly payday for any weekly
17 employees, as applicable, in violation of Labor Code sections 204 and 204b and the IWC Wage
18 Orders (the "Minimum Wages" sections of the applicable orders).

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

23 **SIXTEENTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

25 **Labor Code § 226**

26 91. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
27 herein.
28

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

8 93. Defendants failed in their affirmative obligation provide accurate itemized wage
9 statements to Plaintiffs and aggrieved employees in violation of Labor Code section 226(a)
10 because Plaintiffs and aggrieved employees were not paid for all hours worked at the proper
11 wage rates and the wage statements reflected inaccurate totals, including gross and net wages
12 earned, total hours worked, applicable rates in effect and corresponding number of hours worked.
13 The wage statements are also inaccurate as they do not reflect the proper rate for sick leave pay
14 and amounts owed for meal and rest period premiums.

15 94. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
16 liable to Plaintiffs, the aggrieved employees and the State of California for civil penalties as
17 required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’
18 fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

19 **SEVENTEENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL WAGES UPON**

21 **SEPARATION OF EMPLOYMENT (PAGA)**

22 **Labor Code §§ 201 through 203**

23 95. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
24 herein.

25 96. Defendants willfully failed in their affirmative obligation to pay all wages earned
26 and unpaid to Plaintiffs and aggrieved employees immediately upon termination of employment
27 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of
28 his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation

1 of Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid
2 are those due to Defendants' failure to pay employees for all hours worked, for overtime at the
3 regular rate of pay, for paid sick leave, and for meal and rest period premiums.

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

8 **EIGHTEENTH CAUSE OF ACTION**

9 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)**

10 **Labor Code § 2802**

11 98. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

12 98. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs
13 and aggrieved employees for all necessary expenditures, losses, expenses, and costs incurred
14 by them in direct discharge of the duties of their employment, in violation of Labor Code section
15 2802.

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

20 **NINETEENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR FAILURE TO PROVIDE WRITTEN COMMISSION**

22 **AGREEMENT (PAGA)**

23 **Labor Code § 2751**

24 100. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
25 herein.

26 101. Labor Code section 2751(a) provides that whenever an employer pays
27 employees commissions, the contract for such commissions "shall be in writing and shall set
28 forth the method by which the commissions shall be computed and paid." Section 2751(b)

1 further requires an employer to give a “signed copy of the contract to every employee who is a
2 party thereto” and to obtain a signed copy of the contract from each employee.

3 102. When Defendants changed their commission structure, they failed to provide the
4 updated agreements to Plaintiffs and all aggrieved employees and/or provide copies of the new
5 agreement signed by Defendants and employees.

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

10 **TWENTIETH CAUSE OF ACTION**

11 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

12 **Labor Code § 1174**

13 104. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
14 herein.

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

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

107. 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).

108. As a result, Defendants violated the Labor Code and are liable to Plaintiffs, 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).

TWENTY-FIRST CAUSE OF ACTION

CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)

Labor Code § 246 *et seq.*

109. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

110. Defendants knowingly and intentionally failed in their affirmative obligation to provide notice of and provide and pay paid sick leave to Plaintiffs and the aggrieved employees in violation of Labor Code sections 246 through 248.5.

111. 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. 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.

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

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

6 112. Labor Code section 246(i) requires employers to provide employees with written
7 notice every pay period "that sets forth the amount of paid sick leave available, or paid time off
8 in lieu of sick leave." The notice can either be on the employees' wage statements or a separate
9 written notice.

10 113. Defendants failed to pay sick leave to Plaintiffs and the aggrieved employees at
11 the correct rate, which should have factored in employees' commissions, bonuses, and other
12 forms of remuneration. Defendants instead paid sick leave at the straight time hourly rate.

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

20 **TWENTY-SECOND CAUSE OF ACTION**
21 **CIVIL PENALTIES FOR SUPPLEMENTAL**
22 **PAID SICK LEAVE VIOLATIONS (PAGA)**

23 **Labor Code § 246 et seq.**

24 115. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
25 herein.

26 116. Defendants knowingly and intentionally failed in their affirmative obligation to
27 provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiffs and the
28

1 aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.1, 248.2, and
2 248.6.

3 117. Pursuant to Labor Code section 248.1, Defendants were required to provide up to
4 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20,
5 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80
6 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at
7 least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and
8 requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the
9 period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

10 118. Labor Code section 248.1, 248.2, and 248.6 incorporate the notice and record
11 keeping provisions of sections 246(i) and 247.5. Labor Code section 246(i) requires employers
12 to provide employees with written notice every pay period “that sets forth the amount of paid
13 sick leave available, or paid time off in lieu of sick leave.” The notice can be either on the
14 employees’ wage statements or a separate written notice. Labor Code section 247.5 also requires
15 Defendants to keep records of such leave or else there is a presumption that employees are
16 “entitled to the maximum hours accruable...unless [Defendants] can show otherwise by clear
17 and convincing evidence.”

18 119. On information and belief, Defendants are alleged to have failed to maintain paid
19 sick leave records as required by Labor Code section 247.5.

20 120. Under Labor Code section 248.1, employees must be paid for Covid-19
21 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
22 last pay period, (2) state minimum wage, (3) local minimum wage.

23 121. Under Labor Code section 248.2, non-exempt employees must be paid Covid-
24 19 supplemental paid sick leave according to the highest of the following four methods: (1) the
25 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
26 sick leave, (2) the employee’s total wages in a 90-day period divided by total hours worked,
27 (3) the state minimum wage, or (4) the local minimum wage.

122. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick leave under either one of the following methods (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

123. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate because Defendants failed to factor in employees' commissions, bonuses, and other forms of remuneration. Defendants instead paid such sick leave at the straight time hourly rate rather than one of the methods authorized by statute.

124. As a result, Defendants violated the Labor Code and are liable to Plaintiffs, 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). Plaintiffs are also entitled to penalties under Labor Code section 248.5. Plaintiffs and the aggrieved employees are entitled to recover to these amounts in addition to interest, attorney's fees and costs to the extent permitted by law.

PRAYER FOR RELIEF

Plaintiffs pray for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiffs as the representatives of the Class;
- c. For appointment of counsel for Plaintiffs as Class Counsel;
- d. For injunctive relief;
- e. For compensatory damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA and for Plaintiffs and counsel to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

- 1 j. For recovery of all civil penalties and other recoverable amounts under the
2 PAGA;
- 3 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the
4 extent permitted by law on each cause of action, including (without limitation)
5 under California Labor Code sections 218.5, 226, 1194, 2802, and Code of Civil
6 Procedure section 1021.5;
- 7 l. For such other relief the Court deems just and proper.
- 8

9 Respectfully submitted,

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11 Dated: April 5, 2022

Ferraro Vega Employment Lawyers, Inc.

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14 Nicholas J. Ferraro
15 Attorney for Plaintiffs
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Exhibit A

FERRARO VEGA

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January 20, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Freedom Mortgage Corporation
951 Yamato Road, Suite 175
Boca Raton, FL 33431

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **01/20/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of TAYLRE CHOWNING, THOMAS ARMALY (“Claimants”), and all other “aggrieved employees” under California Labor Code section 2699.3 against FREEDOM MORTGAGE CORPORATION, along with any other related employer entities, including those who may be later added upon further investigation (collectively, “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, Claimants 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 comprise the mortgage lender Freedom Mortgage Corporation, employing aggrieved employees like Claimants in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimants 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 any other employers, and the joint employer of Claimants and the aggrieved employees. Defendants legally employed Claimants and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant CHOWNING worked for Defendants from March 15, 2021 to December 1, 2021. Claimant ARMALY worked for Defendants from about March 15, 2021 to December 29, 2021. Claimants both worked in the positions of Fast Tracker Level 1 and Loan Advisor. Throughout their employment, Claimants worked as an hourly, non-exempt employees. Defendants operate nationwide, including throughout California.

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

All current and former non-exempt hourly 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”).

Claimants seek 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. Claimants reserve the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations

Violation of Labor Code §§ 200, 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

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 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimants and the aggrieved employees were not paid at least minimum wage *for all hours* worked. Claimants 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 Claimants or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states 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.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

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.

Based on Defendants’ written policies, including the Meal Breaks and Breaks policies in the Employee Handbook, aggrieved employees were effectively required to work during uncompensated meal periods, as “[d]epartments and phones still need to be covered during meal breaks.” *See* Employee Handbook, p. 36. Aggrieved employees were required to answer customer telephone calls and emails during breaks, but were not compensated for that time. As a result, Defendants did not pay aggrieved employees for all hours worked at the lawful minimum wage and are liable for the underlying penalties and wages.

When Claimants and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Claimants and the aggrieved employees

sales commissions, non-discretionary bonuses, and other forms of remuneration that Defendants also failed to include in the “regular rate of pay” when employees earned overtime. Defendants paid overtime and doubletime to Claimants and the aggrieved employees at 1.5x and 2x their straight hourly rate. For each overtime hour worked during the period in which Claimants and the aggrieved employees earned sales commissions and bonuses, Defendants should have (but failed to) pay overtime “at the rate of no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example of the regular rate of pay violation is found on Claimant CHOWNING’s 11/07/2021 to 11/20/2021 wage statement with the pay date of 11/26/2021:

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
Comp Bridge	0.0000	\$0.0000	\$0.00	\$2,675.00
Early Dismissal	0.0000	\$0.0000	\$0.00	\$129.80
Expense Reimb	0.0000	\$0.0000	\$0.00	\$30.00
Holiday	0.0000	\$0.0000	\$0.00	\$519.23
Internet Stpd			\$18.00	\$162.00
OT Inc			\$66.73	\$69.16
Overtime	0.7500	\$28.8462	\$21.63	\$341.64
Paid Time Off	0.0000	\$0.0000	\$0.00	\$605.77
Regular	40.0000	\$19.2308	\$769.23	
Regular	40.0000	\$19.2308	\$769.23	\$29,307.66
Rti Commission			\$12,500.00	\$20,300.00
Total Hours 80.7500				

Chowning Wage Statement (Pay Date: 11/26/2021)

Claimant CHOWNING earned a significant commission this pay period, but that amount was not factored into her overtime rate, as she was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay. Defendants committed this same “regular rate of pay” violation against the other aggrieved employees as well, when employees earned forms of pay like bonuses and commissions required to be included in the regular rate but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

Furthermore, Claimants and the aggrieved employees were not paid for all wages owed because Defendants failed to pay all earned commissions. Under Labor Code section 200, commission are considered wages. On information and belief, Claimants and the aggrieved employees were not paid for all commissions that they earned during their employment. Furthermore, Defendants maintained an unlawful commission forfeiture policy and practice that is outlined in employees’ employment agreements. Pursuant to the provision, Defendants unlawfully withheld earned commissions from Claimants and the aggrieved employees on the basis that they were not employed at the time the commission was due to be paid. Claimants and the aggrieved employees satisfied all conditions precedent to earn the commissions, but

were deprived of wages under the unlawful forfeiture provision. *Ellis v. McKinnon Broadcasting Co.*, 18 Cal.App.4th 1796 (1993).

As a result, Claimants may recover civil penalties on behalf of themselves, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 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 Claimants 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.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant first and second meal periods to Claimants and the aggrieved employees. The aggrieved employees' time records establish meal period liability on their face. Claimants' time records show that they often experienced missed, short, and late meal periods. Defendants maintains unlawful meal period and break policies which require employees to work during uncompensated meal periods (*i.e.*, interrupted or on duty meals):

Meal Breaks

Regular, full-time employees normally receive a one-hour, unpaid meal break. If you are a temporary or regular, part-time employee, check with your manager. Any nonexempt employee who has their meal break interrupted should report it to their manager so that a proper investigation can be conducted. The Company complies with all applicable federal and state meal break laws.

Departments and phones still need to be covered during meal breaks. Therefore, you should check with your supervisor or manager for your assigned meal break. Since the timing of your meal break may affect your coworkers' meal breaks, please be sure to leave for and return from your meal break on time. Failure to return from your meal break on-time may result in an "occurrence" per the *Attendance Policy*.

When Defendants did not provide compliant meal periods, Defendants failed to pay Claimants and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. To the extent Defendants paid any meal period premiums, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in sales commissions, bonuses, and other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

As a result, Claimants may recover civil penalties on behalf of themselves, 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.

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 Claimants 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. Defendants required Claimants and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to staffing issues, employees' job responsibilities, telephone calls, and the steady flow of business, and Defendants' specific unlawful policy, Claimants and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Defendants had a

policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Additionally, Defendants maintained an unlawful written policy regarding breaks:

Breaks

Each employee is entitled to no more than two, 15-minute paid work breaks and one unpaid meal break period daily unless otherwise required by applicable state law. One work break should be taken in the morning and one in the afternoon. Employees working less than 6 hours in one day are entitled to one, 15-minute paid work break. All paid work breaks must be taken onsite unless required by applicable state law. Employees are not permitted to leave the workplace during their 15-minute breaks. These are the only allowable breaks during the workday. No additional breaks for smoking or any other activities are allowed during the workday. The 15-minute breaks may not be combined to use as a paid "meal break period" nor can they be combined with the meal break period to extend the meal break. All breaks must be taken separate from each other.

Employees should notify and coordinate the times of each work break and meal break period with their supervisor or manager. Failure to return from break on-time may result as an "occurrence" per the *Attendance Policy*. Taking unauthorized or excessive paid break time beyond the allowable amount may be considered "misconduct" per the *Employee Performance Policy* and subject to disciplinary action, up to and including termination.

Please direct any questions regarding this policy to your immediate supervisor or manager. Failure to adhere to the policy may result in disciplinary action, up to and including termination.

Freedom Mortgage Employee Handbook (Updated 1-18-2021), p. 36

To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in bonuses, commissions, and other compensation.

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

Failure to Reimburse Necessary Expenses
Violation of Labor Code §§ 2800, 2802

Defendants failed in their affirmative legal obligation to reimburse Claimants 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 required Claimants and the aggrieved employees to incur costs for work-related purposes, including expenses associated with cell phones, data, internet, home office supplies, utilities, and other "work from home" costs. In direct consequence of their job duties, Claimants and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and compliantly reimburse as

a matter of policy and practice. To the extent Defendants reimbursed aggrieved employees, those amounts were underpaid. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

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. Labor Code § 2804 prohibits waiver of these rights.

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.

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 Claimants 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 make any retroactive payments to Claimants 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 Claimants and other aggrieved employees’ regular, overtime, sick, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Claimants and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimants may recover civil penalties on behalf of themselves, 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 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 and premiums owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimants may recover civil penalties on behalf of themselves, 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 Claimants 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—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock during uncompensated meal and rest periods, rendering the total hours listed as an inaccurate reflection of hours worked.

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

Claimants 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 Claimants and other aggrieved employees with respect to what amounts

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).

were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimants may recover civil penalties on behalf of themselves, 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.

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 Claimants 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. Defendants were required to pay paid sick time under the method set forth in options one or two.

As an initial matter, Claimants are informed, believed, and allege that Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendants failed to maintain the records required by Labor Code § 246 *et seq.* with respect to the paid sick leave.

However, to the extent paid, Claimants are informed, believe and allege Defendants instead paid sick leave at employees' straight time rate of pay and failed to factor in bonuses, commissions and/or other forms of remuneration. Specifically, (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 commission wages for the reasons aforementioned. Additionally, 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 at which Claimants were 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 Claimants and the aggrieved employees in those pay periods where they earned additional payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Claimants may recover civil penalties on behalf of themselves, 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. Claimants are 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 Claimants 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.

For the same reasons discussed in the Paid Sick Leave section above, Defendants failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute. To the extent paid, Defendants failed to factor in employees' bonuses, commissions, and other compensation when paying sick leave. Defendants instead paid Supplemental Sick Leave at employees' straight time hourly rate rather than by the highest of the methods authorized by Labor Code section 248.2.

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 Claimants and the aggrieved employees in those pay periods where they earned bonuses, commissions, or other forms of non-excludable remuneration and also received statutory paid sick leave. Defendants further failed to maintain the proper records required by the paid sick leave statutes.

As a result, Claimants may recover civil penalties on behalf of themselves, 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. Claimants are also entitled to penalties under Labor Code section 248.5.

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 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 Claimants and each aggrieved employee pursuant to Labor Code section 1174.5.

Failure to Provide Written Commission Agreement
Violation of Labor Code § 2751

Defendants failed to provide written commission plans to all of the aggrieved employees, in violation of Labor Code section 2751. When an employer pays commissions as part of employee compensation, section 2751(a) requires that the employer provide a written contract that sets “forth the method by which the commissions” are “computed and paid.” Section 2751(b) requires an employer to provide a copy of the commission agreement that is signed by both the employer and the employee.

When Defendants changed their commission structure, they failed to provide the updated agreements to all aggrieved employees and/or provide copies of the new agreement signed by Defendants and employees. As one example of this practice, in or around October 2021, Defendants unilaterally informed employees that they would be paid under a new commission structure and began paying employees under the new structure without providing any new written documents or having employees sign such documents. During the last two months of her employment, Claimant CHOWNING repeatedly requested a copy of the new commission structure from Defendants but they never provided her without a copy even though she was paid under the new structure.

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

Claimants were compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimants have 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

Claimants intend 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 Claimants’ counsel to protect the interests of Claimants, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimants and their counsel to fully release liability and resolve the claims alleged in this notice. Claimants 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 Claimants have 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. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimants have a duty to file this case at the earliest opportunity. Defendants may contact Claimants' counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimants 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 Claimants
 Lauren N. Vega, Esq.