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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/08/2022 at 01:33:00 PM

Clerk of the Superior Court
By Keira Jordan, Deputy Clerk

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

DESIREE REYES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PARKSIDE LENDING, LLC, a California
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00022628-CU-OE-CTL

**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. Underpaid Sick Leave Wages
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
- 10-20. Civil Penalties under the PAGA

1 Plaintiff DESIREE REYES (“Plaintiff”), as an individual and on behalf of all other similarly
2 situated current and former California employees and the State of California, brings this class and
3 representative action against Defendants PARKSIDE LENDING, LLC; and DOES 1 through 50
4 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This is a class and representative action brought under California Code of Civil
7 Procedure § 382 for Defendants’ violations of the California Labor Code and Business and
8 Professions Code.

9 2. This is a class and representative action filed for wage and hour violations of the
10 California Labor Code. Plaintiff worked as an hourly, non-exempt employee for Defendants through
11 June 2021.

12 3. Defendants failed to pay Plaintiff, aggrieved employees, and the Class Members their
13 full overtime, meal/rest period premiums, and sick leave wages by failing to take into account non-
14 excludable remuneration, such as bonuses, in determining the correct rate.

15 4. Defendants also required Plaintiff and other employees to work through their meal
16 and rest breaks as a matter of policy, and failed to pay Plaintiff and other employees for such time.
17 This resulted in an underpayment of regular and overtime hours worked each pay period for Plaintiff
18 and others.

19 5. Defendants also failed to pay meal or rest period premiums at the regular rate of
20 compensation to Plaintiff and other employees for such “on duty” breaks, as required by Labor Code
21 § 226.7. Defendants thus failed to provide compliant meal and rest periods (or premiums in lieu
22 thereof). When Defendants did pay meal period premiums, they failed to do so at the proper regular
23 rate of pay. As a result of these violations, Defendants failed to timely pay Plaintiff, aggrieved
24 employees, and Class Members each pay period on paydays and upon separation of employment,
25 and thus are liable for waiting time and other statutory penalties.

26 6. Defendants’ employment policies and practices and payroll administration systems
27 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
28 employees and Class Members.

JURISDICTION & VENUE

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

8. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, and committed some of the alleged violations in this county.

A. Plaintiff Desiree Reyes

9. Plaintiff Desiree Reyes is an individual over 18 years of age who worked for Defendants in California as an hourly, non-exempt employee through June 2021.

B. Defendants

10. Defendant Parkside Lending, LLC is a limited liability company registered to do business in the State of California, doing business and employing labor throughout California, and in San Diego County.

11. Defendant Matthew Ostrander is the Chief Executive Officer and Co-Founder of Defendant Parkside Lending, LLC, and is aware of, and responsible for, the unlawful policies subject to this lawsuit.

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

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown or uncertain to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the factiously named defendants is responsible in some manner for the acts

1 and omissions alleged herein. Plaintiff may seek leave to amend this Complaint to reflect their true
2 names and capacities when they become known.

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

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

15 16. Plaintiff is informed, believes and alleges that the above-mentioned defendants
16 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
17 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
18 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
19 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

20 **GENERAL ALLEGATIONS**

21 17. Plaintiff and other aggrieved employees and Class Members were compensated on an
22 hourly basis, in addition to other forms of compensation including but not limited to, bonuses paid
23 for closing transactions. The bonuses were paid regularly, and the decisions of whether and how
24 much to pay such bonuses were not based on the discretion of Defendants. As discussed further
25 below, such bonuses were not included in the “regular rate of pay” for purposes of calculating
26 overtime rates, paid sick leave wages, and meal/rest period premiums.

1 18. Defendants failed to compensate Plaintiff and other employees for all hours suffered
2 or permitted to work, including for time worked off the clock work during unpaid meal periods,
3 resulting in unpaid minimum, regular, and overtime wages.

4 19. Due to the volume of correspondence and tasks required of Plaintiff, she was forced
5 to take most of her meal breaks while working in front of her computer. However, Defendants still
6 required Plaintiff and other employees to clock out for lunch, even when they were required to work
7 during that time. When Plaintiff and other employees worked through and/or during unpaid meal
8 periods, Defendants thus failed to pay all minimum, regular, and/or overtime wages owed for that
9 time worked.

10 20. Additionally, Defendants failed to provide compliant first and second meal periods to
11 Plaintiff and other employees. Due to the high volume of tasks and constant pressure during each
12 workday, Plaintiff and other employees often experienced missed, short, and late first and second
13 meal periods in order to keep up with the demands of the job, in violation of Labor Code sections
14 226.7, 512 and section 11 of the applicable IWC Wage Orders.

15 21. When Defendants did not provide fully compliant meal periods, Defendants failed to
16 pay Plaintiff and other employees a meal period premium at the regular rate of compensation in
17 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
18 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section
19 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
20 payments, not just hourly wages”).

21 22. When Defendants separately compensated Plaintiff and other employees for *some*
22 meal periods under the pay category “Meals,” Defendants failed to pay meal period time at the rate
23 required by Labor Code section 226.2, which required Defendants to pay for meal and rest periods at
24 the *higher of* the minimum wage or an hourly rate derived by dividing employees’ total weekly
25 compensation (including all forms of pay) by their total hours worked. Instead of factoring in
26 Plaintiff and other employees’ bonus payments, Defendants paid meal period premiums at
27 employees’ base hourly rate, resulting in underpayments of wages to Plaintiff and others.

1 23. Furthermore, due to the heavy workload and pressures from Defendants, Defendants
2 failed to authorize or permit ten-minute rest periods for every four hours of work or major faction
3 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage
4 Order.

5 24. Moreover, Defendants had a policy and practice of not paying rest period premiums
6 to employees who were unable to take rest periods.

7 25. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
8 Code section 226.7 because such premiums were not paid at the regular rate of compensation to
9 Plaintiff and other employees, which would have factored in employees' additional compensation
10 that they received each pay period.

11 26. Moreover, when Plaintiff and other employees earned overtime, Defendants failed to
12 pay the overtime "at the rate of no less than one and one-half times the regular rate of pay for an
13 employee" – as required by the plain language of Labor Code section 510(a) and the IWC Wage
14 Orders – because they failed to include Plaintiff's and others' additional compensation in their
15 calculation for the "regular rate of pay."

16 27. Specifically, Defendants regularly paid Plaintiff and the other employees bonuses and
17 other forms of compensation. When Plaintiff and other employees worked overtime, Defendants
18 paid the overtime at 1.5x Plaintiff and others' base hourly rate rather than at the regular rate of pay,
19 which would have factored in employees' bonuses and additional remuneration.

20 28. In pay periods where Defendants provided Plaintiff and other employees with
21 remuneration in addition to their respective base hourly rate for hours worked—excluding any forms
22 of pay subject to any applicable statutory exclusions from the "regular rate"—Defendants failed to
23 properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor
24 Code § 246. Defendants paid sick leave at employees' straight time hourly rate instead of one of the
25 methods authorized by statute, which required Defendants to factor in employees' additional
26 remuneration, such as bonuses.

27 29. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
28 and other employees.

1 30. With respect to the unpaid minimum and regular wages, overtime wages, sick leave
2 wages, and meal and rest period premiums owed to Plaintiff and other employees, Defendants failed
3 to pay those wages on time each pay period or upon separation of employment. (*See Naranjo v.*
4 *Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.)

5 31. Because Defendants did not pay Plaintiff and other employees for all
6 wages/premiums and sick leave wages owed each pay period of their employment, Defendants failed
7 to timely pay all wages owed each pay day or upon separation of employment (or within 72 hours
8 thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b
9 (paydays).

10 32. Defendants equally failed in their affirmative obligation to provide accurate itemized
11 wage statements each pay period to Plaintiff and other employees. Defendants issued wage
12 statements to Plaintiff and, on information and belief, other employees, which contain at least four
13 distinct types of violations.

14 33. First, on each wage statement furnished, Defendants failed to accurately state the
15 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
16 Plaintiff and other employees were not paid for off the clock work during meal periods and earned
17 overtime at one and one-half times their regular rate of pay, but were underpaid regular wages and
18 overtime on an hourly basis, and were deprived of all sick leave wages and meal and rest period
19 premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net wages
20 earned on those wage statements.

21 34. Second, Defendants violated Labor Code section 226(a)(2) by failing to list
22 employees’ “total hours worked,” as aggrieved employees worked off-the-clock, including during
23 uncompensated meal periods, rendering the total hours listed as an inaccurate reflection of hours
24 worked.

25 35. Third, in violation of Labor Code section 226(a)(9), the hourly rates and
26 corresponding hours worked at those rates are incorrectly listed on Plaintiff’s and other employees’
27 wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime
28 hours that were not paid at the “regular rate of pay,” underpaid meal and rest period premiums, and

1 underpaid sick leave wages, as those hours were paid at the improper base rate and reflected as such
2 on the wage statements of Plaintiff and the Class Members.

3 36. Defendants' wage statement issues described above rendered the wage statements
4 inaccurate and confusing to Plaintiff and other employees, concealing the underpayments and
5 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and other
6 employees as the sole documentary evidence of their respective earnings.

7 37. Plaintiff and other employees suffered injury in the form of confusion regarding
8 amounts paid for hours worked, and in the form of concealment of the common payroll practices
9 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
10 this Complaint.

11 38. Indeed, Plaintiff and, on information and belief, other employees were misinformed
12 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
13 on the wage statements, Plaintiff and, on information and belief, other employees were led to believe
14 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the
15 wages actually earned under California law.

16 39. Defendants' wage statement violations were knowing and intentional as a matter of
17 law with respect to Plaintiff and California employees given that the legal obligation was not
18 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
19 Defendants nevertheless failed to comply despite the means and ability to do so.

20 40. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
21 knowingly and intentionally caused harm to Plaintiff and other employees. Plaintiff is informed,
22 believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and
23 IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent with their
24 obligations under California law.

25 ///

CLASS ALLEGATIONS

C. Class Members

41. Plaintiff brings this action as an individual and on behalf of the following class under Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the State of California as hourly non-exempt employees at any time from four years preceding the filing of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

42. Further, Plaintiff proposes the following subclasses:

- a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were not paid all regular or minimum wages for all hours worked each pay period (including for off-the-clock work).
- b. Unpaid Overtime Subclass: All Class Members who [1] were not paid for all overtime hours worked each pay period or [2] who were paid overtime wages in the same pay period in which they were also paid non-excludable forms of remuneration (including bonuses).
- c. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or more without a duty-free meal period of at least 30 minutes, or worked shifts of 10 hours or more without a second duty-free meal period of at least 30 minutes, and [2] who were not paid one hour of pay at the regular rate of compensation for each of those days.
- d. Rest Period Subclass: All Class Members who [1] were not authorized and permitted to take a 10-minute rest period for every four hours or major fraction thereof and [2] who were not paid one hour at the regular rate of compensation for each of those days.
- e. Untimely Payment of Wages Subclass: All individuals who are members of the following classes: (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, (iii) Meal Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.

- 1 f. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave
2 wages in the same pay period in which they were also paid non-excludable
3 forms of remuneration (including bonuses) and were paid sick leave at rate
4 less than what is required by California law.
- 5 g. Wage Statement Subclass: All individuals who are members of the following
6 classes who received a wage statement from Defendants at any time during
7 the one-year period preceding the filing of this action through the present:
8 (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime
9 Subclass, (iii) Meal Period Subclass, (iv) Rest Period Subclass, and (v) Paid
10 Sick Leave Subclass.
- 11 h. Waiting Time Penalty Subclass: All individuals who are members of the
12 following classes at any time during the three-year period preceding the filing
13 of this action through the present, excluding current employees who have
14 never previously separated from employment with Defendants: (i) Unpaid
15 Minimum or Regular Wage Subclass, (ii) Unpaid Overtime Subclass,
16 (iii) Meal Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave
17 Subclass.

18 43. **Numerosity.** The members of the Class are so numerous that joinder of all
19 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
20 inspection of employment and payroll records Defendants maintain and are required to maintain by
21 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes,
22 and alleges there are more than 40 Class Members.

23 44. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff
24 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
25 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
26 resolving and litigating wage and hour class actions in California state and federal courts.

27 45. **Superiority.** A class action is superior to other means for adjudication of the claims
28 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow

1 for the common issues to be resolved in a single forum, simultaneously and without duplication of
2 effort and expense.

3 46. **Commonality.** Common questions of law and fact and a community of interest exists
4 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
5 Defendants and predominate over any individual issues.

6 47. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
7 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
8 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
9 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
10 on the causes of action alleged herein.

11 **PAGA ALLEGATIONS**

12 48. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
13 behalf of the State of California and all current and former non-exempt hourly employees who
14 worked for Defendants in the State of California during one-year period preceding the date of the
15 PAGA Notice through the current date and the date of final judgment in any pending action (the
16 "aggrieved employees" and the "PAGA Period").

17 49. The State of California, via the Labor and Workforce Development Agency
18 ("LWDA"), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*
19 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff
20 files suit is always the real party in interest."])

21 50. Plaintiff is an "aggrieved employee" because Plaintiff was employed by Defendants
22 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
23 suited to act on behalf of the State of California and collect civil penalties for all violations
24 committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff*
25 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an
26 "aggrieved employee"—a person affected by one Labor Code violation committed by an
27 employer—to pursue penalties for all the Labor Code violations committed by that employer."])
28

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

7 52. Now that at least 65 days have passed from Plaintiff first notifying Defendants and
8 the LWDA on **June 2, 2022** of the specific provisions of the Labor Code alleged to have been
9 violated (including the supporting facts and theories) without LWDA intervention—and without
10 Defendants giving written notice by certified mail to Plaintiff providing a description of any actions
11 taken to cure the alleged violations within 33 days—Plaintiff exhausted all prerequisites and
12 commences this civil action under Labor Code § 2699 with respect to the PAGA notice and any
13 amendments or supplements thereto. A true and correct copy of the PAGA Notice, incorporated by
14 reference as though fully set forth herein, is attached hereto as **Exhibit A**.

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

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL MINIMUM WAGES**

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

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

23 56. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass.

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

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

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

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

9 60. This cause of action is brought by the Unpaid Overtime Subclass pursuant to the IWC
10 Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt
11 employees be timely paid overtime wages all overtime hours worked, and which further provide a
12 private right of action for an employer's failure to pay all overtime compensation for overtime hours
13 worked.

14 61. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
15 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
16 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
17 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
18 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
19 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
20 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

21 62. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
22 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
23 extent permitted by law.

24 **THIRD CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

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

27 64. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
28 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be

provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

65. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

66. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

67. Plaintiff and the Class are entitled to recover to the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

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

69. This cause of action is brought by the Rest Period Subclass pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

70. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

71. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

72. Plaintiff and the Class are entitled to recover to the full amount of the rest period premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

UNDERPAID PAID SICK LEAVE WAGES

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

74. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

75. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et seq.*

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

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

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

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

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

77. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

78. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

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

80. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

81. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and Class Members twice during each 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).

82. Plaintiff and the Class are entitled to recover 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

1 provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent
2 permitted by law.

3 **SEVENTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

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

6 84. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
7 Code § 226(a) which requires non-exempt employees be provided accurate itemized wage
8 statements each pay period, and which further provide a private right of action for an employer's
9 failure to comply with this obligation.

10 85. Defendants knowingly and intentionally failed in their affirmative obligation provide
11 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
12 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
13 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

14 86. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
15 itemized wage statements, causing confusion and concealing wage and premium underpayments.

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

21 **EIGHTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

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

24 89. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
25 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
26 termination of employment, and which further provide a private right of action to recover statutory
27 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
28 of 30 days wages.

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

91. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

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

93. Plaintiff brings this cause of action on behalf of all Classes.

94. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

95. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other Class Members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200, et seq.

96. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

97. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and the Class have an ownership

1 interest and to prevent future damage and the public interest under Business and Professions Code
2 § 17200, et seq. Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
3 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

4 **TENTH CAUSE OF ACTION**

5 **CIVIL PENALTIES FOR FAILURE TO PAY**

6 **ALL REGULAR AND MINIMUM WAGES**

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

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

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

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

23 101. Labor Code section 1197.1(a) provides: "Any employer or other person acting either
24 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
25 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
26 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
27 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
28 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

1 violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid
2 employee for each pay period for which the employee is underpaid regardless of whether the initial
3 violation is intentionally committed.”

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

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

12 **ELEVENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES FOR FAILURE TO PAY**

14 **ALL OVERTIME WAGES**

15 **Labor Code §§ 510, 558 1194, 1197.1, 1198, 1199**

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

17 105. Defendants failed in their affirmative obligation to pay Plaintiff 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 on
20 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
21 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
22 day of a workweek in violation of Labor Code sections 510, 558, 1194, 1197.1, 1198, 1199 and the
23 IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

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

28 ///

1 **TWELFTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS**

3 **Labor Code §§ 226.7 and 512**

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

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

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

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

19 **THIRTEENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS**

21 **Labor Code §§ 226.7 and 516**

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

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

28 113. Further, Defendants willfully failed in their affirmative obligation to consistently pay
Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of

1 compensation for each workday that a fully compliant rest period was not provided, in violation of
2 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

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

7 **FOURTEENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS**

9 **Labor Code §§ 246 *et seq.***

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

11 116. Defendants knowingly and intentionally failed in their affirmative obligation provide
12 and pay paid sick leave to Plaintiff and the aggrieved employees in violation of Labor Code section
13 246.

14 117. 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.

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

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

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

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

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

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

6 120. As a result, Defendants violated the Labor Code and are liable to Plaintiff, 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 permitted by
9 law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under Labor
10 Code section 248.5.

11 **FIFTEENTH CAUSE OF ACTION**

12 **SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS**

13 **Labor Code §§ 246 *et seq.***

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

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

- 19 (1) the regular rate of pay for the workweek in which leave is taken
- 20 (2) state minimum wage; or
- 21 (3) local ordinance minimum wage

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

- 24 (1) the regular rate of pay for the workweek in which leave is taken
- 25 (2) state minimum wage
- 26 (3) local ordinance minimum wage; or
- 27 (4) average hourly pay for preceding 90 days (excluding overtime pay).

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

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

6 **SIXTEENTH CAUSE OF ACTION**

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

8 **Labor Code §§ 204 and 210**

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

10 127. Defendants willfully failed in their affirmative obligation to timely pay all wages and
11 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
12 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
13 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
14 violation of Labor Code sections 204, 204b, 210 and the IWC Wage Orders (the "Minimum Wages"
15 sections of the applicable orders).

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

20 **SEVENTEENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS**

22 **Labor Code §§ 226 and 226.3**

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

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

1 131. Defendants failed in their affirmative obligation provide accurate itemized wage
2 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a).

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

7 **EIGHTEENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR FAILURE TO TIMELY PAY**

9 **ALL WAGES UPON SEPARATION OF EMPLOYMENT**

10 **Labor Code §§ 201 through 203**

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

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

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

21 **NINETEENTH CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR FAILURE TO**

23 **REIMBURSE BUSINESS EXPENSES**

24 **Labor Code § 2802**

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

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

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

5 **TWENTIETH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS**

7 **Labor Code § 1174**

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

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

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

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

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

28 ///

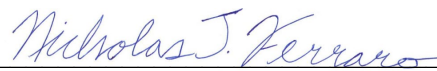
PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the representative of the Class;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For recovery of damages in amount according to proof;
- e. For all recoverable pre- and post-judgment interest;
- f. For recovery of all civil and statutory penalties and liquidated damages;
- g. For disgorgement of all amounts wrongfully obtained;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5;
- j. For Plaintiff 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;
- k. For an award of all civil penalties under the Labor Code section 2698 et seq.;
- l. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including under California Labor Code sections 218.5, 226, 1194, 2802, 2699(g) and Code of Civil Procedure section 1021.5; and
- m. For such other relief the Court deems just and proper.

Dated: August 8, 2022

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Attorneys for Plaintiff

EXHIBIT A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 2, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Parkside Lending, LLC
180 Redwood Street, Ste. 250
San Francisco, CA 94102

Matthew Ostrander
180 Redwood St., Ste. 250
San Francisco, CA 94102

- Amended PAGA Notice -

Submitted electronically to the California
Labor and Workforce Development
Agency

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Jacob Reyes and Desiree Reyes (“Claimants”) and other aggrieved employees under California Labor Code section 2699.3 against Parkside Lending, LLC, Matthew Ostrander, and any other related individuals or employer entities who may be later added based on further investigation (“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 operate a wholesale and retail lending company, and employ individuals like Claimants in the State of California 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 was an agent and/or ostensible agent of any other employers, and the joint employer of Claimants and other 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 Jacob Reyes worked for Defendants until June 7, 2021. During his employment, Claimant Jacob Reyes worked from home as an hourly, non-exempt employee.

Claimant Desiree Reyes worked for Defendants until around June 2021. During her employment, Claimant Desiree Reyes worked from home as an hourly, non-exempt employee who also earned regular non-discretionary bonuses as discussed further below.

Claimants and other aggrieved employees were required to use their personal cell phones and home internet connection to complete their job responsibilities. Claimants and the aggrieved employees were required to install the RingCentral phone application to conduct company business as an employee of Defendants. As discussed below, Defendants failed to reimburse Claimant and the aggrieved employees for various work-related expenses.

Claimant Desiree Reyes and other aggrieved employees earned regular bonuses, which Defendants coded as “BONUS” on earnings statements. Claimant Desiree Reyes earned her bonuses based on her performance in closing transactions. The bonuses were paid regularly, and the decisions of whether and how much to pay such bonuses were not based on the discretion of Defendant. Such bonuses were not included in the “regular rate of pay” for purposes of calculating overtime rates and meal period premiums. Instead, Claimant Desiree Reyes’ overtime payments were calculated at 1.5 times her straight hourly rate, and her meal period premiums were calculated as 1 hour of her straight hourly rate rather than based off of her actual “regular rate of pay.” Claimant Desiree Reyes is informed, believes, and alleges that other aggrieved employees earned similar non-discretionary bonuses, commissions, and other forms of non-excludable remuneration that were not included in their “regular rate of pay” for purposes of calculating overtime and premium penalty rates.

Through this notice, Claimants inform 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 the original notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimants seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimants reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations

Violation of Labor Code §§ 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 for hours worked in excess of 8 hours per day, 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.”

Like federal law, under the California Labor Code, the “regular rate” is not simply a straight time multiple of an employee’s base rate, but rather must include “all remuneration for employment paid to ... the employee,” except the eight items specifically enumerated in 29 U.S.C. § 207(e)(1)-(8). Remuneration like bonuses, commissions, and incentives must be included in the hourly overtime rate. *See, e.g., Howell v. Advantage RN, LLC* (S.D. Cal. 2019) 401 F. Supp. 3d 1078, 1093 (“Such non-discretionary bonuses ... cannot be lawfully excluded from the regular rate”).

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.

Due to the volume of correspondence and tasks required of Claimants, were forced to take most of their meal breaks while working in front of their computers. However, Defendants still required Claimants and other aggrieved employees to clock out for lunch, even when they were required to work during that time. When Claimants and the aggrieved employees worked through and/or during meal periods, Defendants failed to pay all minimum, regular, and overtime wages owed.

Defendants failed to include all forms of remuneration in the regular rate of pay when calculating the overtime rate for Claimant Desiree Reyes and other aggrieved employees. Defendants instead paid overtime at a simple 1.5x multiple of Claimant Desiree Reyes’ and others’ base hourly rate. Defendants excluded the remuneration itemized as “BONUS.” This company-wide policy and practice of not including BONUS payments—as well as other forms of non-excludable remuneration—was applied to other aggrieved employees and is a matter of common payroll administration. Defendants thus failed to include all forms of non-exempted remuneration in the “regular rate of pay” for purposes of paying overtime to aggrieved employees.

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.

Failure to Provide Meal Periods
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants failed to pay all 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 due to the volume of correspondence and tasks required by Defendants. Defendants required Claimants to work through their meal periods and to effectively take their meal periods "on duty." However, Defendants still required Claimants and other aggrieved employees to clock out for lunch, even when he was performing work during this time. Claimants were thus unable to take their first or second meal periods in compliance with California law. Claimants understand that Defendants applies the same pressure to other employees and similarly fails to provide other aggrieved employees with compliant meal periods.

When Defendants did not provide compliant meal periods, Defendants failed to always pay Claimants and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. Although some meal period premiums were paid to Claimants and the aggrieved employees during the relevant period, Defendants did not pay *all* meal period premiums owed for late, short, missed, or interrupted meal periods. Moreover, for workdays in which Defendants owed or paid meal period premiums, Defendants failed to pay the premiums at the regular rate of compensation due to a failure to include all forms of remuneration in the respective regular rate (e.g., commissions, bonuses, etc.) to Claimant Desiree Reyes and other aggrieved employees.

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.

Failure to Provide Rest Periods **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 Claimants' and other employees' job responsibilities, and the constant flow of business and required tasks, Claimants and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Claimants were not provided all of their rest periods due to the incessant work demands of the position, effectively rendering the rest periods on duty. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Moreover, for the same reasons as discussed in the meal period section, Claimants allege that Defendants failed to pay any rest premiums at the lawful regular rate of compensation due to a failure to include all forms of remuneration in the respective regular rate.

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 §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 use their personal devices (e.g., cell phone) and internet connections for work purposes on a daily basis, including through the Ring Central application, along with other work-from-home expenses such as office items and utilities. Claimants and the aggrieved employees could not have performed their jobs without using their personal devices and internet connection. 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 reimburse as a matter of policy and practice. Defendants also failed to reimburse Claimants and other aggrieved employees for other required work-from-home expenses to compensate for office equipment, supplies, utilities, and other expenses incurred as a consequence of working remotely. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code section 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.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimants, 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 minimum, regular, and overtime wages, and failed to pay all required meal and rest period premiums and paid sick leave wages during employment. 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 owed to the aggrieved employees during their employment and failed to properly pay all wages, including overtime, paid sick leave, premiums, and other forms of remuneration 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.

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 *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’”) (rejecting *Maldonado* defense for class claims).

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. Moreover, in violation of Labor Code section 226(a)(9), the hours worked are incorrectly listed on Claimants’ and the aggrieved employees’ wage statements. Additionally, the hourly rates in effect for overtime, paid sick leave, meal/rest period premiums are incorrectly stated for the aggrieved employees as a result of the regular rate underpayments, resulting in further violation of Labor Code section 226(a)(9).

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 were owed and paid, 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, 218

Defendants violated Labor Code section 246 because they failed to calculate and pay certain 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. However, on information and belief, 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, 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 additional remuneration 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.

On information and belief, 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 the aggrieved employees in those pay periods where they earned additional remuneration such as bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave. Such non-compliant payment of paid sick leave results in additional violations as addressed above.

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, on information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute. Defendants failed to factor in employees' bonuses, commissions, and other compensation when paying sick leave. Defendant 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 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.

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.

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

Claimants were compelled to retain the services of counsel to file this court action to protect his interests, the interests of other aggrieved employees, and the State of California. 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 Claimant, 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) his 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 against the defendants).

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 pursue representative claims on behalf of the State of California and the aggrieved employees and will seek all remedies available for violations of the Labor Code and the IWC Wage Orders, including attorneys' fees, costs, interest, and all available penalties set forth in Labor Code section 2699 and all other applicable sections of the Labor Code.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Vega".

Lauren N. Vega

Cc Claimants

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