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Miguel Rivera, and All Aggrieved Employees

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

13 MARIO ARREDONDO JR. and
14 MIGUEL RIVERA, in their
representative capacity, on behalf of the
15 State of California, the general public and
all aggrieved employees of Defendants,
16

17 Plaintiffs.

18 v.

19 PINKERTON CONSULTING &
20 INVESTIGATIONS INC, a Delaware
corporation authorized to do business in
21 California; and DOES 1 through 50
inclusive,
22

23 Defendants.
24

Case No.: 37-2022-00025166-CU-OE-CTL

Civil Unlimited
Amount Demanded Exceeds \$25,000.00

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698 et seq.)**

1. Labor Code Private Attorneys General
Act Representative Claims

25 Plaintiffs Mario Arredondo Jr. and Miguel Rivera (“Plaintiffs”) bring this representative
26 enforcement action in their representative capacity against Defendant Pinkerton Consulting &
27 Investigations Inc. (“Pinkerton”) and DOES 1 through 50, inclusive (collectively, “Defendants”),
28 on the following grounds:

INTRODUCTION

1. Plaintiffs bring this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of themselves and all other current and former employees who performed work for Defendants in California during the time period commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of this Complaint through and including the date that trial concludes (referred to herein as “Aggrieved Employees”).

2. Plaintiffs allege that during the relevant time period Defendants engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders by, among other things:

- a. Misclassifying workers as exempt employees;
- b. Failing to timely pay all minimum and/or regular wages;
- c. Failing to timely pay all overtime and/or double time wages;
- d. Failing to provide meal periods and/or timely pay premium wages;
- e. Failing to authorize and permit rest periods and/or timely pay premium wages;
- f. Failing to maintain accurate employment records;
- g. Failing to furnish accurate itemized wage statements; and
- h. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties.

3. By and through this representative action, Plaintiffs seek to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees, and litigation costs on behalf of themselves and all other Aggrieved Employees, the general public, and the state of California.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiffs and/or their counsel, which are based upon personal

1 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have
2 evidentiary support after reasonable opportunity for further investigation and formal discovery.

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over this action pursuant to California Code of Civil
5 Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to
6 Labor Code §§ 2698 *et seq.*, Plaintiffs bring this action, in their representative capacity, on behalf
7 of themselves and all other Aggrieved Employees, as defined herein.

8 6. This Court has personal jurisdiction over Pinkerton because Pinkerton conducts
9 business in the state of California and has caused injuries in the county of San Diego, as well as
10 throughout the state of California, through its acts, omissions, and violations of the Labor Code
11 and relevant IWC Wage Order, as alleged herein.

12 7. Venue in this judicial district is proper pursuant to Code of Civil Procedure §§
13 395(a) and 395.5 because defendant, including each fictitiously named defendant, transacts
14 business in the county of San Diego and is otherwise within this Court’s jurisdiction for purposes
15 of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
16 other Aggrieved Employees within the county of San Diego and throughout the state of California.

17 **THE PARTIES**

18 **I. PLAINTIFFS**

19 8. Plaintiff Mario Arredondo Jr. (“Plaintiff Arredondo”) at all material times
20 mentioned herein:

- 21 a. Was and is a resident of the County of San Diego, California;
- 22 b. Has been employed by and/or has otherwise performed work for Defendants
23 as an Executive Driver from approximately September 21, 2018 to the
24 present;
- 25 c. Engages in work for Defendants in the County of San Diego, California;
- 26 d. Is improperly classified by Defendants as an exempt employee;
- 27 e. Earns a bi-weekly salary of approximately \$2,575.00 based on an assumed
28 eighty (80) hours of work in a bi-weekly pay period;

- f. Receives a non-discretionary bonus of approximately \$3,000.00 at the end of each fiscal year;
 - g. Should be classified as a non-exempt employee for purposes of the Labor Code and IWC Wage Orders;
 - h. Regularly works more than eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours per week;
 - i. Was and is required to work “stand-by” shifts on non-scheduled workdays, during which he is required to be readily available to respond to work inquiries and is precluded from engaging in personal activities;
 - j. Was and is not timely compensated the appropriate minimum, regular, overtime, and/or double time wages for all time worked or spent under the control of Defendants, including time spent performing work outside of his scheduled work hours;
 - k. Was and is not paid the appropriate overtime wages due to Defendants’ failure to include non-discretionary compensation into the regular rate of pay for purposes of calculating overtime compensation;
 - l. Was and is not provided with the opportunity to take legally compliant meal periods and/or timely paid premium wages;
 - m. Was and is not authorized or permitted to take legally compliant rest periods and/or timely paid premium wages;
 - n. Contends his employment records are not accurately maintained by Defendants;
 - o. Was and is not furnished with accurate itemized wage statements;
 - p. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
 - q. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*
9. Plaintiff Miguel Rivera (“Plaintiff Rivera”) at all material times mentioned herein:
- a. Was and is a resident of the County of San Diego, California;

- b. Was employed by and/or otherwise performed work for Defendants as an Executive Driver from approximately September 21, 2018 to March 30, 2022;
- c. Engaged in work for Defendants in the County of San Diego, California;
- d. Was improperly classified by Defendants as an exempt employee;
- e. Earned a bi-weekly salary of approximately \$2,400.00 based on an assumed eighty (80) hours of work in a bi-weekly pay cycle;
- f. Received a non-discretionary bonus of approximately \$2,000.00 at the end of each fiscal year;
- g. Should have been classified as a non-exempt employee for purposes of the Labor Code and IWC Wage Orders;
- h. Regularly worked more than eight (8) and/or twelve (12) hours per shift and/or forty (40) hours per week;
- i. Was required to work stand-by shifts on non-scheduled workdays;
- j. Was not timely compensated the appropriate minimum, regular, overtime, and/or double time wages for all time worked or spent under the control of Defendants, including time spent on pre- and post-shift work duties;
- k. Was not paid the appropriate overtime wages due to Defendants' failure to include non-discretionary compensation into the regular rate of pay for purposes of calculating overtime compensation;
- l. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid premium wages;
- m. Was not authorized or permitted to take legally compliant rest periods and/or timely paid premium wages;
- n. Contends his employment records were not accurately maintained by Defendants;
- o. Was not furnished with accurate itemized wage statements;
- p. Was not timely paid all wages due and owing upon separation of the

employment relationship;

q. Was not paid all owed waiting time penalties as provided for under California law;

r. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and

s. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

II. DEFENDANTS

10. Defendant Pinkerton Consulting & Investigations Inc. is a Delaware corporation that is authorized to do business, and is actually doing business, in the state of California. Pinkerton is an investigative and security services company that provides risk management services, security consulting, and security protection for executive personnel to organizations in the United States and globally. Pinkerton’s principal place of business is located in Ann Arbor, Michigan.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore sue these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

12. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant is also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

13. At all times mentioned herein, each defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

14. At all times mentioned herein, each defendant, including each fictitiously named

defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

15. At all times mentioned herein, the acts and/or omissions of each of the defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

16. At all times mentioned herein there was a unity of interest and ownership between each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiffs and all other Aggrieved Employees.

17. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiffs and all other Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

18. At all times mentioned herein, each defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiffs, to work and/or prevented Plaintiffs and other Aggrieved Employees from working.

19. At all times mentioned herein, each defendant, including each fictitiously named defendant, had control over Aggrieved Employees.

20. Each defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

21. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

22. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all paragraphs of this Complaint.

23. Plaintiff Arredondo has been employed by Defendants as an Executive Driver from about September 21, 2018 to the present. As an Executive Driver, Plaintiff Arredondo's job duties consist of transporting Toyota executives, engineers, and other contractors from various locations in southern California to manufacturing plants and supplier locations in Mexico; driving armored passenger vehicles; and protecting individuals from potential dangers during transport. Plaintiff Arredondo is scheduled to work three (3) 12-hour shifts, from about 5:30 a.m. to 5:30 p.m., and also works a rotating weekend shift and additional shifts on non-scheduled workdays when coverage is needed. As a result, Plaintiff Arredondo typically works up to five (5) days and sixty (60) hours per week. Plaintiff Arredondo is paid an annual salary on a bi-weekly basis, which is based on an assumption of eighty (80) hours worked during a bi-weekly pay cycle.

24. Plaintiff Rivera was employed by or otherwise performed work for Defendants as an Executive Driver from approximately September 21, 2018 to March 30, 2022. Plaintiff Rivera was responsible for transporting Toyota personnel from locations in southern California to manufacturing plants and suppliers in Mexico. Plaintiff Rivera drove an armored passenger vehicle and ensured the safety of personnel when crossing the border and while in Mexico. Plaintiff Rivera was scheduled to work Monday, Tuesday, and Wednesday, from 5:30 a.m. to 5:30 p.m., although he frequently performed work duties before and after his scheduled shift, such as preparing his vehicle for transport. Additionally, Plaintiff Rivera worked a rotating weekend shift and stand-by shifts on non-scheduled workdays, for a total of about five (5) shifts and sixty (60) hours of work per week. Plaintiff Rivera was paid an annual salary on a bi-weekly basis, which was based on a presumption of eighty (80) workhours in a bi-weekly pay period.

25. At all times during their employment, Plaintiffs were improperly classified by Defendants as exempt salaried employees for Labor Code and IWC Wage Order purposes.

26. Plaintiffs assert that Defendants have employed, and will continue to employ, several individuals in exempt and non-exempt positions throughout the state of California.

1 27. Plaintiffs contend that all Aggrieved Employees were subject to, and continue to be
2 subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture
3 described herein.

4 28. Plaintiffs further allege that they and all other Aggrieved Employees have suffered,
5 and will continue to suffer, the same and/or similar violations of law described herein.

6 29. Plaintiffs and all other Aggrieved Employees who were classified as exempt were
7 misclassified by Defendants because they were not employed in an executive, administrative, or
8 professional exempt capacity. For instance, Plaintiffs did not manage Defendants' business,
9 departments, or subdivisions; direct the work of two or more employees; or have the authority to
10 hire or fire employees or to provide recommendations as to hiring or firing that were given
11 particular weight. Plaintiffs were also not primarily engaged in work directly related to
12 Defendants' management policies or general business operations. Plaintiffs were required to
13 follow strict security protocols and procedures established by Defendants from which they could
14 not deviate without prior authorization, and thus could not exercise discretion and independent
15 judgment in performing their job duties. Moreover, Plaintiffs were not required to have an
16 advanced degree or specialized intellectual instruction to qualify for their position. Accordingly,
17 Plaintiffs and other Aggrieved Employees who were classified as exempt should have been
18 classified as non-exempt employees and received the full rights and protections afforded by the
19 Labor Code and applicable IWC Wage Order.

20 30. Plaintiffs further allege that they were classified as non-exempt, hourly employees
21 by the security firm contracted with Toyota prior to Pinkerton. When Pinkerton was awarded the
22 security services contract with Toyota in or around September of 2018, Pinkerton informed
23 Plaintiffs that they would be reclassified as exempt employees, even though their job duties would
24 remain substantially the same. Thus, Pinkerton had, and continues to have, a policy, practice,
25 procedure, guideline, and/or culture of misclassifying Plaintiffs and other Aggrieved Employees
26 as exempt salaried employees.

27 31. Defendants further implicitly acknowledged Plaintiffs' and other Aggrieved
28 Employees' non-exempt status by paying them overtime wages. Specifically, in February and

1 March of 2022, Defendants authorized Plaintiffs and, on information and belief, other Aggrieved
2 Employees to be paid overtime wages if they worked additional shifts on their non-scheduled
3 workdays.

4 32. Plaintiffs allege that Defendants had, and continue to have, a policy, practice,
5 procedure, guideline, and/or culture of failing to timely pay all minimum and/or regular wages on
6 the day designated in advance by Defendants as the regular pay day.

7 33. Plaintiffs and other Aggrieved Employees were not paid at least minimum wages
8 for all hours worked or spent under the control of Defendants. Plaintiffs and other Aggrieved
9 Employees were misclassified as exempt salaried employees and thus not paid at least minimum
10 wages for any workhours in excess of the presumed forty (40) hours per week upon which their
11 salaries were based. Plaintiffs and, on information and belief, other Aggrieved Employees
12 regularly engaged in work duties before the start of their scheduled shifts, finished work after the
13 end of their scheduled shifts, and worked additional shifts on non-scheduled work days, including
14 rotating weekend shifts. For instance, Plaintiffs and other Aggrieved Employees typically worked
15 past the end of their scheduled shifts due to traffic and long wait times at the United States-Mexico
16 border. As a result, Plaintiffs and other Aggrieved Employees typically worked up to sixty (60)
17 hours per week, for which they received no additional compensation.

18 34. Plaintiffs further contend that they and other Aggrieved Employees were not paid
19 at least minimum wages for all hours permitted and suffered to work due to Defendants' improper
20 policy and practice of "banking" hours. Specifically, Plaintiffs and, on information and belief,
21 other Aggrieved Employees were scheduled to work thirty-six (36) hours per week but were
22 compensated for forty (40) hours of work on a salary basis. The remaining four (4) hours were
23 "banked" by Defendants for later use. When Plaintiffs and, on information and belief, other
24 Aggrieved Employees were required to work on a non-scheduled workday, Defendants applied
25 the "banked" hours, which had the effect of forcing Plaintiffs and other Aggrieved Employees to
26 work without pay. Thus, Defendants caused Plaintiffs and other Aggrieved Employees to be
27 compensated below the minimum wage.

28 35. Additionally, Plaintiffs and, on information and belief, other Aggrieved Employees

1 did not receive at least minimum wages for work performed during stand-by shifts. During these
2 stand-by shifts, Plaintiffs and other Aggrieved Employees could be called into work at any time
3 and had to remain available to immediately respond to inquiries from Defendants. Plaintiffs and
4 other Aggrieved Employees were further precluded from engaging in personal activities that could
5 inhibit their driving ability. Thus, Plaintiffs' and other Aggrieved Employees' standby time is
6 considered compensable hours worked for which Defendants failed to provide any remuneration.

7 36. Plaintiffs also allege that Defendants had, and continue to have, a policy, practice,
8 procedure, guideline, and/or culture of failing to pay Aggrieved Employees all overtime and/or
9 double time wages no later than the pay day for the next regular payroll period. Plaintiffs assert
10 that they and, on information and belief, other Aggrieved Employees regularly worked in excess
11 of eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek,
12 but were not paid overtime and/or double time wages. For instance, Plaintiffs typically worked
13 more than twelve (12) hours in a workday due to performing work duties before and after their
14 scheduled shift times, but received no double time wages. Defendants' failure to pay all owed
15 overtime and/or double time wages results from Defendants' improper misclassification of
16 Plaintiffs and other Aggrieved Employees as exempt employees; compensating Aggrieved
17 Employees a salary based on forty (40) hours of work per week, without regard to the hours they
18 actually worked; and implementing an illegal policy and practice of "banking" hours.

19 37. Plaintiffs contend that Defendants had, and continue to have, a policy, practice,
20 procedure, guideline, and/or culture of failing to use non-discretionary pay to calculate the
21 respective rate of pay as necessary for the calculation and payment of overtime wages for
22 Aggrieved Employees. For instance, Plaintiffs received a non-discretionary bonus at the end of
23 each fiscal year for satisfying specific goals and objectives provided to Plaintiffs and measured
24 by Defendants' management. Defendants failed to use Plaintiffs' non-discretionary compensation
25 when calculating the regular rate of pay for purposes of determining payments for overtime
26 compensation. Thus, when Plaintiffs received overtime wages in February and March of 2022,
27 they were not paid the appropriate amount.

28 38. Plaintiffs alleges that Defendants had, and continue to have, a policy, practice,

1 procedure, guideline, and/or culture of failing to provide Aggrieved Employees, including
2 himself, with the opportunity to take legally compliant meal periods and/or timely paying
3 premium wages for non-compliant meal periods.

4 39. Defendants did not, and do not, have a policy, practice, guideline, procedure and/or
5 culture of providing Aggrieved Employees with the opportunity to take a thirty (30) minute, off-
6 duty, uninterrupted meal period that is free from Defendants' control when they work more than
7 six (6) hours in a day, nor do Defendants have a policy, practice, guideline, procedure and/or
8 culture of providing a second thirty (30) minute, off-duty, uninterrupted meal period that is free
9 from Defendants' control when they work more than ten (10) hours in a day. Plaintiffs and other
10 Aggrieved Employees were not provided with the opportunity to take lawful meal periods due to
11 Defendants' policy and practice of misclassifying them as exempt employees. Moreover,
12 Defendants required Plaintiffs and other Aggrieved Employees to monitor their cell phones and
13 be readily available to respond to emergency situations at all times during their shifts, including
14 any time they attempted to take a meal period. Consequently, Plaintiffs and other Aggrieved
15 Employees were consistently interrupted during their meal periods, required to work through their
16 meal periods, and/or not provided with meal periods at all.

17 40. Plaintiffs and, on information and belief, other Aggrieved Employees did not sign
18 an on-duty meal period agreement at any point during their employment, nor did they properly
19 waive any of their meal periods.

20 41. Despite not receiving legally compliant meal periods, Plaintiffs assert that they and
21 other Aggrieved Employees did not receive premium wages equivalent to an additional hour of
22 pay at their regular rate of pay for each day they were not provided with compliant meal periods.

23 42. Plaintiffs allege that Defendants had, and continue to have, a policy, practice,
24 procedure, guideline, and/or culture of failing to authorize and permit them and other Aggrieved
25 Employees to take legally compliant rest periods and/or timely pay them premium wages for non-
26 compliant rest periods.

27 43. As a result of Defendants' requirement for Aggrieved Employees, including
28 Plaintiffs, to monitor their cell phones and be readily available to respond to work needs at all

1 times during their shift, Aggrieved Employees were not authorized or permitted to take an off-
2 duty, uninterrupted, ten (10) minute rest period for every four (4) hours worked or major fraction
3 thereof.

4 44. Although Plaintiffs and other Aggrieved Employees were not authorized and
5 permitted to take legally compliant rest periods, they were not compensated rest period premium
6 wages for all non-compliant rest periods as required by California law.

7 45. Plaintiffs allege that Defendants had, and continue to have, a policy, practice,
8 procedure, guideline, and/or culture of knowingly and intentionally failing to maintain accurate
9 employment records for Aggrieved Employees.

10 46. Because of Defendants' illegal policies, practices, guidelines, procedures, and/or
11 culture described herein including, but not limited to, the failure to record the total hours of
12 compensable time worked, Plaintiffs assert that Defendants knowingly and intentionally failed to
13 maintain accurate records reflecting when Aggrieved Employees started and ended each work
14 period, their meal periods, total daily hours actually worked, total hours worked in each payroll
15 period, and actual wages earned and paid, among other things, in violation of California law.
16 Furthermore, Plaintiffs and, on information and belief, other Aggrieved Employees were
17 instructed by their supervisor to falsify their time records by recording that they worked five (5)
18 8-hour shifts, when they had actually worked three (3) 12-hour shifts.

19 47. Plaintiffs allege that Defendants had, and continue to have, a policy, practice,
20 procedure, guideline, and/or culture of failing to furnish accurate itemized wage statements to
21 Plaintiffs and other Aggrieved Employees. Specifically, Plaintiffs and, on information and belief,
22 other Aggrieved Employees were not furnished with wage statements reflecting the information
23 required by California law including, but not limited to, all applicable hourly rates in effect during
24 the pay period, the corresponding number of hours worked at each hourly rate, and the actual
25 gross and net wages earned. For instance, Plaintiffs' wage statements incorrectly reflected that
26 they worked exactly forty (40) hours every week, when in fact, Plaintiffs typically worked around
27 sixty (60) hours per week. In addition, Plaintiffs' wage statements did not have the correct rate of
28 overtime pay because Defendants did not include non-discretionary compensation in the regular

1 rate of pay for purposes of calculating overtime.

2 48. Due to Defendants' failure to furnish wage statements, Plaintiffs and, on
3 information and belief, other Aggrieved Employees were unable to promptly and easily determine
4 the total number of hours actually worked, the applicable hourly rates in effect during the pay
5 period, and/or the corresponding number of hours worked at each hourly rate, among other things.

6 49. Plaintiffs allege that Defendants had, and continue to have, a policy, practice,
7 procedure, guideline, and/or culture of willfully failing to timely pay Aggrieved Employees all
8 wages due and owing at the time of separation and/or the required waiting time penalties for the
9 late payment of such wages. For instance, Plaintiff Rivera ended his employment relationship with
10 Defendants on March 30, 2022, after providing a notice of resignation on March 17, 2022.
11 However, Plaintiff Rivera was not immediately paid all of his wages due and owing including,
12 but not limited to, unpaid minimum, regular, overtime, double time, and/or premium wages.
13 Plaintiff Rivera also contends that, to date, he has not received all wages or waiting time penalties
14 owed to him. Plaintiffs further contend, based on information and belief, that Defendants have not
15 paid waiting time penalties to other former Aggrieved Employees for the late payment of final
16 wages.

17 50. On March 24, 2022, Plaintiff Arredondo submitted written notice to the California
18 Labor and Workforce Development Agency ("LWDA") and Pinkerton as required by the PAGA,
19 informing them of Pinkerton's alleged violations of the Labor Code, including the facts and
20 theories to support each violation. A true and correct copy of the March 24, 2022 written notice
21 is attached hereto as **Exhibit 1** and is incorporated herein by reference.

22 51. On April 21, 2022, Plaintiffs submitted an amended written notice to the LWDA
23 and Pinkerton informing them of Pinkerton's alleged violations of the Labor Code under the
24 PAGA, including the facts and theories to support each violation. A true and correct copy of the
25 April 21, 2022, written notice is attached hereto as **Exhibit 2** and is incorporated herein by
26 reference.

27 52. To date, which is more than 65 days after submission of Plaintiffs' written notice,
28 the LWDA has not provided notice of its intent to investigate Plaintiffs' alleged violations of the

1 Labor Code. Pursuant to the PAGA, Plaintiffs have the right to pursue, and do so pursue, the
2 asserted claims in a representative action in their representative capacity on behalf of themselves
3 and all other Aggrieved Employees, the general public and the state of California as permitted by
4 Labor Code § 2699.3.

5 53. Plaintiffs further believe that additional violations may be discovered and therefore
6 reserve their right to allege additional violations of the law as investigation and discovery
7 warrants. In the event Plaintiffs discover additional violations, Plaintiffs will seek to amend the
8 operative complaint as necessary.

9 **PAGA DESIGNATION**

10 54. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all
11 paragraphs of this Complaint.

12 55. By and through this representative action, Plaintiffs intend to represent the
13 following aggrieved employees:

14 All current and former non-exempt employees, regardless of whether
15 paid by salary or other means, who performed work for Defendants in
16 California during the period commencing one year and sixty-five days
17 prior to the filing of this Complaint through and including the last date
18 of trial (hereinafter the “PAGA Period”) and who have suffered at
19 least one of the violations alleged herein. To the extent that California
Rules of Court, Appendix I, Emergency Rule 9 and/or equitable
tolling operates to toll the claims by the aggrieved employees against
Defendants, the PAGA Period should be adjusted accordingly.

20 56. Aggrieved Employees are all “employees” as the term is used in the Labor Code
21 and the IWC Wage Orders regulating wages, hours, and working conditions in the state of
22 California.

23 57. A more precise definition of the aggrieved employees may be determined after
24 further investigation and discovery. Plaintiffs reserve their right to redefine the group of aggrieved
25 employees as permitted by California law.

26 58. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for
27 a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
28 commissions, boards, agencies or employees for violation of the code may, as an alternative, be

1 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
2 and other current or former employees pursuant to the procedures specified in Labor Code §
3 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code
4 and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to
5 the aggrieved employees, pursuant to Labor Code § 2699(i).

6 59. During all, or a portion of, the one-year and sixty-five day period before Plaintiffs
7 filed notice of their claims with the LWDA, Defendants were Plaintiffs' and all other Aggrieved
8 Employees' employer or person acting on behalf of Aggrieved Employees' employer, either
9 individually or as an officer, agent, or employee of another person, within the meaning of Labor
10 Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the
11 minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid
12 employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable
13 penalties imposed pursuant to Labor Code § 203.

14 60. Plaintiffs are "aggrieved employees" under the PAGA because they were employed
15 by the alleged violator, Defendants, and experienced one or more of the alleged violations outlined
16 herein, and therefore are properly suited to represent the interests of other Aggrieved Employees.
17 (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761;
18 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

19 61. Plaintiffs allege that all other Aggrieved Employees are also "aggrieved employees"
20 under the PAGA because Defendants employed them and all Aggrieved Employees experienced
21 one or more of the alleged violations outlined herein.

22 62. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiffs have exhausted their
23 administrative remedies because they complied with the notice requirements outlined in Labor
24 Code § 2699.3. On March 24, 2022, Plaintiff Arredondo submitted notice to the LWDA and
25 Pinkerton informing them of Pinkerton's alleged Labor Code violations pursuant to the PAGA.
26 (See Exh. 1.) On April 21, 2022, Plaintiffs submitted an amended notice to the LWDA and
27 Pinkerton. (See Exh. 2.) The LWDA had sixty-five (65) days under the PAGA to provide notice
28 of whether it intended to investigate the alleged violations. To date, the LWDA has not provided

1 notice of its intent to investigate the alleged violations. Plaintiffs thus have the right to pursue,
2 and do so pursue, the asserted claims under the PAGA in a representative capacity pursuant to
3 Labor Code § 2699.

4 63. As set forth herein, Defendants have committed, and continue to commit, numerous
5 violations for which the Labor Code and applicable IWC Wage Order, which entitles Plaintiffs,
6 in their representative capacity, to recover, on behalf of themselves and all other Aggrieved
7 Employees, the state of California, and the general public, civil penalties and attorneys' fees and
8 costs from Defendants for the alleged violations, described herein.

9 64. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
10 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
11 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
12 limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194,
13 1197, 1197.1, and 1198. Plaintiffs and other Aggrieved Employees are entitled to, and therefore
14 seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described
15 herein.

16 65. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
17 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and
18 costs. As such, Plaintiffs, in their representative capacity on behalf of themselves and all other
19 Aggrieved Employees, are entitled to, and therefore seek, attorneys' fees and costs.

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **(By Plaintiffs, in their Representative Capacity, against Defendants and Does 1-50)**

23 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

24 [Labor Code §§ 2698 *et seq.*]

25 66. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 67. Plaintiffs, in their representative capacity on behalf of themselves and all other
28 Aggrieved Employees, are entitled to and thus seek to recover civil penalties through a

1 representative enforcement action based on Defendants' violations of the following Labor Code
2 and/or IWC Wage Order provisions:

- 3 a. Failing to timely pay all minimum, regular, overtime, and/or double time
4 wages during employment in violation of Labor Code §§ 204, 210, 510, 558,
5 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours
6 and Days of Work" sections of the applicable IWC Wage Order;
- 7 b. Failing to provide legally compliant meal periods and/or timely pay premium
8 wages for non-compliant meal periods during employment in violation of
9 Labor Code §§ 204, 226.7, 512, and the "Meal Periods" section of the
10 applicable IWC Wage Order;
- 11 c. Failing to authorize and permit legally compliant rest periods and/or timely
12 pay premium wages for non-compliant rest periods during employment in
13 violation of Labor Code §§ 204, 226.7, and the "Rest Periods" section of the
14 applicable IWC Wage Order;
- 15 d. Failing to maintain accurate employment records in violation of Labor Code
16 §§ 226, 1174, 1174.5, and the "Records" section of the applicable IWC Wage
17 Order;
- 18 e. Failing to furnish accurate itemized wage statements in violation of Labor
19 Code §§ 226, 226.3, and the "Records" section of the applicable IWC Wage
20 Order; and
- 21 f. Failing to timely pay all wages due and owing upon separation of
22 employment and/or the required waiting time penalties in violation of Labor
23 Code §§ 201-203.

24 68. Labor Code § 210 provides that any person who fails to pay wages as provided in
25 Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each
26 failure to pay each employee, and for each subsequent violation or any willful or intentional
27 violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully
28 withheld, in addition to any other penalty. Plaintiffs, in their representative capacity on behalf of

1 themselves and all other Aggrieved Employees, are entitled to, and therefore seek, the civil penalty
2 imposed by Labor Code § 210.

3 69. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for
4 an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage deduction statement or fails to keep the records
6 required in section 226(a), in addition to any other penalty provided by law. Plaintiffs, in their
7 representative capacity on behalf of themselves and all other Aggrieved Employees, are entitled
8 to, and therefore seek, the civil penalty imposed by Labor Code § 226.3.

9 70. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
10 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each
11 underpaid employee for the initial violation and \$100 per pay period for each underpaid employee
12 for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any
13 provision regulating hours and days of work in any order of the IWC. Plaintiffs, in their
14 representative capacity on behalf of themselves and all other Aggrieved Employees, are entitled
15 to, and therefore seek, the civil penalty imposed by Labor Code § 558.

16 71. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
17 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
18 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code §
19 2699 for a violation of Labor Code § 1174(d). Plaintiffs, in their representative capacity on behalf
20 of themselves and all other Aggrieved Employees, are entitled to, and therefore seek, the civil
21 penalty imposed by Labor Code § 1174.5.

22 72. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee
23 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250
24 for each underpaid employee for each pay period for which the employee is underpaid for paying
25 or causing an employee to be paid a wage less than the minimum wage. Plaintiffs, in their
26 representative capacity on behalf of themselves and all other Aggrieved Employees, are entitled
27 to, and therefore seek, the civil penalty imposed by Labor Code § 1197.1.

28 73. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee

1 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
2 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
3 limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194,
4 1197, 1197.1, and 1198. Plaintiffs, in their representative capacity on behalf of themselves and all
5 other Aggrieved Employees, are entitled to, and therefore seek, the civil penalty imposed by Labor
6 Code § 2699(f).

7 74. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
8 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and
9 costs. As such, Plaintiffs, in their representative capacity on behalf of themselves and all other
10 Aggrieved Employees, are entitled to, and therefore seek, attorneys' fees and costs.

11 75. Plaintiffs, in their representative capacity on behalf of themselves and all other
12 Aggrieved Employees, are entitled to and seek recovery of reasonable attorneys' fees as provided
13 by Labor Code §§ 218.5 and 1194, and Code of Civil Procedure § 1021.5.

14 76. Plaintiffs, in their representative capacity on behalf of themselves and all other
15 Aggrieved Employees, request further relief as described in the below prayer for relief.

16 **PRAYER FOR RELIEF**

17 Plaintiffs, in their representative capacity, pray for judgment against Defendants and in
18 favor of the state of California, Plaintiffs, and all other Aggrieved Employees as follows:

- 19 a. For any and all civil penalties available for the Labor Code violations alleged
20 herein including, but not limited to, civil penalties under Labor Code §§ 210,
21 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- 22 b. For an order determining that Plaintiffs are entitled to recover a civil penalty
23 of \$100 for each aggrieved employee per pay period for the initial violation
24 and \$200 for each aggrieved employee per pay period for each subsequent
25 violation as provided in Labor Code § 2699(f);
- 26 c. For reasonable attorneys' fees and costs of suit to the extent permitted by
27 law, including, but not limited to, Labor Code §§ 218.5, 1194, 2699(g)(1),
28 Code of Civil Procedure § 1021.5, and the "common fund" theory, the

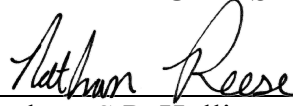
“substantial benefit” theory, the “catalyst” theory and/or other applicable law; and

d. For any and all other relief as this Court deems proper and just and is available under Labor Code §§ 2698 *et seq.*

Dated: June 27, 2022

GRAHAMHOLLIS APC

By:



Graham S.P. Hollis

Vilmarie Cordero

Hali M. Anderson

Nathan J. Reese

Allison E. Schubert

Attorneys for Plaintiffs Mario Arredondo Jr.,
Miguel Rivera, and All Aggrieved Employees

EXHIBIT 1

March 24, 2022

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Pinkerton Consulting & Investigations Inc.
9 Campus Drive
Parsippany, NJ 07054

Pinkerton Consulting & Investigations Inc.
c/o National Registered Agents, Inc.
Agent for Service of Process
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Mario Arredondo Jr.'s Wage and Hour Claims Against Pinkerton Consulting & Investigations Inc.

Dear Labor and Workforce Development Agency and Pinkerton Consulting & Investigations Inc.:

Please be advised that Mario Arredondo Jr. ("Claimant") has retained our firm, **GrahamHollis, APC**, to represent him for various claims against Pinkerton Consulting & Investigations Inc. ("the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other current and former employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes facts and theories to support the Labor Code violations herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this written notice, Claimant intends to represent himself and all other current and former employees who performed work for the Company in California during the relevant time period (referred to herein as

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Evan J. Armstrong

Alyssa Smith

Allison Schubert

*Provisionally Licensed Lawyer

“Aggrieved Employees”). All Aggrieved Employees, including Claimant are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that he and all other Aggrieved Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Pinkerton Consulting & Investigations Inc. is a Delaware corporation with its principal place of business located in Ann Arbor, Michigan. Pinkerton Consulting & Investigations Inc. is an investigative and security services company, offering risk management services, security consulting, and executive protection to organizations across the United States and globally.

Claimant has been employed by, or has otherwise performed work for, the Company as a Security Driver from approximately September 21, 2018 to the present. As a Security Driver, Claimant’s job duties consist of transporting Toyota executives, engineers, and other contractors from various locations in southern California to Toyota manufacturing plants and supplier locations in Mexico, including Tijuana, Mexicali, and Tecate. Claimant drives armored passenger vehicles and is responsible for protecting individuals from potential dangers while crossing the border. Claimant must be readily available at all times during his shifts to transport the protected individuals back to the United States in the event of an emergency.

Claimant is scheduled to work three (3) days per week and twelve (12) hours per day, from 5:30 a.m. to 5:30 p.m. However, Claimant’s shifts frequently exceed twelve (12) hours due to traffic and/or long wait times at the United States-Mexico border. In addition, the Company regularly requires Claimant to work a rotating weekend shift and additional shifts on non-scheduled workdays when coverage is needed, resulting in Claimant working up to five (5) days per week and sixty (60) hours per week. Any time that Claimant is not scheduled for work on a regularly scheduled workday, Claimant is required by the Company to remain on “stand-by” and be available to immediately respond to any inquiries from the Company. Claimant is compensated a salary of approximately \$2,575.00 on a bi-weekly basis, which is based on an assumption of eighty (80) hours in a bi-weekly pay cycle.

At all relevant times, the Company improperly classified Claimant as an exempt salaried employee, ineligible to receive overtime pay for overtime hours worked and other protections afforded by the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. As described herein, Claimant alleges the Company has a policy, practice, procedure, and/or guideline of misclassifying him and other Aggrieved Employees as exempt salaried employees for its own benefit. Claimant and other Aggrieved Employees should have been classified as non-exempt employees, entitled to the full protections of both the Labor Code and the applicable IWC Wage Order.

At no time during Claimant’s employment as a Security Driver has he been employed in an executive, administrative, or professional exempt capacity. Claimant and, on information and belief, other Aggrieved Employees do not manage the Company’s business or subdivisions, nor do they have the authority to hire or fire employees. Further, Claimant and other Aggrieved Employees are not primarily engaged in work directly related to management policies or general business operations of the Company. Claimant and other Aggrieved Employees are also not permitted to exercise discretion and independent judgment in performing their job duties, as they are required to follow strict procedures and protocols established by the Company. Additionally, Claimant and other Aggrieved Employees are not required to

have advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction for their position. Accordingly, at all times, Claimant and other Aggrieved Employees have been improperly classified as exempt employees. In fact, prior to the Company contracting with Toyota to provide security services, Claimant and other Aggrieved Employees were classified by the previously-contracted security firm as non-exempt hourly employees. When the Company was awarded the contract in or around September 2018, the Company notified Claimant and other Aggrieved Employees that they would be classified as exempt employees, even though their job duties would remain the same.

Moreover, the Company implicitly acknowledges Claimant's and other Aggrieved Employees' non-exempt status because the Company, beginning in or around February of 2022, authorized Claimant and other Aggrieved Employees to be paid overtime wages if they work additional shifts on their non-scheduled workdays.

The Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and applicable IWC Wage Order. Specifically, the Company failed to timely pay Claimant and other Aggrieved Employees all appropriate wages including minimum, regular, overtime, and/or double time wages for all hours worked; failed to provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums periods as required under California law; failed to maintain accurate records; failed to furnish accurate itemized wage statements; and failed to timely pay all wages due and owing upon separation of employment.

The Company has a policy, practice, procedure, and/or guideline of failing to timely pay Claimant and other Aggrieved Employees all minimum, regular, overtime, and/or double time wages for all time actually worked or spent under the control of the Company. As a result of being misclassified as an exempt employee and being paid on a salary basis, Claimant and other Aggrieved Employees are not paid at least minimum wages for all hours worked, including time spent working through meal periods and any workhours in excess of the presumed forty (40) hours upon which their weekly salaries are based. Specifically, the Company schedules Claimant for thirty-six (36) hours of work per week but pays him for forty (40) hours. The additional four (4) hours are "banked" by the Company for later use. If Claimant is called into work on a non-scheduled workday, the Company applies the "banked" hours, thereby precluding Claimant from receiving any compensation for hours worked in excess of forty (40) hours in a week.

In addition, Claimant and, on information and belief, other Aggrieved Employees receive no remuneration for stand-by shifts. During these stand-by shifts, Claimant and other Aggrieved Employees are not engaged in security services, but they must be available to immediately respond to inquiries from the Company and are precluded from engaging in personal activities that may inhibit their driving ability. Thus, Claimant and other Aggrieved Employees do not receive at least minimum wages for all time during which they are subject to the control of the Company, in violation of California law.

Moreover, Claimant and, on information and belief, other Aggrieved Employees regularly work shifts that are in excess of eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek, but are not compensated all overtime and/or double time wages owed. For instance, Claimant frequently works in excess of his scheduled twelve (12) hour shifts due to traffic and long wait times at the border, for which he receives no double time wages. Claimant further alleges that he and other Aggrieved

Employees are deprived of overtime wages due to the Company's improper policy and practice of "banking" hours, as described above.

Further, the Company pays Claimant and, on information and belief, other Aggrieved Employees non-discretionary compensation, which should be included when determining the regular rate of pay for purposes of calculating overtime compensation. For instance, Claimant receives an annual bonus of \$3,500 from the Company at the end of each fiscal year, which is based on specific goals and objectives provided to Claimant and measured by management. However, the Company fails to use Claimant's and, on information and belief, other Aggrieved Employees' non-discretionary compensation when calculating the regular rate of pay for purposes of determining the payments for overtime compensation. The Company has therefore failed to timely pay Claimant and other Aggrieved Employees the appropriate overtime wages.

The Company has a policy, practice, procedure, and/or guideline of not providing Claimant and other Aggrieved Employees with the opportunity to take thirty (30) minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also alleges that the Company does not provide Aggrieved Employees, including himself, with the opportunity to take a second thirty (30) minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. Claimant asserts that he and other Aggrieved Employees are not provided with the opportunity to take lawful meal periods because they are improperly classified as exempt, salaried employees. Moreover, the Company requires Claimant and other Aggrieved Employees to be within close proximity to the manufacturing plant, constantly monitor their cell phones, and be readily available to respond to emergency situations at all times during their shifts, including any time they attempt to take a meal period. Claimant and, on information and belief, other Aggrieved Employees did not sign an on-duty meal period agreement at any point during their employment, nor did they properly waive any of their meal periods.

For the same reasons, Claimant and other Aggrieved Employees are not authorized or permitted by the Company to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Thus, Claimant contends that he and, on information and belief, other Aggrieved Employees have never been provided with a legally compliant rest period.

Although Aggrieved Employees, including Claimant, do not receive legally compliant meal and/or rest periods, Claimant and, on information and belief, other Aggrieved Employees do not receive premium wages equivalent to an additional hour of pay at their regular rate of pay for each day they are not provided compliant meal and/or rest periods.

As a direct result of the Company's illegal policies, practices, procedures, and/or guidelines, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual time worked, the beginning and end of each meal period, and actual wages earned and paid, among other things, in violation of California law. For instance, Claimant was instructed by his supervisor to falsify his time records by recording on his timesheets that he worked five 8-hour shifts, when he had actually worked three 12-hour shifts.

Furthermore, the wage statements provided to Claimant and other Aggrieved Employees fail to reflect the correct total hours worked by the employee, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among

other things, as required by the Labor Code. For example, Claimant's wage statements incorrectly reflect that he works eighty (80) hours on a biweekly basis, when in fact, Claimant works up to sixty (60) hours per week.

Claimant further alleges, based on information and belief, that the Company has a policy, practice, procedure, and/or guideline of failing to timely pay former Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, overtime, and/or double time wages for all hours worked, as well as meal and rest premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, based on information and belief, that former Aggrieved Employees have not been paid any waiting time penalties for the late payment of wages, as required by California law.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded to them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

**FAILURE TO TIMELY PAY MINIMUM, REGULAR, OVERTIME,
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable on 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 § 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." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

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 § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

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

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

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

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

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 § 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to timely pay all minimum, regular, overtime, and/or double time wages to Claimant and other Aggrieved Employees for all time engaged in work on behalf of the Company. The Company misclassified Claimant and other Aggrieved Employees as exempt employees and thus failed to pay at least minimum wages for all hours actually worked. Claimant and other Aggrieved Employees were also not compensated for all time suffered or permitted to work during their standby shifts. Additionally, the Company failed to timely pay all overtime and/or double time wages to Claimant and other Aggrieved Employees for all hours worked in excess of eight (8) hours per day, twelve (12) hours per day, and/or forty (40) hours per week. The Company further failed to include Aggrieved Employees' non-discretionary bonuses into their regular rate of pay for purposes of calculating overtime wages. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7, 512, and the "Meal Periods" section of the applicable IWC Wage Order)

Section 512(a) of the Labor Code provides:

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

without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at p. 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7:

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours in a workday. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND/OR TIMELY PAY
PREMIUM WAGES**

(Labor Code §§ 204, 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

In pertinent part, Labor Code § 226.7 provides:

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

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at pp. 1103-1114.)

As discussed herein, the Company failed to authorize and permit Aggrieved Employees, including Claimant, to take an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174(c) requires every employer to "keep a record showing the names and addresses of all employees employed..." Labor Code § 1174(d) further requires every person employing labor in California to:

[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The "Records" section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per

aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant further alleges that he was instructed by his supervisor to falsify his timesheets, resulting in inaccurate employment records. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period

in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Labor Code § 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, accurately reflect their total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Premium wages constitute wages under Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at pp. 1103-1114.)

Labor Code § 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Due to the Labor Code violations described herein, Claimant asserts that the Company did not timely pay to former Aggrieved Employees all minimum, regular, overtime, and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of employment. Based on information and belief, Claimant further contends that the Company did not pay former Aggrieved Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf all Aggrieved Employees to the extent permitted by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) further states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by, among other things, failing to timely pay all regular, minimum, overtime, and/or double time wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to maintain accurate employment records; failing to furnish accurate itemized wage statements; and failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, as required under the Labor Code and the applicable sections of the IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of himself and all Aggrieved Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur

such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of himself and all Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company violated the Labor Code and applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable provisions of the IWC Wage Order. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

A handwritten signature in black ink that reads "Nathan Reese". The signature is written in a cursive, flowing style.

Nathan Reese

EXHIBIT 2

April 21, 2022

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Nathan Reese
nreese@grahamhollis.com
619.344.8696 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Pinkerton Consulting & Investigations Inc.
9 Campus Drive
Parsippany, NJ 07054

Pinkerton Consulting & Investigations Inc.
c/o National Registered Agents, Inc.
Agent for Service of Process
330 N Brand Blvd Ste 700
Glendale, CA 91203

**Re: LWDA Case No.: LWDA-CM-875239-22
Amended Notice of Mario Arredondo Jr.'s and Miguel Rivera's PAGA Claims
Against Pinkerton Consulting & Investigations Inc.**

Dear Labor and Workforce Development Agency and Pinkerton Consulting & Investigations Inc.:

This letter shall serve as Mario Arredondo Jr.'s ("Claimant Arredondo") amended written notice, and as Miguel Rivera's ("Claimant Rivera") first written notice to the California Labor and Workforce Development Agency ("LWDA") and Pinkerton Consulting & Investigations Inc. ("the Company") of the alleged California Labor Code ("Labor Code") violations Claimant Arredondo and Claimant Rivera (together, "Claimants") claim that the Company committed against them and all other current and former employees of the Company in California during the relevant statutory period. Claimants provide this amended notice, which includes facts and theories to support the Labor Code violations alleged herein and in the original written notice, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this amended notice, Claimants intend to represent themselves and all other current and former employees who performed work for the Company in California during the relevant time period (referred to herein as "Aggrieved Employees"). All Aggrieved Employees, including Claimants, are believed

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Evan J. Armstrong

Alyssa Smith

Allison Schubert

*Provisionally Licensed Lawyer

to have suffered at least one of the Labor Code violations described herein. Claimants therefore contend that they and all other Aggrieved Employees are “aggrieved employees” as defined by the PAGA.

ADDITIONAL FACTS REGARDING CLAIMANT MIGUEL RIVERA

Claimants incorporate by reference all of the factual allegations and legal theories asserted in Claimant Arredondo’s March 24, 2022 original written notice as if stated herein. A true and correct copy of Claimant Arredondo’s original notice letter (“Original Notice”) is attached as **Exhibit A**.

Claimant Rivera was employed by the Company as an Executive Driver from approximately October 2018 to March 30, 2022. As an Executive Driver, Claimant Rivera was responsible for transporting Toyota personnel from locations in southern California to manufacturing plants and suppliers in Mexico. Claimant Rivera drove armored passenger vehicles and ensured the safety of Toyota personnel when crossing the border and while in Mexico. Throughout his shifts, Claimant Rivera was required to monitor his work phone and be readily available to assist in the event of an emergency. At all relevant times, Claimant Rivera was compensated a biweekly salary based on an assumption of eighty (80) workhours in a bi-weekly pay cycle.

Claimant Rivera was scheduled to work Monday, Tuesday, and Wednesday from 5:30 a.m. to 5:30 p.m., but he typically worked in excess of his scheduled hours. For instance, Claimant Rivera was required to perform work tasks as early as 4:45 a.m., such as washing his vehicle and filling up on gas, to ensure that he was ready to begin working at his scheduled start time. In addition, Claimant Rivera regularly finished work after 5:30 p.m. due to waiting in traffic at the United States-Mexico border. Claimant Rivera was also required to work a rotating weekend shift and stand-by shifts on non-scheduled workdays. During his stand-by shifts, Claimant Rivera could be called into work at any time and thus was precluded from engaging in personal activities.

Claimant Rivera alleges that the Company had a policy, practice, procedure, and/or guideline of improperly classifying Aggrieved Employees, including himself, as exempt salaried employees, thus preventing them from receiving overtime pay for overtime hours worked, meal and rest periods, and other rights afforded by the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders. Claimant Rivera and other Aggrieved Employees should have been classified as non-exempt employees because their job duties did not meet the requirements for the executive, administrative, or professional exemptions. Further, the Company implicitly acknowledged Claimant Rivera’s non-exempt status when the Company began paying Claimant Rivera overtime wages beginning in March of 2022.

The Company denied, and continues to deny, Claimant Rivera and other Aggrieved Employees the specific rights afforded to them under the Labor Code and applicable IWC Wage Order. Specifically, the Company failed to timely pay Claimant Rivera and other Aggrieved Employees all appropriate wages including minimum, regular, overtime, and/or double time wages for all hours worked; failed to provide them with legally compliant meal and rest breaks or pay them premium wages as required under California law; failed to maintain accurate records; failed to furnish accurate itemized wage statements; and failed to timely pay all wages due and owing upon separation of employment.

The Company has a policy, practice, procedure, and/or guideline of failing to timely pay Claimant Rivera and other Aggrieved Employees all minimum, regular, overtime, and/or double time wages for all time actually worked or spent under the control of the Company. Claimant Rivera and other Aggrieved Employees were not paid at least minimum wages for any workhours in excess of the assumed forty (40) hours per week upon which their salaries were based. For instance, as a result of pre and post-shift work duties and working additional shifts on non-scheduled work days, Claimant Rivera frequently worked up to five (5) days and sixty (60) hours per week, for which he received no additional remuneration. Claimant Rivera was also required to work non-scheduled shifts without pay due to the Company's practice of "banking" eight (8) hours per pay period and applying these "banked" hours to non-scheduled shifts. Additionally, Claimant Rivera did not receive at least minimum wages for time spent under the Company's control during his stand-by shifts.

Claimant Rivera and, on information and belief, other Aggrieved Employees regularly worked shifts in excess of eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek, but were not compensated all overtime and/or double time wages owed. For instance, Claimant Rivera typically worked more than twelve (12) hours in a workday due to performing work duties before and after his scheduled shift, but did not receive all owed overtime and/or double time wages. Claimant Rivera and other Aggrieved Employees were also deprived of overtime wages due to the Company's improper policy and practice of "banking" hours. Furthermore, the Company failed to include non-discretionary bonuses in Claimant Rivera's regular rate of pay for purposes of calculating overtime wages. Thus, on the rare occasion that Claimant Rivera and other Aggrieved Employees were paid overtime wages, they were not paid the appropriate amount by the Company.

The Company has a policy, practice, procedure, and/or guideline of failing to provide Claimant Rivera and other Aggrieved Employees with the opportunity to take thirty (30) minute, off-duty, uninterrupted meal periods that are free from the employer's control when they worked more than six (6) hours in a day, and/or a second thirty (30) minute, off-duty, uninterrupted meal period that is free from the employer's control when they worked more than ten (10) hours in a day. Claimant Rivera was erroneously classified as exempt, and thus not provided with the opportunity to take legally compliant meal periods. In addition, Claimant Rivera was required to stay on the work premises any time he attempted to take a meal period and to keep his phone turned "on" and on him at all times during his shifts.

Claimant Rivera and other Aggrieved Employees were also not authorized or permitted by the Company to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. For instance, Claimant Rivera had to stay within close proximity to the worksite and keep his phone on him at all times in case of an emergency. Thus, Claimant Rivera was not provided with off-duty rest periods in violation of California law.

Additionally, Claimant Rivera and, on information and belief, other Aggrieved Employees, did not receive premium wages in the amount of one (1) hour of pay at their regular rate of pay for each day they were not provided with a lawful meal and/or rest period.

The Company had a policy, practice, procedure, and/or guideline of not maintaining accurate records for Claimant Rivera and other Aggrieved Employees, due to the Company's willful failure to record all hours worked by the employees. On at least one occasion, Claimant Rivera was instructed by his

supervisor, Sean Leath, to falsify his time records by recording that he worked five (5) eight (8) hour shifts, when in fact he had worked three (3) twelve (12) hour shifts.

Claimant Rivera and other Aggrieved Employees were not furnished with wage statements that complied with California law because the wage statements did not correctly show the total hours worked by the employee, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, the gross wages actually earned, and the net wages actually earned. For instance, Claimant Rivera's wage statements did not reflect all hours spent performing work duties, including before and after his scheduled shifts, instead incorrectly showing that he worked only eighty (80) hours in a biweekly pay period.

Claimant Rivera also alleges that the Company has a policy, practice, procedure, and/or guideline of failing to timely pay former Aggrieved Employees, including himself, all wages due and owing upon separation of employment, including minimum, regular, overtime, double time, and/or premium wages. To date, Claimant Rivera has not received all wages owed nor the required waiting time penalties for the late payment of wages.

All facts, claims, and/or legal theories contained within this amended notice as well as in the Original Notice are alleged and/or asserted on behalf of Claimants and all other Aggrieved Employees and are based on the information available at the time of the respective writing. Since Claimants' investigation is ongoing, Claimants reserve their right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of themselves and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimants reserve the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to their civil complaint.

CONCLUSION

Based on this amended written notice and the Original Notice, the Company violated the Labor Code and applicable IWC Wage Order, thereby depriving Claimant Arredondo, Claimant Rivera, and other Aggrieved Employees of the rights and protections afforded to them. Claimants have satisfied the prerequisites of the PAGA to serve as representatives of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth in this amended written notice and the Original Notice, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimants may elect to initiate and/or amend a civil action, on behalf of themselves and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

A handwritten signature in black ink that reads "Nathan Reese". The signature is written in a cursive, flowing style.

Nathan Reese

Enclosures: Exhibit A – Letter to the LWDA, dated March 24, 2022 (“Original Notice”)

EXHIBIT A

March 24, 2022

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Nathan Reese
nreese@grahamhollis.com
619.344.8696 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Pinkerton Consulting & Investigations Inc.
9 Campus Drive
Parsippany, NJ 07054

Pinkerton Consulting & Investigations Inc.
c/o National Registered Agents, Inc.
Agent for Service of Process
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Mario Arredondo Jr.'s Wage and Hour Claims Against Pinkerton Consulting & Investigations Inc.

Dear Labor and Workforce Development Agency and Pinkerton Consulting & Investigations Inc.:

Please be advised that Mario Arredondo Jr. ("Claimant") has retained our firm, **GrahamHollis**, APC, to represent him for various claims against Pinkerton Consulting & Investigations Inc. ("the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other current and former employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes facts and theories to support the Labor Code violations herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this written notice, Claimant intends to represent himself and all other current and former employees who performed work for the Company in California during the relevant time period (referred to herein as

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Evan J. Armstrong

Alyssa Smith

Allison Schubert

*Provisionally Licensed Lawyer

“Aggrieved Employees”). All Aggrieved Employees, including Claimant are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that he and all other Aggrieved Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Pinkerton Consulting & Investigations Inc. is a Delaware corporation with its principal place of business located in Ann Arbor, Michigan. Pinkerton Consulting & Investigations Inc. is an investigative and security services company, offering risk management services, security consulting, and executive protection to organizations across the United States and globally.

Claimant has been employed by, or has otherwise performed work for, the Company as a Security Driver from approximately September 21, 2018 to the present. As a Security Driver, Claimant’s job duties consist of transporting Toyota executives, engineers, and other contractors from various locations in southern California to Toyota manufacturing plants and supplier locations in Mexico, including Tijuana, Mexicali, and Tecate. Claimant drives armored passenger vehicles and is responsible for protecting individuals from potential dangers while crossing the border. Claimant must be readily available at all times during his shifts to transport the protected individuals back to the United States in the event of an emergency.

Claimant is scheduled to work three (3) days per week and twelve (12) hours per day, from 5:30 a.m. to 5:30 p.m. However, Claimant’s shifts frequently exceed twelve (12) hours due to traffic and/or long wait times at the United States-Mexico border. In addition, the Company regularly requires Claimant to work a rotating weekend shift and additional shifts on non-scheduled workdays when coverage is needed, resulting in Claimant working up to five (5) days per week and sixty (60) hours per week. Any time that Claimant is not scheduled for work on a regularly scheduled workday, Claimant is required by the Company to remain on “stand-by” and be available to immediately respond to any inquiries from the Company. Claimant is compensated a salary of approximately \$2,575.00 on a bi-weekly basis, which is based on an assumption of eighty (80) hours in a bi-weekly pay cycle.

At all relevant times, the Company improperly classified Claimant as an exempt salaried employee, ineligible to receive overtime pay for overtime hours worked and other protections afforded by the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. As described herein, Claimant alleges the Company has a policy, practice, procedure, and/or guideline of misclassifying him and other Aggrieved Employees as exempt salaried employees for its own benefit. Claimant and other Aggrieved Employees should have been classified as non-exempt employees, entitled to the full protections of both the Labor Code and the applicable IWC Wage Order.

At no time during Claimant’s employment as a Security Driver has he been employed in an executive, administrative, or professional exempt capacity. Claimant and, on information and belief, other Aggrieved Employees do not manage the Company’s business or subdivisions, nor do they have the authority to hire or fire employees. Further, Claimant and other Aggrieved Employees are not primarily engaged in work directly related to management policies or general business operations of the Company. Claimant and other Aggrieved Employees are also not permitted to exercise discretion and independent judgment in performing their job duties, as they are required to follow strict procedures and protocols established by the Company. Additionally, Claimant and other Aggrieved Employees are not required to

have advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction for their position. Accordingly, at all times, Claimant and other Aggrieved Employees have been improperly classified as exempt employees. In fact, prior to the Company contracting with Toyota to provide security services, Claimant and other Aggrieved Employees were classified by the previously-contracted security firm as non-exempt hourly employees. When the Company was awarded the contract in or around September 2018, the Company notified Claimant and other Aggrieved Employees that they would be classified as exempt employees, even though their job duties would remain the same.

Moreover, the Company implicitly acknowledges Claimant's and other Aggrieved Employees' non-exempt status because the Company, beginning in or around February of 2022, authorized Claimant and other Aggrieved Employees to be paid overtime wages if they work additional shifts on their non-scheduled workdays.

The Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and applicable IWC Wage Order. Specifically, the Company failed to timely pay Claimant and other Aggrieved Employees all appropriate wages including minimum, regular, overtime, and/or double time wages for all hours worked; failed to provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums periods as required under California law; failed to maintain accurate records; failed to furnish accurate itemized wage statements; and failed to timely pay all wages due and owing upon separation of employment.

The Company has a policy, practice, procedure, and/or guideline of failing to timely pay Claimant and other Aggrieved Employees all minimum, regular, overtime, and/or double time wages for all time actually worked or spent under the control of the Company. As a result of being misclassified as an exempt employee and being paid on a salary basis, Claimant and other Aggrieved Employees are not paid at least minimum wages for all hours worked, including time spent working through meal periods and any workhours in excess of the presumed forty (40) hours upon which their weekly salaries are based. Specifically, the Company schedules Claimant for thirty-six (36) hours of work per week but pays him for forty (40) hours. The additional four (4) hours are "banked" by the Company for later use. If Claimant is called into work on a non-scheduled workday, the Company applies the "banked" hours, thereby precluding Claimant from receiving any compensation for hours worked in excess of forty (40) hours in a week.

In addition, Claimant and, on information and belief, other Aggrieved Employees receive no remuneration for stand-by shifts. During these stand-by shifts, Claimant and other Aggrieved Employees are not engaged in security services, but they must be available to immediately respond to inquiries from the Company and are precluded from engaging in personal activities that may inhibit their driving ability. Thus, Claimant and other Aggrieved Employees do not receive at least minimum wages for all time during which they are subject to the control of the Company, in violation of California law.

Moreover, Claimant and, on information and belief, other Aggrieved Employees regularly work shifts that are in excess of eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek, but are not compensated all overtime and/or double time wages owed. For instance, Claimant frequently works in excess of his scheduled twelve (12) hour shifts due to traffic and long wait times at the border, for which he receives no double time wages. Claimant further alleges that he and other Aggrieved

Employees are deprived of overtime wages due to the Company's improper policy and practice of "banking" hours, as described above.

Further, the Company pays Claimant and, on information and belief, other Aggrieved Employees non-discretionary compensation, which should be included when determining the regular rate of pay for purposes of calculating overtime compensation. For instance, Claimant receives an annual bonus of \$3,500 from the Company at the end of each fiscal year, which is based on specific goals and objectives provided to Claimant and measured by management. However, the Company fails to use Claimant's and, on information and belief, other Aggrieved Employees' non-discretionary compensation when calculating the regular rate of pay for purposes of determining the payments for overtime compensation. The Company has therefore failed to timely pay Claimant and other Aggrieved Employees the appropriate overtime wages.

The Company has a policy, practice, procedure, and/or guideline of not providing Claimant and other Aggrieved Employees with the opportunity to take thirty (30) minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also alleges that the Company does not provide Aggrieved Employees, including himself, with the opportunity to take a second thirty (30) minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. Claimant asserts that he and other Aggrieved Employees are not provided with the opportunity to take lawful meal periods because they are improperly classified as exempt, salaried employees. Moreover, the Company requires Claimant and other Aggrieved Employees to be within close proximity to the manufacturing plant, constantly monitor their cell phones, and be readily available to respond to emergency situations at all times during their shifts, including any time they attempt to take a meal period. Claimant and, on information and belief, other Aggrieved Employees did not sign an on-duty meal period agreement at any point during their employment, nor did they properly waive any of their meal periods.

For the same reasons, Claimant and other Aggrieved Employees are not authorized or permitted by the Company to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Thus, Claimant contends that he and, on information and belief, other Aggrieved Employees have never been provided with a legally compliant rest period.

Although Aggrieved Employees, including Claimant, do not receive legally compliant meal and/or rest periods, Claimant and, on information and belief, other Aggrieved Employees do not receive premium wages equivalent to an additional hour of pay at their regular rate of pay for each day they are not provided compliant meal and/or rest periods.

As a direct result of the Company's illegal policies, practices, procedures, and/or guidelines, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual time worked, the beginning and end of each meal period, and actual wages earned and paid, among other things, in violation of California law. For instance, Claimant was instructed by his supervisor to falsify his time records by recording on his timesheets that he worked five 8-hour shifts, when he had actually worked three 12-hour shifts.

Furthermore, the wage statements provided to Claimant and other Aggrieved Employees fail to reflect the correct total hours worked by the employee, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among

other things, as required by the Labor Code. For example, Claimant's wage statements incorrectly reflect that he works eighty (80) hours on a biweekly basis, when in fact, Claimant works up to sixty (60) hours per week.

Claimant further alleges, based on information and belief, that the Company has a policy, practice, procedure, and/or guideline of failing to timely pay former Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, overtime, and/or double time wages for all hours worked, as well as meal and rest premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, based on information and belief, that former Aggrieved Employees have not been paid any waiting time penalties for the late payment of wages, as required by California law.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded to them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

**FAILURE TO TIMELY PAY MINIMUM, REGULAR, OVERTIME,
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable on 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 § 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." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an

employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

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 § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

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

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

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

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

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 § 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to timely pay all minimum, regular, overtime, and/or double time wages to Claimant and other Aggrieved Employees for all time engaged in work on behalf of the Company. The Company misclassified Claimant and other Aggrieved Employees as exempt employees and thus failed to pay at least minimum wages for all hours actually worked. Claimant and other Aggrieved Employees were also not compensated for all time suffered or permitted to work during their standby shifts. Additionally, the Company failed to timely pay all overtime and/or double time wages to Claimant and other Aggrieved Employees for all hours worked in excess of eight (8) hours per day, twelve (12) hours per day, and/or forty (40) hours per week. The Company further failed to include Aggrieved Employees' non-discretionary bonuses into their regular rate of pay for purposes of calculating overtime wages. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7, 512, and the “Meal Periods” section of the applicable IWC Wage Order)

Section 512(a) of the Labor Code provides:

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

without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at p. 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7:

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours in a workday. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND/OR TIMELY PAY
PREMIUM WAGES**

(Labor Code §§ 204, 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

In pertinent part, Labor Code § 226.7 provides:

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

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at pp. 1103-1114.)

As discussed herein, the Company failed to authorize and permit Aggrieved Employees, including Claimant, to take an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174(c) requires every employer to "keep a record showing the names and addresses of all employees employed..." Labor Code § 1174(d) further requires every person employing labor in California to:

[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The "Records" section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per

aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant further alleges that he was instructed by his supervisor to falsify his timesheets, resulting in inaccurate employment records. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period

in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Labor Code § 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, accurately reflect their total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Premium wages constitute wages under Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at pp. 1103-1114.)

Labor Code § 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Due to the Labor Code violations described herein, Claimant asserts that the Company did not timely pay to former Aggrieved Employees all minimum, regular, overtime, and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of employment. Based on information and belief, Claimant further contends that the Company did not pay former Aggrieved Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf all Aggrieved Employees to the extent permitted by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) further states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by, among other things, failing to timely pay all regular, minimum, overtime, and/or double time wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to maintain accurate employment records; failing to furnish accurate itemized wage statements; and failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, as required under the Labor Code and the applicable sections of the IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of himself and all Aggrieved Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur

such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of himself and all Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company violated the Labor Code and applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable provisions of the IWC Wage Order. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

A handwritten signature in black ink that reads "Nathan Reese". The signature is written in a cursive, flowing style.

Nathan Reese