

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Elida M. Espinoza (State Bar No. 314001)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 / (619) 350-6855 facsimile
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Madelynn Black

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/12/2022 at 09:46:00 AM
Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

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

MADELYNN BLACK, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

EWC EAST BAY, INC, a corporation;
AEIEB INC, a corporation; CJJ EASE, INC.,
a corporation; BLAKER EWC INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00009708-CU-OE-CTL

Assigned to the Hon. Kenneth J. Medel
Dept. C-66

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Underpaid Sick Leave & Underpaid Covid-19 Supplemental Paid Sick Leave
8. Violations of the Unfair Competition Law
- 9-17. Claims for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 (PAGA)

Action filed: March 14, 2022

1 Plaintiff MADELYNN BLACK (“Plaintiff”), on behalf of a class of all other similarly
2 situated current and former employees of the State of California, brings this class and representative
3 action against Defendants EWC EAST BAY, INC; AEIEB INC.; CJJ EASE, INC.; and BLAKER
4 EWC INC.; and DOES 1 through 50 (collectively, “Defendants”), alleging as follows¹:

5 INTRODUCTION

6 1. This is a class and representative action filed for wage and hour violations of the
7 California Labor Code. Defendants operate a growing chain of hair removal salons known as
8 European Wax Center. Defendants underpaid overtime wages because of their company-wide
9 payroll practice of failing to include commissions and other payments in the regular rate of pay for
10 the purpose of paying overtime. Defendants also did not pay Labor Code § 226.7 premiums at the
11 regular rate of compensation for non-compliant meal periods and rest periods, including late, short,
12 and missed meal periods which are evident on the face of Defendants’ employment and payroll
13 records. Defendants also underpaid sick leave and Covid-19 supplemental sick leave because they
14 failed to use one of the methods authorized under the California Labor Code. As a result of these
15 violations, Defendants failed to timely pay Plaintiff and Class Members each pay period on paydays
16 and upon separation of employment, and thus are liable for waiting time and other statutory
17 penalties, in addition to the underlying wages, premiums, sick leave, attorneys’ fees, interest and
18 reasonable litigation costs. Defendants also failed to provide accurate itemized wage statements.

19 2. Defendants’ employment policies and practices and payroll administration systems
20 enabled and facilitated these violations on a company-wide basis with respect to the Class
21 Members.

22 ///

23 ///

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

1 **JURISDICTION & VENUE**

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

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

7 **PARTIES**

8 **A. The Plaintiff Madelynn Black**

9 5. Plaintiff MADELYNN BLACK is an individual over 18 years of age who worked
10 for Defendants in San Diego County as an hourly, non-exempt employee.

11 6. Plaintiff was employed as a Guest Service Associate in San Diego County until her
12 employment ended in February 2022.

13 **B. The Defendants**

14 7. Throughout the relevant statutory limitations periods, each of the defendants was a
15 legal employer of Plaintiff and Class Members.

16 8. Plaintiff is informed, believes, and alleges that Defendant EWC EAST BAY, INC. is
17 a corporation incorporated in the State of California, doing business and employing labor
18 throughout San Diego, California.

19 9. Plaintiff is informed, believes, and alleges that Defendant AEIEB INC. is a
20 corporation incorporated in the State of California, doing business and employing labor throughout
21 San Diego, California.

22 10. Plaintiff is informed, believes, and alleges that Defendant CJJ EASE, INC. is a
23 corporation incorporated in the State of California, doing business and employing labor throughout
24 San Diego, California.

25 11. Plaintiff is informed, believes, and alleges that Defendant BLAKER EWC INC. is a
26 corporation incorporated in the State of California, doing business and employing labor throughout
27 San Diego, California.

1 12. Each of the Defendants do business as European Wax Center.

2 13. Plaintiff is informed, believes, and alleges that no class action asserting similar
3 factual allegations has been filed against any of the named defendants within the preceding three
4 years, that the defendants and more than two-thirds of Class Members are citizens of California.

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

11 15. Plaintiff is informed, believes, and alleges that all defendants in this action are
12 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
13 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
14 employees, suffers and permits them to work, and engages the workforce creating a common law
15 employment relationship.

16 16. Additionally, all defendants have common ownership, common management,
17 interrelationship of operations, and centralized control over labor relations and are therefore part of
18 an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
19 herein. Defendants operate as employers of the Class in their operation of the European Wax Center
20 hair removal salons.

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

25 18. Plaintiff is informed, believes and alleges that the above-mentioned defendants
26 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
27 regulating minimum wages and days of work and other provisions of the Labor Code with respect
28

1 to the Class of aggrieved employees. As a result, they may be held personally liable under Labor
2 Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th
3 809.)

4 **GENERAL ALLEGATIONS**

5 19. When Defendants paid overtime to Plaintiff and other Class Members, Defendants
6 failed to pay the overtime at the lawful regular rate of pay. Plaintiff and other Class Members
7 regularly worked overtime and earned commissions and other remuneration during the same pay
8 period. In those pay periods, Defendants paid employees at their straight time hourly rate for the
9 overtime hours, failing to pay overtime hours “at the rate of no less than one and one-half times the
10 regular rate of pay for an employee[.]” or “at the rate of no less than twice the regular rate of pay
11 for an employee” for any applicable double time hours, as required by Labor Code section 510 and
12 the IWC Wage Orders. Accordingly, Defendants are liable for the unpaid overtime wages, civil and
13 statutory penalties, interest, and waiting time penalties for each affected Class Member.

14 20. Defendants failed to consistently provide timely, off-duty 30-minute meal periods to
15 Class Members within the first five hours of work, and timely second off-duty 30-minute meal
16 periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections
17 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v. Loews*
18 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are synonymous:
19 “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section
20 510(a), encompasses all nondiscretionary payments, not just hourly wages.”]) “[T]ime records
21 showing noncompliant meal periods raise a rebuttable presumption of meal period violations,
22 including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58,

23 21. Plaintiff’s time records show meal period violations without a corresponding meal
24 period premium payment. Employees were unable to consistently take their meal periods in a
25 timely and compliant manner.

26 ///

1 22. When Defendants did not provide fully compliant meal periods, Defendants failed to
2 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
3 violation of Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) Defendants’ practice of not
4 paying all meal period premiums at the lawful rate (*i.e.*, including all forms of remuneration in the
5 “regular rate of compensation”) is a matter of common corporate policy and payroll administration
6 such that it applies and affected all other Class Members and are evident from the time records
7 maintained by Defendants, which show late, short and missed meal periods without an associated
8 meal period premium at the lawful rate on the corresponding employee wage statement.

9 23. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for every
10 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
11 section 12 of the applicable IWC Wage Order. When Defendants did not provide a fully compliant
12 rest period to Plaintiff or other Class Members, Defendants failed to pay Plaintiff and other Class
13 Members a rest period premium at the lawful “regular rate of compensation” in violation of Labor
14 Code section 226.7.

15 24. In pay periods where Defendants provided Plaintiff and other Class Members with
16 remuneration in addition to their respective base hourly rate for hours worked (such as sales
17 commissions) – excluding any forms of pay subject to any applicable statutory exclusions from the
18 “regular rate” – Defendants failed to properly calculate and pay sick leave at the appropriate regular
19 rate of pay, in violation of Labor Code §§ 246.

20 25. Defendants failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by
21 statute because when paying such leave, Defendants failed to factor in employees’ commissions,
22 bonus, incentives and other forms of compensation. On information and belief, Defendant instead
23 paid Supplemental Sick Leave at employees’ straight time hourly rate rather than by one of the
24 methods authorized by Labor Code sections 248.1, 248.2 and 248.6.

25 26. With respect to the unpaid wages, sick leave, and premiums owed to Plaintiff and
26 Class Members, Defendants failed to pay those wages on time each pay period or upon separation
27 of employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums
28

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

4 27. Defendants equally failed in their affirmative obligation to provide accurate itemized
5 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
6 statements to Plaintiff and, on information and belief, other Class Members, which contain at
7 several types of violations.

8 28. First, on each wage statement furnished, Defendants failed to accurately state the
9 “name and address of the legal entity that is the employer,” in violation of § 226(a)(8). The wage
10 statements that Defendants issued inaccurately list EWC Mission Valley as the employer.
11 EWC Mission Valley is not the legal entity that employs Plaintiff and the Class Members.
12 Defendants also issued wage statements to Plaintiff, and on information and belief, other Class
13 Members, that did not contain any address for the employing entity.

14 29. Second, on each wage statement furnished, Defendants failed to accurately state the
15 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
16 Plaintiff and Class Members earned overtime at one and one-half times their regular rate of pay, but
17 were underpaid overtime on an hourly basis (due to the regular rate of pay underpayment), and were
18 deprived of all sick leave and meal and rest period premiums earned at the lawful rate, resulting in
19 an inaccurate itemization of gross and net wages earned on those wage statements.

20 30. Third, on each wage statement furnished to Plaintiff and, on information and belief,
21 the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate by the
23 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
24 Class Members do not accurately list the applicable hourly overtime rate in effect, but instead a
25 deflated overtime rate that does not include all forms of non-excepted remuneration in the regular
26 rate required to calculate and pay overtime.

1 31. Defendants' wage statement issues described above rendered the wage statements
2 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
3 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
4 Members as the sole documentary evidence of their respective earnings.

5 32. Plaintiff and Class Members suffered injury in the form of confusion regarding
6 amounts paid for hours worked, and in the form of concealment of the common payroll practices
7 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
8 this Complaint.

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

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

18 35. Because of the violations set forth in this Complaint, including Defendants' failure
19 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay,
20 Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain
21 records showing accurate daily hours worked at the corresponding wage rate, and the wages paid to
22 each employee.

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

CLASS ACTION ALLEGATIONS

37. ***Class Definition.*** The named individual Plaintiff seeks class certification under California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- a. All individuals currently or formerly employed by Defendants in the State of California as hourly non-exempt employees at any time from **March 14, 2018** through the time of trial in this action (the “Class” or “Class Members” and the “Class Period”).

38. Further, Plaintiff proposes the following subclasses:

- a. All Class Members who separated from employment with Defendants at any time from **March 14, 2019** through the time of trial in this action (the “Waiting Time Subclass”).
- b. All Class Members who received a wage statement from Defendants at any time from **March 14, 2021** through the time of trial in this action (“Wage Statement Subclass”).
- c. All Class Members who received additional forms of compensation that are non-excludable from the regular rate of pay, such as bonuses and commissions, each pay period in which they also worked overtime or double-time hours (the “Regular Rate of Pay Subclass”).
- d. All Class Members who worked shifts of five hours or more without a duty-free meal period of at least 30 minutes that started before the end of the fifth hour of work, who were not paid one hour of pay at the regular rate of compensation for each of those days (“Meal Period Subclass”).
- e. All Class Members who worked shifts of four hours or major fraction thereof without being authorized or permitted an uninterrupted rest period of at least 10 minutes, who were not paid one hour at the regular rate of compensation for each of those days (“Rest Period Subclass”).

- 1 f. All Class Members who during the Class Period were paid for sick leave or
2 Covid-19 supplemental sick leave and were not paid for such sick leave at a
3 rate authorized by one of the methods provided in the California Labor Code
4 (“Sick Leave Underpayment Class”).
- 5 g. All Class Members who were not paid all regular, overtime, or minimum
6 wages for all hours worked each pay period (“Unpaid Wage Subclass”).
- 7 h. All Class Members who were subject to Defendants’ unlawful or unfair
8 business acts or practices during the Class Period (“UCL Class”).

9 39. Plaintiff reserves the right to move the Court to amend or modify the class
10 definitions and to establish additional classes and subclasses as appropriate.

11 40. **Numerosity.** The members of the Class are so numerous that joinder of all
12 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
13 of Defendants’ employment and payroll records. Plaintiff is informed, believes, and alleges there
14 are more than 40 Class Members.

15 41. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff
16 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
17 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
18 wage-and-hour class actions in California state and federal courts.

19 42. **Manageability.** This class action is manageable because the liability and damages to
20 Class Members can be ascertained by review of corporate and employer timekeeping and payroll
21 records along with other evidence that Defendants maintained and are required by law to maintain
22 under the California Labor Code, IWC Wage Orders and federal law. This class action is
23 manageable because the contact information and identity of percipient witnesses—namely,
24 Defendants’ employees (the putative class members)—is readily maintained by Defendants.

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

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

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

6 45. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
7 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
8 resulted in losses to Plaintiff and Class Members.

9 46. Proof of common unlawful business practices, which Plaintiff experienced and is
10 representative of, will establish the right of the Class to recover on the causes of action alleged
11 herein.

12 **PAGA ALLEGATIONS**

13 47. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on
14 behalf of the State of California and the "aggrieved employees," defined as follows:

- 15 a. All current and former non-exempt hourly employees who worked for
16 Defendants in the State of California during the period of **March 8, 2021**
17 through the time of trial ("PAGA Period").

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

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

1 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
2 violations committed by that employer.”])).

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

9 51. On **March 8, 2022**, Plaintiff gave written notice by online filing with the LWDA
10 and by certified mail to Defendants of the specific provisions of the Labor Code alleges to have
11 been violated, including the facts and theories to support the alleged violations (the “PAGA
12 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
13 Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

14 52. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
15 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
16 actions taken to cure the alleged violations.

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

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

25 ///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Labor Code §§ 510 and 1194**

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

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

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

13 57. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
14 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
15 to the full amount of the unpaid overtime wages, in addition to interest, attorneys’ fees, and costs to
16 the extent permitted by law, including under Labor Code section 1194.

17 **SECOND CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **Labor Code §§ 226.7 and 512**

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

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

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

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

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Labor Code §§ 226.7 and 516

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

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

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

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

1 worked each pay period, (5) net wages earned, (8) name and address of legal entity that is the
2 employer, and (9) all hourly rates in effect and the total number of hours worked each pay period.

3 72. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
4 itemized wage statements, causing confusion and concealing wage and premium underpayments.
5 As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee
6 for the initial pay period in which a violation occurred and \$100 per employee for each violation in
7 a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest,
8 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section
9 226(e).

10 **SIXTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

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

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

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

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

24 **SEVENTH CAUSE OF ACTION**

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

26 **Labor Code §§ 246 *et seq.***

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

1 77. Defendants knowingly and intentionally failed in their affirmative obligation provide
2 and pay paid sick leave to Plaintiff and the Sick Leave Underpayment Class in violation of Labor
3 Code section 246.

4 78. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
5 commencement of employment at a rate of 1 hour for every thirty hours worked or be provided with
6 no less than 24 hours of sick leave in a calendar year. Section 246(c) entitles employees to use any
7 accrued sick leave beginning on their 90th day of employment.

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

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

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

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

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

22 80. Defendants failed to pay Plaintiff and the Sick Leave Underpayment Class paid sick
23 leave at one of the lawful rates set forth in the statute because Defendants failed to include in their
24 sick leave calculation the additional remuneration received by Plaintiff and the Sick Leave
25 Underpayment Class.

1 81. Furthermore, Defendants knowingly and intentionally failed in their affirmative
2 obligation to pay Covid-19 Supplemental Sick Leave to the Sick Leave Underpayment Class at the
3 correct rate in violation of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6.

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

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

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

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

20 (II) Calculated by dividing the covered employee's total wages, not
21 including overtime premium pay, by the employee's total hours
22 worked in the full pay periods of the prior 90 days of employment.

23 (III) The state minimum wage.

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

25 85. Labor Code section 248.6 requires employers to pay supplemental sick leave using
26 either method I or II identified above.

1 86. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
2 Leave in the manner described above because Defendants failed to include in their sick leave
3 calculation the additional remuneration received by the Sick Leave Underpayment Class.

4 87. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
5 Sick Leave Underpayment Class for underpaid sick leave earnings, in addition to interest,
6 attorneys' fees, and costs.

7 **EIGHTH CAUSE OF ACTION**

8 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

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

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

11 89. Defendants willfully failed in their affirmative obligation to timely pay each payday
12 or at other required intervals all minimum, regular, and overtime wages, meal and rest period
13 premium wages, sick leave, and other amounts sought in this lawsuit to Plaintiff and Class
14 Members. These failures constitute unlawful, deceptive, and unfair business acts and practices in
15 violation of Business and Professions Code section 17200, *et seq.*

16 90. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
17 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of
18 all monies and property withheld, acquired, or converted by Defendants in violation of the Labor
19 Code and IWC Wage Orders under Business and Professions Code section 17202, 17203, 17204
20 and 17208.

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

1 **NINTH CAUSE OF ACTION**

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

3 **Labor Code §§ 2698, *et seq.***

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

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

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

16 **TENTH CAUSE OF ACTION**

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

18 **Labor Code § 226.7**

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

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

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

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

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

7 **ELEVENTH CAUSE OF ACTION**

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

9 **Labor Code § 226.7**

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

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

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

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

24 / //

1 **TWELFTH CAUSE OF ACTION**

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

3 **Labor Code § 204, *et seq.***

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

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

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

15 **THIRTEENTH CAUSE OF ACTION**

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

17 **Labor Code § 226**

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

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

25 108. Defendants knowingly and intentionally failed in their affirmative obligation provide
26 accurate itemized wage statements to Plaintiff and aggrieved employees, resulting in confusion to
27 Plaintiff and the aggrieved employees. Specifically, the wage statements issued to Plaintiff and the
28

1 aggrieved employees did not accurately state each pay period all of the information required by
2 Labor Code section 226(a)(1)-(9).

3 109. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved
4 employees of accurate itemized wage statements, causing confusion and concealing wage and
5 premium underpayments.

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

10 **FOURTEENTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION (PAGA)**

12 **Labor Code §§ 201 through 203**

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

14 112. Defendants willfully failed in their affirmative obligation to pay all wages earned
15 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
16 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
17 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
18 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
19 those due to Defendants failure to pay employees for all hours worked and for meal and rest period
20 premiums.

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

25 ///

FIFTEENTH CAUSE OF ACTION
RECORDKEEPING VIOLATIONS (PAGA)

Labor Code § 1174

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

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

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

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

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

SIXTEENTH CAUSE OF ACTION
CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)

Labor Code § 246 et seq.

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

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

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

7 122. Labor Code section 246(l) governs how Defendants were required to calculate paid
8 sick leave and states: [A]n employer shall calculate paid sick leave using any of the following
9 calculations:

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

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

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

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

25 124. Defendants failed to pay sick leave to Plaintiff and the aggrieved employees at the
26 correct rate, which should have factored in employees' commissions, bonuses, and other forms of
27 remuneration. Defendants instead paid sick leave at the straight time hourly rate.

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

7 **SEVENTEENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR SUPP. PAID SICK LEAVE VIOLATIONS (PAGA)**

9 **Labor Code § 246 *et seq.***

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

11 127. Defendants knowingly and intentionally failed in their affirmative obligation to
12 provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the
13 aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.2, and 248.6.

14 128. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80
15 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
16 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
17 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
18 January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

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

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

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

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

1 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under California Labor Code
3 sections 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5;

4 l. For such other relief the Court deems just and proper.
5

6 Respectfully submitted,
7

8 Dated: May 12, 2022

Ferraro Vega Employment Lawyers, Inc.

9
10 

11 Nicholas J. Ferraro

12 Attorney for Plaintiff Madelynn Black
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

March 8, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

EWC East Bay, Inc.
d/b/a European Wax Center
375 C Avenue
Coronado, CA 92118

Blaker EWC Inc.
d/b/a European Wax Center
375 C Avenue
Coronado, CA 92118

AEIEB Inc.
d/b/a European Wax Center
375 C Avenue
Coronado, CA 92118

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **March 8, 2022**

CJJ Ease, Inc.
d/b/a European Wax Center
375 C Avenue
Coronado, CA 92118

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of MADELYNN BLACK (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against EWC EAST BAY, INC., AEIEB INC., CJJ EASE, INC., BLAKER EWC INC., which together do business as EUROPEAN WAX CENTER, along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

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

FACTUAL STATEMENT

Defendants operate a growing chain of hair removal salons, employing aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

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

Claimant BLACK worked for Defendants from October 2019 to February 2022. During that time, Claimant worked in the position of Guest Service Associate. Throughout her employment, Claimant worked as an hourly, non-exempt employee.

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

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

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

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

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage *for all hours* worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime

compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Here, Claimant and other aggrieved employees earned commissions and, on information and belief, potentially other forms of remuneration that were not included in the “regular rate of pay” for purposes of overtime, sick pay, and 226.7 premium pay. Instead, Defendants, during certain pay periods, paid Claimant and other aggrieved employees at a 1.5x multiple of their respective base hourly rate. This resulted in an underpayment of wages each pay period in which an employee earned commissions in the same pay period they earned overtime, premiums, or paid sick leave. An illustrative example of this is provided on Claimant’s wage statement beginning 01/02/2022 and ending 01/15/2022, with the pay date of 01/21/2022.

When Claimant and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Claimant and the aggrieved employees sales commissions that they failed to include in the “regular rate of pay” when employees earned overtime. Defendants paid overtime to Claimant and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Claimants and the aggrieved employees earned sales commissions, Defendants should have (but failed to) pay overtime “at the rate of no less than ***one and one-half times the regular rate of pay*** for an employee” as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. Additionally, other forms of wages, such as paid sick leave wages, were not paid at the lawful regular rate, resulting in similar underpayments of wages.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 210, 558, 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

Defendants failed to provide compliant meal periods to Claimant and the aggrieved employees. The aggrieved employees’ time records establish meal period liability on their face. Claimant’s time records show at least 7 meal period violations in about three months. Moreover, Claimant and the aggrieved employees did not have formal control of their meal periods because, as stated in Defendant’s Employee Handbook, meal periods were purportedly scheduled by Supervisors.

European Wax Center

Daily meal periods are scheduled according to the needs of each position. Your supervisor will schedule your meal periods.

Extract from Defendant’s Employee Handbook

<i>Black</i>	<i>Madelynn</i>	<i>4C2006196</i>
P Wed 01/12/2022	04:00 PM - 08:38 PM	4.63
P Sat 01/15/2022	09:48 AM - 02:24 PM	4.60
P Sat 01/15/2022	03:23 PM - 06:59 PM	3.60
P Tue 01/18/2022	07:28 AM - 11:30 AM	5.03
P Tue 01/18/2022	11:59 AM - 02:00 PM	2.02
P Wed 01/19/2022	07:25 AM - 11:34 AM	5.15
P Wed 01/19/2022	11:59 AM - 02:00 PM	2.02

Extract from Claimant’s Time Sheets Showing Meal Breaks Started After the 5th Hour of Work

P Tue 01/25/2022	12:00 PM - 02:00 PM	2.00
P Wed 01/26/2022	01:54 PM - 05:35 PM	4.68
P Wed 01/26/2022	06:02 PM - 08:29 PM	2.45
P Fri 01/28/2022	09:56 AM - 02:01 PM	4.08

Extract from Claimant’s Time Sheets Showing Meal Breaks of Less than 30 Minutes

When Defendants did not provide compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section

226.7. To the extent Defendants paid any meal period premiums, the premiums were not paid at the “regular rate of compensation,” but at a lesser amount because, as explained above, Defendant’s failed to properly calculate Claimant’s and the aggrieved employee’s “regular rate of compensation.”

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

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

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

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

Due to staffing issues, employees’ job responsibilities, and the steady flow of business, Claimant and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Furthermore, Defendants engaged in the practice of depriving Claimant and aggrieved employees of rest period premiums. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees due to Defendant’s incorrect regular rate of compensation calculations.

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

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

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that

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

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages, including sick leave, and premiums, owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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

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

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3). Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

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

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

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

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

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

The third option is not applicable because this case involves non-exempt employees. Defendants were required to pay paid sick time under the method set forth in options one or two.

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

However, to the extent paid, Claimant is informed, believes, and alleges Defendants instead paid sick leave at employees' straight time rate of pay and failed to factor in bonuses, commissions and/or other forms of remuneration. Specifically, Defendants did not pay paid sick leave "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek," as the regular rate should have included commission wages for the reasons aforementioned. Additionally, Defendants did not use method two by dividing the employee's total wages by total hours worked in the full pay periods of the prior 90 days, as such calculation would have resulted in a paid sick leave rate higher than the base rate at which Claimant was paid.

Moreover, Defendants incorrectly calculated Claimant's and the other aggrieved employees accrued paid sick leave. Pay stubs show that Defendants elected to use the accrual method. However, Defendants' calculations do not lead to 1 hour of accrued sick leave for every 30 hours worked, but instead reveal a lower, unlawful accrual rate. For example, up to the pay date of 01/21/2022, Claimant had worked an aggregate total of 267.59 hours and should have accrued 8.91 hours of paid sick leave by that date, but the pay stub for the pay period shows that Claimant had only accrued 5.0 hours.

/ / /

EWC Mission Valley	Period Beginning Date 1/2/2022	Pay Date 1/21/2022	Co. 4C2	Clock	Home Dept 000001
Madelynn Black	Period Ending Date 1/15/2022	WGPS Advance Pay Date	File # 006196	Number 00030001	Worked In Dept 000001
Gross Pay					\$ 819.90
Regular					Rate: 15.0000 Hours: 43.74 \$ 656.10
Overtime					Rate: 22.5000 Hours: 1.72 \$ 38.70
COMMISSION (field 3)					\$ 125.10
Total Hours Worked: 45.46					
Basis of Pay: HOURLY					
Taxes					\$ 113.94
Federal Income Tax					\$ 32.18
Social Security					\$ 50.83
Medicare					\$ 11.89
State Worked In: California Code: CA					\$ 10.02
SUI/SDI: California (Taxing) Code: 75					\$ 9.02
Deductions					\$ 0.00
Take Home					\$ 705.96
Checking 1					\$ 705.96
Other Details					
Memos					
Sick Balance					5.00
Vacation Bal					2.28

Claimant's Pay Stub from 01/21/2022

Similarly, Claimant's pay stub from January 7, 2022, shows that Claimant worked 31.77 hours but did not accrue any sick leave. Additionally, this specific pay stub also fails to show Claimant's accrued sick leave to date.

EWC Mission Valley	Period Beginning Date	Pay Date	Co.	Clock	Home Dept
	12/19/2021	1/7/2022	4C2		000001
Madelynn Black	Period Ending Date	WGPS Advance Pay Date	File #	Number	Worked In Dept
	1/1/2022		006196	00010001	000001
Gross Pay					\$ 557.10
Regular	Rate: 14.0000	Hours: 31.77	\$ 444.78		
COMMISSION (field 3)					\$ 112.32
Total Hours Worked: 31.77					
Basis of Pay: HOURLY					
Taxes					\$ 54.65
Federal Income Tax					\$ 5.90
Social Security					\$ 34.54
Medicare					\$ 8.08
SUI/SDI: California (Taxing)	Code: 75	\$ 6.13			
Deductions					\$ 0.00
Take Home					\$ 502.45
Checking 1					\$ 502.45
Other Details					
Memos					
Vacation Bal					2.28

Claimant's Pay Stub from 01/07/2022, Showing No Paid Sick Leave Was Accrued Even Though Claimant Worked More than 30 Hours During This Pay Period

Furthermore, the failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned additional payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave, as Defendants appear to have paid such hours at the respective base rate of Claimant and the other aggrieved employees, rather than the required statutory rate (*i.e.*, regular rate of pay).

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Underpaid Covid Supplemental Paid Sick Leave
Violation of Labor Code §§ 246 through 248.6

Defendants violated Labor Code section 248.2 and 248.6 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at the lawful hourly rate. Labor Code 248.2 required employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

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

- (I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.
- (II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- (III) The state minimum wage.
- (IV) The local minimum wage to which the covered employee is entitled.

Labor Code section 248.6 requires employers to pay supplemental sick leave using either method I or II identified above.

On information and belief, Defendants violated California law by failing to pay Covid Supplemental Paid Sick Leave at the correct rate. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.2 and 248.6 was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned bonuses, commissions, or other forms of non-excludable remuneration and also received statutory paid sick leave. On information and belief, Defendants paid supplemental sick leave at employees' straight time hourly rate instead of one of the methods authorized by statute. Defendants further failed to maintain the proper records required by the paid sick leave statutes.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation

per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

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

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

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

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums and sick leave—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(9) whenever they failed to pay wages, earnings, or other premiums at the lawful regular rate of pay, instead paying at the depreciated base hourly rate, such as overtime in some pay periods and paid sick leave in others. Furthermore, it appears as though Defendants listed paid sick leave hours under the line item for regular hours, which renders a further violation of Labor Code § 226(a)(9) as Claimant and the other aggrieved employees did not receive a wage statement showing all

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

applicable hourly rates in effect, with the corresponding number of hours at *each hourly rate* during the respective pay period.

Additionally, Defendants violated Labor Code section 226(a)(8) by failing to properly list the name of the legal employer on each respective paystub.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

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

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

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements

releasing liability require Court approval in connection with Claimant and her counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) her lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Diamler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

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

CONCLUSION

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

Thank you for your attention to this matter.

Sincerely,

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

Nicholas J. Ferraro

Cc Claimant
Tayna Dias <Tayna.Dias@waxcenter.com>