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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

YADIRA PALACIOS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

COMPOSITES HORIZONS, LLC a Delaware
company; PRECISION CASTPARTS CORP.,
an Oregon corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. **22STCV23807**

Representative Action Complaint

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Underpaid Sick Leave
5. Underpaid COVID-19 Supplemental Sick Pay
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Recordkeeping Penalties

1 Plaintiff YADIRA PALACIOS (“Plaintiff”), individually as the State of California’s
2 designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other
3 current and former aggrieved employees, brings this representative action against Defendants
4 COMPOSITES HORIZONS, LLC; PRECISION CASTPARTS CORP.; and DOES 1 through 50
5 (collectively, “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a case filed by Plaintiff, an aggrieved employee, seeking civil penalties
8 against Defendants for violations of the California Labor Code.

9 2. Plaintiff worked for Defendants from 2018 through December 21, 2021 as an
10 hourly-nonexempt technician. Plaintiff and aggrieved employees were not paid overtime, sick time,
11 supplemental sick time, meal period premiums, or rest period premiums based on their lawful
12 “regular rate of pay.” Plaintiff and aggrieved employees earned non-discretionary bonuses, shift
13 differential premiums, and other amounts that are not excludable from the “regular rate of pay”
14 under California law. However, Defendants did not include such bonuses, shift differentials, and
15 other amounts when calculating Plaintiff’s and others’ “regular rate of pay” for purposes of
16 overtime pay, sick time pay, meal period premiums, or rest period premiums.

17 3. In connection with Plaintiff’s employment and the employment of others within the
18 State of California, Defendants committed numerous systemic Labor Code violations for which
19 Plaintiff now seeks to receiver civil penalties pursuant to Labor Code § 2698 *et seq.*

20 **JURISDICTION & VENUE**

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

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

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PARTIES

A. Plaintiff Yadira Palacios

6. Plaintiff Yadira Palacios is a citizen of California over 18 years of age who worked as a technician for Defendants from August 2018 to December 21, 2021. Plaintiff was an hourly, non-exempt employee.

B. Defendants

7. Plaintiff is informed, believes, and alleges that Defendant Composites Horizons, LLC (“Composites Horizons”) is a limited liability company doing business and employing individuals in the state of California. Defendant Composites Horizons is a producer and supplier of composite parts for various industries, including aircraft and medical manufactures.

8. Plaintiff is informed, believes, and alleges that Defendant Precision Castparts Corp. (“PCC,” or, together with Defendant Composites Horizons, “Defendant” or “Defendants”) is a corporation doing business and employing individuals in the state of California. Plaintiff is informed, believes, and alleges that Defendant PCC owns Defendant Composites Horizons in whole or in part, and that both companies exercised total and joint control over Plaintiff’s employment and the policies at issue in this Complaint.

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

10. Plaintiff is informed, believes, and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are

1 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
2 omissions alleged herein. Defendants operate as employers of the employees in their business
3 operations.

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

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

13 **PAGA ALLEGATIONS**

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

- 16 1. All current and former hourly non-exempt employees of Defendants who
17 work or worked within the State of California at any time from April 19,
18 2021, through the date of judgment (the “PAGA Period”)

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

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

1 “aggrieved employee”—a person affected by one Labor Code violation committed by an
2 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

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

9 17. On April 19, 2022, Plaintiff gave written notice by online filing with the LWDA and
10 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
11 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
12 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice is
13 attached hereto as Exhibit 1 and incorporated by reference.

14 18. 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 19. Now that at least 65 days have passed from Plaintiff first notifying Defendants of
18 these violations, without any notice of cure from Defendants or notice from the LWDA of its intent
19 to 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 20. 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 GENERAL ALLEGATIONS

26 21. The facts and theories as set forth in the PAGA Notice (Exhibit 1) are incorporated
27 herein by reference as though fully set forth herein.
28

1 22. Plaintiff was employed by Defendants as an hourly technician from August 2018
2 through December 21, 2021. Throughout her employment, Plaintiff and other aggrieved employees
3 worked substantial overtime hours, and were not paid the lawful overtime rate based on the regular
4 rate of pay.

5 23. Plaintiff and aggrieved employees worked shifts during the day and during the
6 evening. They were paid at a different rate for working the night versus the day shift by the addition
7 of a “shift premium” for evening shift hours.

8 24. Plaintiff and aggrieved employees also earned non-discretionary quarterly bonuses.
9 Defendants paid employees such bonuses for every quarter based on their length of service with the
10 company.

11 25. Defendants were required to include the “shift premiums” and “bonuses” in the
12 regular rate of pay for purposes of calculating and paying overtime to Plaintiff and the aggrieved
13 employees during the PAGA Period. Under the California Labor Code, the “regular rate” is not
14 simply a straight time multiple of an employee’s base rate, but rather must include “all
15 remuneration for employment paid to ... the employee,” except the eight items specifically
16 enumerated in 29 U.S.C. § 207(e)(1)-(8). Remuneration like bonuses and incentives must be
17 included in the hourly overtime rate or the premium rate. (*See, e.g., Howell v. Advantage RN, LLC*
18 (*S.D. Cal. 2019*) 401 F. Supp. 3d 1078, 1093 (“Such non-discretionary bonuses ... cannot be
19 lawfully excluded from the regular rate”); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
20 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section
21 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
22 payments, not just hourly wages”).) Additionally, shift differentials and on-call pay (i.e. work paid
23 at different rates) must also be factored in to the regular rate of pay used to calculate overtime for
24 employees. (*See, e.g., Bay Ridge Operating Co. v. Aaron* (1948) 334 U.S. 446, 469.)

25 26. However, throughout Plaintiff’s entire employment, neither the “shift premiums” nor
26 the non-discretionary quarterly bonuses were included in her “regular rate of pay” for purposes of
27 calculating overtime rates. For example, Defendants failed to include all forms of remuneration in
28 the regular rate of pay when calculating the overtime rate for Plaintiff and other aggrieved

employees, as illustrated on Plaintiff's October 22, 2021 bonus payment and November 5, 2021 wage statement copied below:

CO FILE DEPT CLOCK VCHR NO
CHP 082260 140421 580 0000424049 1

COMPOSITES HORIZONS, LLC
1471 INDUSTRIAL PARK ST • COVINA, CA 91722-3499

Earnings Statement 

Period Beginning: 10/22/2021
Period Ending: 10/22/2021
Pay Date: 10/22/2021

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 1

YADIRA PALACIOS
[REDACTED]

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Bonus			541.96	1,939.81
Regular				23,090.08
Overtime				3,789.92
Double Time				15.38
Epsl Self				369.12
Holiday Pay				583.44
Shift Premium				3.23
Sick				513.24
Vacation Pay				1,094.04
Gross Pay			541.96	31,398.26

Your federal taxable wages this period are \$541.96

Other Benefits and Information	this period	total to date
Tot Hrs Worked		1,425.70
Ca Sick Balance		80.00
Sick Balance		4.96
Vac Balance		13.49

Important Notes
YOUR COMPANY ER PHONE NUMBER IS 626-331-0861

October 22, 2021 Payment of Quarterly Non-Discretionary Bonus

CO FILE DEPT CLOCK VCHR NO
CHP 082260 140421 580 0000440043 1

COMPOSITES HORIZONS, LLC
1471 INDUSTRIAL PARK ST • COVINA, CA 91722-3499

Earnings Statement 

Period Beginning: 10/18/2021
Period Ending: 10/31/2021
Pay Date: 11/05/2021

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 1

YADIRA PALACIOS
[REDACTED]

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	20.0000	72.00	1,440.00	24,530.08
Overtime	30.0000	9.56	286.80	4,076.72
Bonus				1,939.81
Double Time				15.38
Epsl Self				369.12
Holiday Pay				583.44
Shift Premium				3.23
Sick				513.24
Vacation Pay				1,094.04
Gross Pay			\$1,726.80	33,125.06

* Excluded from federal taxable wages
Your federal taxable wages this period are \$1,511.55

Other Benefits and Information	this period	total to date
Tot Hrs Worked	81.56	1,507.26
Sick Balance		5.58
Vac Balance		16.57

Important Notes
YOUR COMPANY ER PHONE NUMBER IS 626-331-0861

Deductions	Statutory
Federal Income Tax	-135.65

2,680.09

Wage Statement for pay period of October 18 – October 31, 2021 showing overtime paid at 1.5 times the straight hourly rate

27. Defendants instead paid Plaintiff a simple 1.5x multiple of her base rate of \$20 (\$20 x 1.5) to arrive at the overtime rate paid of \$30. Defendants excluded the remuneration itemized as “Bonus” paid directly by Defendants to Plaintiff in connection with her employment. Defendants similarly failed to include shift differentials paid to Plaintiff in her regular rate of pay for overtime

1 purposes. This company-wide policy and practice of not including bonus, shift differentials, or
2 other forms of non-excludable remuneration, was applied to other aggrieved employees and is a
3 matter of common payroll administration.

4 28. Defendants were also required to include the bonuses and shift premium payments in
5 the hourly rate for paid sick leave and for supplemental paid sick leave, as required by Labor Code
6 sections 246(l)(1)-(3), 248.1, and 248.2. However, Defendants instead paid Plaintiff, like other
7 aggrieved employees, paid sick leave hours at the base rate, rather than lawful methods. On
8 information and belief, Plaintiff also alleges that Defendants failed to pay Covid Supplemental Paid
9 Sick Leave at the correct rate.

10 29. Defendants were also required, but failed, to include the bonuses and shift premium
11 in the regular rate of compensation for purposes of calculating and paying meal and rest period
12 premiums to Plaintiff and the aggrieved employees during the PAGA Period. (*See, e.g., Ferra v.*
13 *Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 862 (2021) (“We hold that the terms are
14 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
15 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). In pay
16 periods when Plaintiff earned overtime or Labor Code § 226.7 premiums, Defendants calculated
17 and paid Plaintiff and aggrieved employees based only on their respective straight time base hourly
18 rates, not their respective regular rate of pay, which includes the bonus and shift premium
19 payments, among other sums. Accordingly, Defendants underpaid premiums due under Labor Code
20 § 226.7 to Plaintiff and other aggrieved employees by not including all required forms of non-
21 excludable remuneration in the regular rate of compensation during the PAGA Period.

22 30. With respect to the unpaid wages and sick leave and meal and rest period premiums
23 owed to Plaintiff and Aggrieved Employees, Defendants failed to pay those wages on time each pay
24 period or upon separation of employment. Because Defendants did not pay Plaintiff and aggrieved
25 employees for all wages/premiums owed each pay period their employment, Defendants failed to
26 timely pay all wages owed each pay day or upon separation of employment (or within 72 hours
27 thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b
28 (paydays). (*See Naranjo v. Spectrum Security Services, Inc.* (May 23, 2022) 13 Cal. 5th 93.)

1 31. Defendants equally failed in their affirmative obligation to provide accurate itemized
2 wage statements each pay period to Plaintiff and aggrieved employees. Defendants issued wage
3 statements to Plaintiff and, on information and belief, aggrieved employees, which contain multiple
4 types of violations.

5 32. First, Defendants failed to accurately state the “gross wages earned” and “net wages
6 earned” in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and aggrieved employees earned
7 regular and overtime wages, but were underpaid, resulting in an inaccurate itemization of gross and
8 net wages earned on those wage statements. Defendants’ failure to pay meal and rest period
9 premiums owed to Plaintiff and the aggrieved employees also resulted in an inaccurate reflection of
10 gross and net wages on employee wage statements.

11 33. Second, Defendants failed to accurately state “all applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
14 Aggrieved Employees include the incorrect hourly rate in effect for overtime hours, meal and rest
15 period premium hours, and sick leave hours, when there was a corresponding regular rate of
16 pay/compensation violation.

17 34. Defendants’ wage statement issues described above rendered the wage statements
18 inaccurate and confusing to Plaintiff and aggrieved employees, concealing the underpayments and
19 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
20 aggrieved employees as the sole documentary evidence of their respective earnings.

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

25 36. Indeed, Plaintiff and, on information and belief, aggrieved employees were
26 misinformed and misled by the wage statements wages, hours, and earnings. As a result of the
27 inaccuracies on the wage statements, Plaintiff and, on information and belief, aggrieved employees
28

1 were led to believe that net and gross wages reflected were a complete and accurate reflection of the
2 wages actually earned under California law.

3 37. Defendants' wage statement violations were knowing and intentional as a matter of
4 law with respect to Plaintiff and aggrieved employees given that the legal obligation was not
5 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
6 Defendants nevertheless failed to comply despite the means and ability to do so.

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

12 39. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
13 knowingly and intentionally caused harm to Plaintiff and Aggrieved Employees. Plaintiff is
14 informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor
15 Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent
16 with their obligations under California law.

17 40. Proof of common unlawful business practices, which Plaintiff experienced and is
18 representative of, will establish the right of aggrieved employees to recover on the causes of action
19 alleged herein.

20 **FIRST CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME WAGES**

22 **Labor Code §§ 510, 1194, 1198**

23 **(ALL CAUSES OF ACTION AGAINST ALL DEFENDANTS)**

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

25 42. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
26 employees no less than one and one-half times their respective "regular rate of pay" for all hours
27 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
28 the seventh day of work in any one workweek, and no less than twice their respective "regular rate

1 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
2 day of a workweek in violation of Labor Code sections 510, 1194, 1198 and the IWC Wage Orders
3 (the “Hours and Days of Work” sections of the applicable orders).

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

8 **SECOND CAUSE OF ACTION**

9 **CIVIL PENALTIES FOR FAILURE TO PAY MEAL PERIOD PREMIUMS**

10 **Labor Code §§ 226.7, 512, 1198**

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

12 45. Defendants violated Labor Code §§ 226.7, 512, and 516, 1198 and the IWC Wage
13 Orders (the “Meal Periods” and “Rest Periods” sections of the applicable orders) by failing to pay
14 meal and rest period premiums at the regular rate of compensation to the aggrieved employees
15 during the PAGA Period. On days in which Plaintiff and the aggrieved employees received a meal
16 or rest period premium under Labor Code § 226.7, Defendants failed to pay the corresponding meal
17 or rest period premium at one hour their regular rate of compensation.

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

21 47. 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 **THIRD CAUSE OF ACTION**

26 **CIVIL PENALTIES FOR FAILURE TO PAY REST PERIOD PREMIUMS**

27 **Labor Code §§ 226.7, 516, 1198**

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

1 49. Defendants violated Labor Code §§ 226.7, 512, and 516, 1198 and the IWC Wage
2 Orders (the “Meal Periods” and “Rest Periods” sections of the applicable orders) by failing to pay
3 meal and rest period premiums at the regular rate of compensation to the aggrieved employees
4 during the PAGA Period. On days in which Plaintiff and the aggrieved employees received a meal
5 or rest period premium under Labor Code § 226.7, Defendants failed to pay the corresponding meal
6 or rest period premium at one hour their regular rate of compensation.

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

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

14 **FOURTH CAUSE OF ACTION**
15 **PAID SICK LEAVE VIOLATIONS**
16 **Labor Code §§ 246 *et seq.***

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

18 53. Defendants knowingly and intentionally failed in their affirmative obligation provide
19 and pay paid sick leave to aggrieved employees in violation of Labor Code section 246.

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

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

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

27 (1) Paid sick time for nonexempt employees shall be calculated in
28 the same manner as the regular rate of pay for the workweek in

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

18 **SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS**

19 **Labor Code §§ 246 *et seq.***

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

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

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

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

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

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

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

14 **SIXTH CAUSE OF ACTION**

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

16 **Labor Code § 204**

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS**

3 **Labor Code §§ 226 and 226.3**

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

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

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

14 **EIGHTH CAUSE OF ACTION**

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

16 **ALL WAGES UPON SEPARATION OF EMPLOYMENT**

17 **Labor Code §§ 201 through 203**

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

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

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

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- 1 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
2 the extent permitted by law, including under Labor Code section 2699(g) and Code
3 of Civil Procedure § 1021.5;
4 c. For any recoverable pre- and post-judgment interest; and
5 d. For such other relief the Court deems just and proper.
6

7 Dated: July 22, 2022

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

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10 Nicholas J. Ferraro
11 Attorney for Plaintiff Yadira Palacios
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Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

ATTORNEYS AT LAW
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Facsimile: 619-350-6855
www.ferrarovega.com

April 19, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Composite Horizons, LLC
5885 Meadows Road, Suite 620
Lake Oswego, OR 97035

Precision Castparts Corp.
4650 Macadam Avenue, Ste. 300
Portland, OR 97239

- PAGA Notice & Filing Fee -

Submitted electronically to the California
Labor and Workforce Development
Agency on **04/19/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Yadira Palacios (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against Composite Horizons, LLC; Precision Castparts Corp.; and any other related individuals or employer entities who may be later added based on further investigation (“Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, 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.

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FACTUAL STATEMENT

Defendants produce and supply superalloys, aluminum, titanium, and other aerospace composites, and employ individuals like Claimant in the State of California in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions. 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 worked for Defendants from August 2018 through December 2021. During her employment, Claimant and other aggrieved employees worked substantial overtime hours, and were not paid the lawful overtime rate based on the regular rate of pay. Claimant and others worked shifts during the day and during the evening. They were paid at a different rate for working the night versus the day shift by the addition of a “shift premium” for evening shift hours.

Claimant and other employees also earned non-discretionary quarterly bonuses. Claimant and other employees were promised such bonuses for every quarter based on their length of service with the company. Throughout Claimant’s entire employment, neither the “shift premiums” nor the non-discretionary quarterly bonuses were included in Claimant’s and other employees’ “regular rate of pay” for purposes of calculating overtime rates. These other forms of remuneration were also not included in the regular rate of compensation for meal and rest period premiums and as part of the calculation of paid sick leave rates. Upon information and belief, Claimant alleges this same practice of underpaying overtime applies to other non-exempt employees and continues.

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 narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Underpaid Overtime

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

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

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

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

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

Defendants failed to include all forms of remuneration in the regular rate of pay when calculating the overtime rate for Claimant and other aggrieved employees, as illustrated on Claimant's 10/22/2021 bonus payment and 11/05/2021 wage statement copied below:

CO FILE DEPT CLOCK VCHR NO CHP 082260 140421 580 0000424049 1		Earnings Statement 	
COMPOSITES HORIZONS, LLC 1471 INDUSTRIAL PARK ST • COVINA, CA 91722-3495		Period Beginning: 10/22/2021 Period Ending: 10/22/2021 Pay Date: 10/22/2021	
Taxable Marital Status: Single Exemptions/Allowances: Federal: 1 CA: 1		YADIRA PALACIOS 	
Social Security Number:			

Earnings	rate	hours	this period	year to date
Bonus			541.96	1,939.81
Regular				23,090.08
Overtime				3,789.92
Double Time				15.38
Epsi Self				369.12
Holiday Pay				583.44
Shift Premium				3.23
Sick				513.24
Vacation Pay				1,094.04
Gross Pay			\$541.96	31,398.26

Your federal taxable wages this period are \$541.96

Other Benefits and Information	this period	total to date
Tot Hrs Worked		1,425.70
Ca Sick Balance		80.00
Sick Balance		4.96
Vac Balance		13.49

Important Notes
YOUR COMPANY ER PHONE NUMBER IS 626-331-0861

October 22, 2021 Payment of Quarterly Non-Discretionary Bonus

CO FILE DEPT CLOCK VCHR NO CHP 082260 140421 580 0000440048 1		Earnings Statement 	
COMPOSITES HORIZONS, LLC 1471 INDUSTRIAL PARK ST • COVINA, CA 91722-3499		Period Beginning: 10/18/2021 Period Ending: 10/31/2021 Pay Date: 11/05/2021	
Taxable Marital Status: Single Exemptions/Allowances: Federal: 1 CA: 1		YADIRA PALACIOS 	
Social Security Number:			

Earnings	rate	hours	this period	year to date
Regular	20.0000	72.00	1,440.00	24,530.08
Overtime	30.0000	9.56	286.80	4,076.72
Bonus				1,939.81
Double Time				15.38
Epsi Self				369.12
Holiday Pay				583.44
Shift Premium				3.23
Sick				513.24
Vacation Pay				1,094.04
Gross Pay			\$1,726.80	33,125.06

Deductions	Statutory		
	Federal Income Tax	-135.65	2,680.09

* Excluded from federal taxable wages
Your federal taxable wages this period are \$1,511.55

Other Benefits and Information	this period	total to date
Tot Hrs Worked	81.56	1,507.26
Sick Balance		5.58
Vac Balance		16.57

Important Notes
YOUR COMPANY ER PHONE NUMBER IS 626-331-0861

Wage Statement for pay period of October 18 – October 31, 2021 showing overtime paid at 1.5 times the straight hourly rate

Defendants instead paid Claimant a simple 1.5x multiple of her base rate of \$20 (\$20 x 1.5) to arrive at the overtime rate paid of \$30. Defendants excluded the remuneration itemized as “Bonus” paid directly by Defendants to Claimant in connection with her employment.

Similarly, Defendants failed to include shift differentials paid to Claimant in her regular rate of pay for overtime purposes. This company-wide policy and practice of not including bonus, shift differentials, or other forms of non-excludable remuneration, was applied to other aggrieved employees and is a matter of common payroll administration.

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

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

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

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and 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.

During times when Claimant and the aggrieved employees experienced non-compliant meal periods, Defendants failed to pay employees meal period premiums. In pay periods where Defendants paid meal period premiums to Claimant or the aggrieved employees, Defendants did not pay those premiums at the regular rate of compensation. As explained with respect to the "regular rate" allegations of the overtime section, and for the same reasons, Defendants did not include all required forms of remuneration when calculating the regular rate at which meal premiums must be paid. Specifically, Defendant did not include the bonus and shift

premium payments in the regular rate of compensation for purposes of the meal period premiums. Instead, Defendants paid the meal period premiums to Claimant and aggrieved employees at the same hourly rate as their respective base hourly rates. As a result, Defendants violated the foregoing sections of the Labor Code and IWC Wage Orders and underpaid Claimant and the aggrieved employee meal period premiums.

This common policy and practice of underpaying premiums by not including all forms of pay (including but not limited to the bonus and shift differential payments cited herein) applied as a matter of common payroll administration with respect to the aggrieved employees.

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

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.

During times when Claimant and the aggrieved employees experienced non-compliant rest periods, Defendants failed to pay the applicable rest period premium payment. For the same reasons as set forth above in the meal period section, and on information and belief, the aggrieved employees were underpaid rest period premiums, to the extent they received any, as a result of Defendants' policy and practice of not including all forms of remuneration in the regular rate of compensation at which such rest period premiums must be paid.

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

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

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

Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

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

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

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

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

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

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

Defendants did not pay paid sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek,” as the regular rate should have included the non-discretionary bonuses and premium payments for the reasons aforementioned. *See Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901. 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. Defendants instead paid Claimant, like other aggrieved employees, paid sick leave hours at the base rate, rather than lawful methods one or two above.

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 shift premium payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Claimant may recover civil penalties on behalf of 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, shift differentials, 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.

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

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or makes any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

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

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

As a result, Claimant may recover civil penalties on behalf of 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 Claimant and other aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

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

Because Defendants failed to pay all wages owed to Claimant and other aggrieved employees during their employment and failed to properly pay overtime, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Indeed, Claimant is a former employee and like other former employees who have left the company, they were not paid all wages owed on account of the ongoing, systemic "regular rate of pay" underpayments, paid sick leave underpayments, and meal and rest period premium underpayments that occurred throughout employment and, on information and belief, continues to this day.

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

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

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

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly

rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—the regular rate of pay underpayments for overtime, premium pay, and paid sick leave—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned overtime, paid sick leave, and premiums at the “regular rate” or variation thereof, but were instead underpaid. Additionally, Defendants violated Labor Code section 226(a)(5) for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub. Furthermore, in violation of Labor Code section 226(a)(9), the hourly rates in effect for overtime, paid sick leave, and premiums are incorrect for the same reasons, as they are inaccurately stated as the base rate for Claimant and other aggrieved employees, whereas they earned and were entitled to pay at the regular rate of pay.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated.

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.

/ / /

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).

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

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

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

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

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that 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. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees against the defendants).

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

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will pursue representative claims on behalf of the State of California and the aggrieved employees and will seek all remedies

available for violations of the Labor Code and the IWC Wage Orders, including attorneys' fees, costs, interest, and all available penalties set forth in Labor Code section 2699 and all other applicable sections of the Labor Code.

Thank you for your attention to this matter.

Sincerely,

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

Lauren N. Vega

Cc Claimant

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