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County of San Diego

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Clerk of the Superior Court
By Nora Lopez, Deputy Clerk

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

BRENDA CARDENAS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

UNDER ARMOUR RETAIL, INC., a
corporation; UNDER ARMOUR, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00026843-CU-OE-CTL

Representative Action Complaint

1. Failure to Pay All Overtime Wages
2. Unpaid Vacation Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Failure to Pay All Wages Upon Separation
9. Recordkeeping Violations

Representative Action Complaint

Brenda Cardenas vs. Under Armour Retail, Inc. et al.

1 Plaintiff BRENDA CARDENAS (“Plaintiff”), individually as the State of
2 California’s designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of
3 other current and former aggrieved employees, brings this representative action against
4 Defendants UNDER ARMOUR RETAIL, INC., a corporation; UNDER ARMOUR, INC.; and
5 DOES 1 through 50 (collectively, “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

9 2. In connection with Plaintiff’s employment and the employment of others within
10 the State of California, Defendants committed numerous systemic Labor Code violations for
11 which Plaintiff now seeks to receive civil penalties pursuant to Labor Code § 2698 *et seq.*

12 **JURISDICTION & VENUE**

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

15 4. Plaintiff is informed and believes that her *individual* PAGA claims do not arise to the
16 necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C. section 1332(a)
17 or jurisdiction under the Class Action Fairness Act.

18 5. Venue as to each defendant is proper in this judicial district because Defendants
19 employed Plaintiff and aggrieved employees in this county, and committed some of the alleged
20 Labor Code violations in this county.

21 **PARTIES**

22 6. Plaintiff worked for Defendants in San Diego County from May 2017 to May 2018
23 and from February 2019 to January 2022, as an hourly, non-exempt employee. During her
24 employment with Defendants, Plaintiff held the positions of Footwear Lead, Sales Lead, and
25 Assistant Store Manager.

26 7. Defendant UNDER ARMOUR RETAIL, INC. does business and employs
27 aggrieved employees throughout California, including in San Diego County.

1 8. Defendant UNDER ARMOUR, INC. does business and employs aggrieved
2 employees throughout California, including in San Diego County.

3 9. The true names and capacities, whether individual, corporate, or otherwise, of the
4 parties sued as DOES 1 through 50, are presently uncertain to Plaintiff, who sues them by such
5 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
6 alleges that each of the fictitiously-named defendants is responsible in some manner for the acts and
7 omissions alleged herein.

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

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

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

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PAGA ALLEGATIONS

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

All current and former non-exempt hourly employees who worked for Defendants in the State of California at any time from April 14, 2021, through the date of final judgment (the “PAGA Period”).

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

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

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

17. On **April 14, 2022**, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the “PAGA

1 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A copy of the PAGA Notice is
2 attached hereto as **Exhibit 1** and incorporated by reference.

3 18. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
4 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
5 actions taken to cure the alleged violations.

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

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

13 **GENERAL ALLEGATIONS**

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

16 22. Plaintiff was employed by Defendants as an hourly, non-exempt employee until
17 January 2022. Defendants paid Plaintiff and the aggrieved employees bonuses and/or commissions
18 in addition to their hourly wages.

19 23. When Defendants paid overtime to Plaintiff and aggrieved employees, Defendants
20 failed to pay the overtime at the “regular rate of pay” because they failed to include bonuses,
21 commissions, and other additional remuneration in the regular rate of pay calculation.

22 24. Plaintiff and other aggrieved employees regularly worked overtime and earned
23 bonuses, commissions, and other remuneration. In those pay periods, Defendants paid Plaintiff and
24 the aggrieved employees at a 1.5x multiple of their base time hourly rate for the overtime hours,
25 failing to pay overtime hours “at the rate of no less than one and one-half times the regular rate of
26 pay for an employee[,]” or “at the rate of no less than twice the regular rate of pay for an employee”
27 for any applicable double time hours, as required by Labor Code section 510 and the IWC Wage
28 Orders.

1 25. For example, Plaintiff's wage statement for the pay period of 12/19/2021 through
2 1/1/2022 shows that she was paid a bonus of \$331.00 and also worked overtime.

3 26. For this pay period, Plaintiff should have been paid an overtime rate that included
4 the Retail Bonus earnings, such that her regular rate of pay would be higher than a simple 1.5x
5 multiple. Instead, Plaintiff was paid overtime at 1.5x her base hourly rate.

6 27. Accordingly, Defendants are liable for the unpaid overtime wages, civil and
7 statutory penalties, interest, and waiting time penalties for each affected aggrieved employee.

8 28. At the time of separation of employment, Defendants failed to pay accrued and
9 unused vacation time at the lawful rate of compensation to Plaintiff and the aggrieved employees.

10 29. At the time of Plaintiff's resignation, she had accrued 60 hours of paid-time-off that
11 Defendants failed to compensate her for.

12 30. Plaintiff alleges that this policy and practice of failing to provide payment of
13 accrued and unused vacation or PTO hours upon termination applied to other aggrieved employees
14 as well.

15 31. Additionally, Plaintiff further alleges wage violations based on Defendants' rate of
16 pay at which it paid meal and rest period premiums, which were less than the required regular rate of
17 compensation, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC
18 Wage Orders.

19 32. Plaintiff's claim for meal and rest period premium underpayments is based on the
20 method of calculation used to pay those premiums; in other words, Defendants did not include all
21 forms of remuneration in the "regular rate of compensation," which resulted in premium payments to
22 Plaintiff and the aggrieved employees at rates less than the rate required by law.

23 33. Thus, when Defendants did not provide fully compliant meal periods, Defendants
24 failed to pay Plaintiff and aggrieved employees a meal period premium at the regular rate of
25 compensation (*i.e.*, a rate that factored in additional remuneration), in violation of Labor Code
26 section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 ("We
27 hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like
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1 “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just
2 hourly wages”).

3 34. Defendants’ practice of not paying all meal period premiums at the lawful rate (*i.e.*,
4 including all forms of remuneration in the “regular rate of compensation”) is a matter of common
5 corporate policy and payroll administration such that it applies and affected all other aggrieved
6 employees and are evident from the time records maintained by Defendants.

7 35. When Defendants’ did not provide fully compliant rest periods to Plaintiff or other
8 aggrieved employees, Defendants failed to pay Plaintiff or other aggrieved employees a rest period
9 premium at the lawful “regular rate of compensation,” in violation of Labor Code section 226.7 and
10 516 and section 12 of the applicable IWC Wage Order.

11 36. As one illustrative example of the premium underpayments issue, Plaintiff’s wage
12 statement for the pay period of 11/21/2021 through 12/04/2021 shows that she was paid a bonus of
13 \$200.00 (among other earnings) and also earned a meal period premium.

14 37. For this pay period, Plaintiff was paid at the rate of \$18.50 for the premium
15 payment, which is her base hourly rate.

16 38. However, Plaintiff should have been paid an hourly rate that included all forms of
17 remuneration, including the bonus that she earned during that pay period, such that her premium pay
18 would be higher than her base hourly rate.

19 39. This is one illustrative example of Defendants’ unlawful regular rate calculation, and
20 results in liability for the meal/rest period premiums, civil and statutory penalties, interest, and
21 waiting time penalties for each affected individual.

22 40. Furthermore, Defendants failed to provide Plaintiff and the aggrieved employees
23 paid sick leave at the correct accrual rate and failed to pay paid sick leave at the rate required by
24 statute.

25 41. Plaintiff is informed and believes that Defendants also failed to pay Covid-19
26 Supplemental Paid Sick Leave at the correct rate, in violation of Labor Code section 246, 248.2, and
27 248.6.

1 42. Defendants failed to provide sick leave in accordance with California law because it
2 implemented an accrual method that granted Plaintiff, and on information and belief, the aggrieved
3 employees, less sick leave hours than what they were entitled to receive.

4 43. In pay periods where Defendants provided Plaintiff and other aggrieved employees
5 with remuneration in addition to their respective base hourly rate for hours worked (such as bonuses
6 or commissions) — excluding any forms of pay subject to any applicable statutory exclusions from
7 the “regular rate”—Defendants failed to properly calculate and pay paid sick leave and supplemental
8 paid sick leave at the appropriate regular rate of pay, in violation of Labor Code sections 246, 248.2,
9 and 248.6.

10 44. Defendants paid sick leave and supplemental paid sick leave (to the extent paid) at
11 employees’ base hourly rate instead of one of the methods authorized by statute, which required
12 Defendants to factor in employees’ additional remuneration, such as bonuses and commissions.
13 Defendants’ underpayment of paid sick leave resulted in wage underpayments to Plaintiff and the
14 aggrieved employees.

15 45. As one illustrative example, Plaintiff’s wage statement for the pay period of
16 03/14/2021 through 03/27/2021 shows that she was paid a bonus of \$267.00 (among other earnings)
17 and that she was also paid sick pay.

18 46. For this pay period, Plaintiff was paid sick pay at the rate of \$17.50 per hour, which
19 was her base hourly rate for that pay period.

20 47. However, Plaintiff should have been paid an hourly rate for sick pay that included
21 all forms of remuneration, such that her lawful rate of pay would be higher than a simple 1.0x
22 multiple, encompassing the bonus she earned during the pay period.

23 48. This is one illustrative example of Defendants’ unlawful calculation and
24 underpayment of sick pay to Plaintiff and the aggrieved employees, and results in liability for
25 associated civil and statutory penalties, interest, and waiting time penalties for each affected
26 individual.

27 49. With respect to the overtime wages, paid sick leave, and meal and rest period
28 premiums owed to Plaintiff and the aggrieved employees due to underpayment, Defendants

1 failed to pay those wages on time each pay period or upon separation of employment. *See*
2 *Naranjo vs. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

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

7 51. Defendants equally failed in their affirmative obligation to provide accurate itemized
8 wage statements each pay period to Plaintiff and aggrieved employees.

9 52. Defendants issued wage statements to Plaintiff and, on information and belief, other
10 aggrieved employees, which contain several types of violations.

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

18 54. Second, on each wage statement furnished, Defendants failed to accurately state
19 “all applicable hourly rates in effect during the pay period and the corresponding number of
20 hours worked at each hourly rate by the employee” in violation of Labor Code § 226(a)(9). The
21 hourly rates on the wage statement are inaccurate with respect to overtime hours that were not
22 paid at the “regular rate of pay,” meal and rest period premiums not paid at the regular rate of
23 compensation, and paid sick leave hours that were paid at the improper base rate and reflected as
24 such on the wage statements of the aggrieved employees.

25 55. Defendants’ wage statement issues described above rendered the wage statements
26 inaccurate and confusing to Plaintiff and aggrieved employees, concealing the underpayments and
27 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
28 aggrieved employees as the sole documentary evidence of their respective earnings.

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

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

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

59. Because of the violations set forth in this Complaint, 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 records showing accurate daily hours worked at the corresponding wage rate, and the wages paid to each employee.

60. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and aggrieved employees.

61. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent with their obligations under California law.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Labor Code §§ 2698, *et seq.*

(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)

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

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

64. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

SECOND CAUSE OF ACTION

UNPAID VACATION WAGES

Labor Code §§ 201, 202, 203, 227.3, 558, 2699

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

66. Defendants willfully failed in their affirmative obligation to pay accrued and unused vacation time at the lawful rate of compensation to Plaintiff and the aggrieved employees at the time of separation, in violation of Labor Code sections 201(a), 202(a), and 227.3.

67. Labor Code section 227.3 states that if an employer offers an employment contract or policy providing for paid vacation time, such paid vacation time shall be paid as wages to separated employees, at his or her final rate.

68. Labor Code section 201(a) provides that upon termination of an employee, “the wages earned and unpaid at the time of discharge are due and payable immediately.”

69. Labor Code section 202(a) provides that upon resignation of an employee, “his or her wages shall become due and payable no later than 72 hours thereafter...”

70. 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

sections 558 and 2699(a), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATION

Labor Code §§ 226.7

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

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

73. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATION

Labor Code §§ 226.7 and 516

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

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

76. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 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).

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1 **FIFTH CAUSE OF ACTION**

2 **PAID SICK LEAVE VIOLATIONS**

3 **Labor Code §§ 246 *et seq.***

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

5 78. Defendants knowingly and intentionally failed in their affirmative obligation to
6 provide and pay paid sick leave wages to Plaintiff and the aggrieved employees in violation of Labor
7 Code section 246.

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

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

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

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

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

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

24 81. Defendants failed to pay Plaintiff and aggrieved employees paid sick leave wages at
25 one of the lawful rates set forth in the statute because Defendants failed to include in their
26 calculation the additional remuneration received by Plaintiff and the aggrieved employees, including
27 but not limited to, bonuses and commissions. Defendants instead paid to Plaintiff and the aggrieved
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1 employees' sick leave wages at their base hourly rate, resulting in wage underpayments to Plaintiff
2 and the aggrieved employees.

3 82. Moreover, on information and belief, Defendants knowingly and intentionally failed
4 in their affirmative obligation to provide notice of and provide Covid-19 Supplemental Sick Leave to
5 Plaintiff and the aggrieved employees, in violation of Labor Code sections 246, 247, 247.5, 248.2,
6 and 248.6.

7 83. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80
8 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
9 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
10 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
11 January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

20 86. To the extent Covid-19 Supplemental Sick Leave was provided, Plaintiff is informed
21 and believes that Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate
22 because Defendants failed to factor in to the paid sick leave rate employees' bonuses, commissions,
23 and other forms of remuneration. Plaintiff is informed and believes that Defendants instead paid
24 such sick leave at employees' base hourly rates rather than one of the methods authorized by statute.

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

3 **SIXTH CAUSE OF ACTION**
4 **UNTIMELY PAYMENT OF WAGES**

5 **Labor Code §§ 204, *et seq.***

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

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

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

17 **SEVENTH CAUSE OF ACTION**
18 **WAGE STATEMENT VIOLATIONS**

19 **Labor Code §§ 226 and 226.3**

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

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

27 93. Defendants knowingly and intentionally failed in their affirmative obligation
28 provide accurate itemized wage statements to Plaintiff and aggrieved employees in violation of

1 Labor Code section 226(a). Specifically, the wage statements issued to Plaintiff and the aggrieved
2 employees did not accurately state each pay period all of the information required by Labor Code
3 section 226(a)- (9).

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES UPON SEPARATION**

13 **Labor Code §§ 201 through 203**

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

15 97. Defendants willfully failed in their affirmative obligation to pay all wages (including

16 98. overtime, sick leave wages, and meal and rest premiums) earned and unpaid to
17 Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours
18 thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to
19 quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections
20 201 through 203 and the IWC Wage Orders.

21 99. 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).

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1 **NINTH CAUSE OF ACTION**

2 **RECORDKEEPING VIOLATIONS**

3 **Labor Code § 1174**

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

5 101. Labor Code section 1174 provides: “Every person employing labor in this state
6 shall:

7 102. ...(d) Keep, at a central location in the state or at the plants or establishments at
8 which employees are employed, payroll records showing the hours worked daily by and the wages
9 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
10 employees employed at the respective plants or establishments. These records shall be kept in
11 accordance with rules established for this purpose by the commission, but in any case shall be kept
12 on file for not less than three years.”

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

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

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

25 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff prays for judgment as follows:

- 3 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 4 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
- 5 the extent permitted by law, including under Labor Code section 2699(g);
- 6 c. For any recoverable pre- and post-judgment interest; and
- 7 d. For such other relief the Court deems just and proper.

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9 Dated: July 8, 2022

Ferraro Vega Employment Lawyers, Inc.

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11 Nicholas J. Ferraro

12 Attorneys for Plaintiff Brenda Cardenas

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Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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April 14, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Under Armour Retail, Inc.
1020 Hull Street
Baltimore, MD 21230

Under Armour Retail of California, LLC
1020 Hull Street
Baltimore, MD 21230

Under Armour, Inc.
1020 Hull Street
Baltimore, MD 21230

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **04/14/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of BRENDA CARDENAS (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against UNDER ARMOUR RETAIL, INC., UNDER ARMOUR, INC., and UNDER ARMOUR RETAIL OF CALIFORNIA, LLC, along with any other related employer entities, including those who may be later added upon further investigation (collectively referred to as “Defendant”).

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

Defendant comprises the sports equipment company that manufactures footwear, sports, and casual apparel. Defendant employs 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. Defendant operates nationwide, including throughout California.

Defendant 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 was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Each of the named Under Armour defendants legally employed Claimant and the other aggrieved employees under California law, as evident in the common written employment policies and administration of employment practices among the workforce.

Additionally, Defendant and its 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 BRENDA CARDENAS worked for Defendant from in or about May 2017 to May 2018 and from February 2019 to January 2022. Claimant worked in the positions of Footwear Lead, Sales Lead, and Assistant Store Manager. 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 Defendant 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 Defendant’s 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.

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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

Defendant 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.

Specifically, when Claimant and other aggrieved employees worked overtime, Defendant failed to pay the overtime at the “regular rate of pay.” Defendant paid Claimant and the aggrieved employees bonuses and other forms of remuneration that Defendant failed to include in the “regular rate of pay” when employees earned overtime. Defendant paid overtime and double-time to Claimant and the aggrieved employees at 1.5x and 2x their straight hourly rate. For each overtime hour worked during the period in which Claimant and the aggrieved employees earned bonuses, Defendant should have (but failed to) pay overtime “at the rate of no less than *one and one-half times the regular rate of pay* for an employee” and “*twice* the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of the regular rate of pay violation is found on Claimant’s wage statement for the pay period from 12/19/2021 through 01/01/2022, with the pay date of 01/07/2022:

Earnings	Rate	Hours/Units	Amount	Year-To-Date
Regular	18.50	54.50	1,008.25	1,008.25
Overtime	27.75	2.25	62.44	62.44
PTO EARNINGS	18.50	8.00	148.00	148.00
Retail Bonus			331.00	331.00
Holiday Pay	18.50	16.00	296.00	296.00
Gross Pay			1,845.69	1,845.69

Extract from Claimant’s Pay Statement from 01/07/2022 Showing She Was Paid Overtime at 1.5x Her Base Hourly Rate

During this pay period, Claimant earned a sales bonus of \$331.00 that was not factored into her overtime rate, as she was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay. Defendant committed this same “regular rate of pay” violation against Claimant throughout her employment and against the other aggrieved employees as well, when employees earned forms of pay like bonuses that were required to be included in the regular rate but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

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.

Unpaid Vacation Wages
Violation of Labor Code §§ 201, 202, 203, 227.3, 558, 2699

Defendant failed to pay accrued and unused vacation time at the lawful rate of compensation to Claimant and other aggrieved employees at the time of separation of employment, in violation of Labor Code sections 201(a), 202(a), and 227.3. Labor Code section 227.3 states that if an employer offers an employment contract or policy providing for paid vacation time, such paid vacation time shall be paid as wages to separated employees, at his or her final rate. Labor Code section 201(a) provides that upon termination of an employee, “the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202(a) provides that upon resignation of an employee, “his or her wages shall become due and payable not later than 72 hours thereafter...” Failure to do so triggers the requirement to pay waiting time penalties under Labor Code section 203.

Defendant failed to pay Claimant her accrued and unused vacation (paid-time-off) time upon her separation from employment. Plaintiff resigned on January 6, 2022. At the time of her resignation, Claimant had accrued and not used around 60 hours of paid-time-off. Defendant did not pay Claimant any paid-time-off at the time of her separation of employment. Moreover, to date, Defendant has failed to pay Claimant the 60 hours of accrued and unused paid-time-off she earned during her employment in violation of Labor Code 227.3. Claimant alleges that this policy and practice of failing to provide payment of accrued and unused vacation or PTO hours upon termination applied to other aggrieved employees and was a matter of common payroll policy and practice.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and other aggrieved employees as provided under Labor Code §§ 558, 2699 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

Defendant 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.

Defendant failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. Claimant’s and the aggrieved employees’ time records establish meal period liability on their face as they show that they often experienced missed, short, and late meal periods. When Defendant did not provide compliant meal periods, Defendant failed to pay Claimant and other aggrieved employees a meal period premium at the “regular rate of compensation” because the premiums paid did not factor in bonuses, commissions, and other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

Earnings	Rate	Hours/Units	Amount	Year-To-Date
Other Paid Leave				18.50
Regular	18.50	73.37	1,357.35	22,600.75
Overtime	27.75	8.96	248.64	882.60
WORKED HOLIDAY	27.75	3.70	102.68	102.68
PTO EARNINGS	18.50	2.00	37.00	2,416.00
COVID Leave				74.00
MEAL TIME PAY	18.50	2.00	37.00	307.73
Split Shift Pen	18.50	1.00	18.50	36.25
EMERGENCY PAY				221.76
Health Assessment	18.50	0.55	10.23	149.97
ONETIME BONUS			200.00	1,691.00
Gifttax-GU Result			159.87	159.87
Retail Bonus				116.48
Bonus Gross Up			319.74	319.74
Holiday Pay	18.50	8.00	148.00	869.84
<u>Sick pay</u>				<u>581.32</u>

Extract from Claimant’s Pay Statement from 12/10/2021 Showing She Was Paid Meal Period Premiums at Her Base Hourly Rate

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

Defendant 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.

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

law. Though not a legal requirement, Under Armour will strive to provide one 15-minute paid rest break for every four hours worked. These paid rest breaks are not guaranteed and are subject to business needs and manager discretion.

Extract from the Handbook Under Armour Provided Claimant

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

Defendant violated Labor Code section 246 because it 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. Defendant was 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 Defendant failed to provide paid sick leave in accordance with California law, rendering Defendant liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendant failed to maintain the records required by Labor Code § 246 *et seq.* with respect to the paid sick leave.

Defendant paid sick leave at employees' straight time rate of pay and failed to factor in bonuses and other forms of remuneration. Specifically, Defendant 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 bonuses and other remuneration for the reasons aforementioned. Additionally, Defendant 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.

Earnings	Rate	Hours/Units	Amount	Year-To-Date
Regular	17.75	30.92	548.83	7,217.70
Overtime	26.63	0.55	14.64	225.82
PTO EARNINGS	17.75	36.00	639.00	1,491.00
MEAL TIME PAY				159.75
Split Shift Pen				17.75
Health Assessment	17.75	0.25	4.45	48.95
ONETIME BONUS			267.00	1,174.00
Holiday Pay				426.00
Sick pay	17.75	9.25	164.19	581.32
Gross Pay			1,638.11	11,342.29

Extract from Claimant's Pay Statement from 04/02/2021 Showing Claimant Was Paid Sick Leave at Her Base Hourly Rate

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 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**

Defendant violated Labor Code section 248.2 and 248.6 because it 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, Defendant violated California law by failing to pay Covid Supplemental Paid Sick Leave at the correct rate. Claimant is informed and believed Defendant failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute because it failed to factor in bonuses and other remuneration into the sick leave 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 or other forms of non-excludable remuneration and also received statutory paid sick leave. Defendant 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**

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

Because Defendant 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, Defendant 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, Defendant underpaid Claimant and other aggrieved employees’ regular, overtime, sick, and premium pay, including at the lawful regular rate of compensation/pay. Defendant is 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**

Defendant 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, accrued vacation, sick leave, 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 Defendant failed to pay all regular and overtime wages, accrued vacation, sick leave, and premiums owed to Claimant and the aggrieved employees during their employment and failed to pay regular and overtime wages at the lawful respective rates, Defendant failed to timely pay all wages owed upon separation of employment. Moreover, as explained above, Defendant failed to pay Claimant her accrued vacation wages within 72 hours of her resignation. Therefore, Defendant failed to timely pay Claimant all wages owed to her upon her resignation 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.

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

Defendant 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 wages, overtime wages, sick pay, and premiums—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, premiums, and paid sick leave but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendant 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, Defendant violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock during uncompensated meal periods, rendering the total hours listed as an inaccurate reflection of hours worked.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay” with respect to overtime, meal/rest period

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).

premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and reflected as such on the wage statements of the aggrieved employees.

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 Defendant's failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendant 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, Defendant is 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 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 Defendant
to Change Policies and Practices

Claimant intends to pursue legal action against Defendant based on the violations set forth in this notice. Defendant is 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) her lawsuit was a catalyst in motivating Defendant 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 Defendant will be liable at trial, and (3) that Claimant has hereby notified Defendant 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. Defendant 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,



Nicholas J. Ferraro

Cc Claimant
 Lauren N. Vega, Esq.
 Elida M. Espinoza, Esq.

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