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Superior Court of California,
County of San Diego

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Attorneys for Plaintiff Raquel Caro Santiago

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

RAQUEL CARO SANTIAGO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

SOUTHWEST KEY PROGRAM, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00021991-CU-OE-CTL

*Assigned to the Hon. Timothy Taylor
Department: C-72*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Failure to Pay PSL and Supp. PSL Wages
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
- 8-14. Claims for Civil Penalties under the Private
Attorneys General Act of 2004

1 Plaintiff RAQUEL CARO SANTIAGO (“Plaintiff”), as an individual and on behalf of all
2 others similarly situated current and former employees, and the State of California, brings this
3 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendant
4 SOUTHWEST KEY PROGRAM, INC.; and DOES 1 through 50 (collectively, “Defendants”), and
5 on information and belief alleges as follows:

6 **INTRODUCTION**

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

10 2. Plaintiff further seeks civil penalties on behalf of herself and other aggrieved
11 employees under the Private Attorneys General Act of 2004 for Defendants’ violations of the
12 California Labor Code.

13 **JURISDICTION & VENUE**

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

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

19 **PARTIES**

20 **A. Plaintiff Raquel Caro Santiago**

21 5. Plaintiff RAQUEL CARO SANTIAGO is an individual over 18 years of age who
22 worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until
23 JANUARY 2022.

24 ///

B. Class Members

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

7. Further, Plaintiff proposes the following subclasses:

- a. Labor Code § 226.7 Premium Subclass: All Class Members who were paid meal and/or rest period premium wages under Labor Code § 226.7 in the same pay period in which they were also paid non-excludable forms of remuneration including, but not limited to, hazard pay premiums and other forms of compensation.
- b. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave wages in the same pay period in which they were also paid non-excludable forms of remuneration, including but not limited hazard premium pay and other forms of compensation).
- c. Untimely Payment of Wages Subclass: All Class Members who are members of the Labor Code § 226.7 Premium Subclass and/or the Paid Sick Leave Subclass.
- d. Wage Statement Subclass: All Class Members who: [1] are members of the Labor Code § 226.7 Premium Subclass and/or Paid Sick Leave Subclass and [2] who received a wage statement from Defendants at any time during the one-year period preceding the filing of this action through the present.
- e. Waiting Time Subclass: All Class Members who are members of the Labor Code § 226.7 Premium Subclass and/or Paid Sick Leave Subclass at any time during the three-year period preceding the filing of this action through the present, excluding current employees who have never previously separated from employment with Defendants.

1 **C. Defendants**

2 8. Plaintiff is informed, believes, and alleges that Defendant SOUTHWEST KEY
3 PROGRAM, INC. is a corporation registered to do business in the State of California, doing
4 business and employing labor throughout San Diego County.

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

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

16 11. Plaintiff is informed, believes, and alleges that at least some of the defendants have
17 common ownership, common management, interrelationship of operations, and centralized control
18 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
19 responsible for the acts and omissions alleged herein.

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

24 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants
25 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
26 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
27 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
28 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

GENERAL ALLEGATIONS

14. Defendants paid Plaintiff and Class Members hazard pay premiums and other forms of compensation that they failed to include in their calculation of meal and rest period premiums and paid sick leave, resulting in underpaid wages to Plaintiff and Class Members.

15. When Defendants paid a meal or rest period premium to employees, they failed to pay such premiums at the “regular rate of compensation,” in violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“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”).

16. Plaintiff and the Class Members were paid hazard pay premiums and other forms of remuneration. When Defendants paid premiums during the same pay periods when employees were paid additional forms of compensation, Defendant failed to pay such meal and rest period premiums at employees the “regular rate of compensation,” which should have included the hazard pay premiums. Instead, Defendants paid such premiums at Plaintiff and the Class Members’ base hourly rate.

17. An illustrative example of this can be found in Plaintiff’s pay statement for the pay period from 08/09/2021 to 08/23/2021, during which Plaintiff received a hazard pay premium for each hour worked, but was compensated for a meal period premium at her base hourly rate of \$23.67 instead of at the regular rate of compensation.

18. On information and belief, Defendants’ practice of not paying all premiums at the lawful rate (*i.e.*, including all forms of remuneration in the “regular rate of compensation”) is a matter of common corporate policy and payroll administration such that it applies and affected all other Class Members.

19. In pay periods when Defendants provided Plaintiff and other Class Members with remuneration in addition to their respective base hourly rate for hours worked (such premium hazard pay)—excluding any forms of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants failed to properly calculate and pay paid sick leave wages at the appropriate rate of pay, in violation of Labor Code § 246. Defendants paid sick leave at employees’ base hourly rate

1 instead of one of the methods authorized by statute, which required Defendants to factor in
2 employees' additional remuneration, such as hazard premium pay.

3 20. An illustrative example of the above can be found on Plaintiff's wage statement for
4 the pay period from 08/09/2021 to 08/23/2021, which shows that Plaintiff earned \$429.74 in hazard
5 pay and was paid 6.27 hours of accrued sick leave wages at her base hourly rate of \$23.21, instead of
6 a rate derived from one of the methods required by Labor Code section 246.

7 21. To the extent Defendant paid Covid-19 Supplemental Paid Sick Leave, Plaintiff is
8 informed and believes that Defendant failed to pay the sick leave at a rate authorized by statute
9 because they failed to factor in employees' premium hazard pay and other forms of compensation.

10 22. On information and belief, Plaintiff alleges that Defendants instead paid
11 Supplemental Sick Leave at employees' base hourly rate rather than by one of the methods
12 authorized by Labor Code sections 248.1, 248.2, and 248.6.

13 23. Additionally, Plaintiff is informed and believes that Defendants failed to provide sick
14 leave in the amount required by California law.

15 24. An example of Defendants' violations can be seen by comparing Plaintiff's pay
16 statements with the pay dates of 7/30/2021 and 8/13/2021. Plaintiff's pay statement with the pay date
17 of 7/30/2021, shows that she had 8.49 hours of accrued and unused sick leave

18 25. Plaintiff's pay statement for the following period, dated 8/ 13/ 2021, shows that
19 Plaintiff worked 82.17 hours, and thus should have accrued 2. 73 hours of paid sick leave for a total
20 of 11.22 accrued and available paid sick leave hours for the pay period. During this pay period,
21 Plaintiff did not use nor was she paid for any accrued sick leave. Nevertheless, her pay statement
22 reveals that she had only 6.26 hours of accrued sick leave.

23 26. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
24 and Class Members.

25 27. On information and belief, Plaintiff alleges that Defendants' sick leave wage
26 underpayments were a result of a common payroll practice that impacted all Class Members who
27 used paid sick leave.

1 28. Because Defendants did not pay Plaintiff and the Class for all wages (including sick
2 leave and meal and rest premiums) owed each pay period of their employment, Defendants failed to
3 timely pay all wages owed each pay period or upon separation of employment (or within 72 hours
4 thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b
5 (paydays). *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.

6 29. Defendants equally failed in their affirmative obligation to provide accurate itemized
7 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage statements
8 to Plaintiff and, on information and belief, other Class Members, which contain the following
9 violations.

10 30. First, on each wage statement furnished, Defendants failed to accurately state the
11 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
12 Plaintiff and Class Members were undercompensated for paid sick leave wages and meal and rest
13 period premiums, resulting in an inaccurate itemization of gross and net wages earned on those wage
14 statements. *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.

15 31. Second, on each wage statement furnished to Plaintiff and, on information and belief,
16 the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect during
17 the pay period and the corresponding number of hours worked at each hourly rate by the employee”
18 in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and Class
19 Members do not accurately list the accurate rates of pay for paid sick leave and meal and rest period
20 premiums.

21 32. Defendants’ wage statement issues described above rendered the wage statements
22 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
23 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
24 Members as the sole documentary evidence of their respective earnings.

25 33. Plaintiff and Class Members suffered injury in the form of confusion regarding
26 amounts paid for hours worked, and in the form of concealment of the common payroll practices
27 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
28 this Complaint.

34. Indeed, Plaintiff and, on information and belief, Class Members 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, Class Members 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.

35. Defendants' wage statement violations were knowing and intentional as a matter of law with respect to Plaintiff and California Class Members 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.

36. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and the Class Members.

37. 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.

CLASS ALLEGATIONS

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

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

40. ***Superiority.*** A class action is superior to other means for adjudication of the claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow for the common issues to be resolved in a single forum, simultaneously and without duplication of effort and expense.

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

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

PAGA ALLEGATIONS

43. 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 during the period of May 31, 2021 through the current date and the date of final judgment in this action (“PAGA Period”).

44. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the Private Attorney’s General Act. (*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.”]).

45. “Notwithstanding any other provision of law, any provision of this code providing 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)).

46. On May 31, 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 Notice”).

1 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice,
2 incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

3 47. 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 48. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
7 violations, without any notice of cure from them or notice from the LWDA of its intent to investigate
8 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
9 prerequisites and commenced this civil action under Labor Code § 2699.

10 49. 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 **FIRST CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

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

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

17 51. This cause of action is brought by the Labor Code § 226.7 Premium Subclass
18 pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-
19 exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof),
20 and which further provide a private right of action for an employer’s failure to lawfully provide all
21 meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

22 52. As such, Defendants willfully failed in their affirmative obligation to consistently pay
23 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
24 each workday that a fully compliant meal period was not provided, in violation of Labor Code
25 sections 226.7, 512, 558, and 1198 and the 5-2001 IWC Wage Order section 11.

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

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

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

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PAY PAID SICK LEAVE & SUPP. PAID SICK LEAVE WAGES

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

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

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

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

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

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

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

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

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

10 63. Furthermore, on information and belief, Defendants knowingly and intentionally
11 failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to the Paid
12 Sick Leave Subclass at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and
13 248.6.

14 64. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
15 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
16 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
17 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
18 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
19 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
20 January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

26 (I) Calculated in the same manner as the regular rate of pay for the
27 workweek in which the covered employee uses COVID-19 supplemental
28

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

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

6 (III) The state minimum wage.

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

8 67. Labor Code section 248.6 requires employers to pay supplemental sick leave using
9 either method (I) or (II), as identified above.

10 68. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
11 Leave in the manner described above because Defendants failed to include in their sick leave
12 calculation the additional remuneration received by the Paid Sick Leave Subclass.

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

16 **FOURTH CAUSE OF ACTION**

17 **UNTIMELY PAYMENT OF WAGES**

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

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

23 72. Defendants willfully failed in their affirmative obligation to timely pay all wages and
24 premiums earned by Plaintiff and Class Members twice during each calendar month on days
25 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
26 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor
27 Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the
28 applicable orders).

1 73. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages,
2 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
3 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
4 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under
5 provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent
6 permitted by law.

7 **FIFTH CAUSE OF ACTION**

8 **WAGE STATEMENT VIOLATIONS**

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

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

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

18 77. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
19 itemized wage statements, causing confusion and concealing wage and premium underpayments.

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

25 **SIXTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 79. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
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1 80. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
2 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
3 termination of employment, and which further provide a private right of action to recover statutory
4 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
5 of 30 days wages.

6 81. Defendants willfully failed and continue to fail in their affirmative obligation to pay
7 all wages (including sick leave and meal and rest premiums) earned and unpaid to Plaintiff and
8 members of the Waiting Time Penalty Subclass immediately upon termination of employment or
9 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
10 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
11 Code sections 201 through 203 and the IWC Wage Orders.

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

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

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

18 84. Plaintiff brings this cause of action on behalf of all Classes.

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

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

1 87. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
2 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
3 restitution of the moneys as necessary and according to proof to restore all monies withheld,
4 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
5 17208.

6 88. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
7 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
8 interest and to prevent future damage and the public interest under Business and Professions Code §
9 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and costs
10 to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

17 **TENTH CAUSE OF ACTION**

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

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

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

26 99. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
27 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
28

1 Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to
2 the extent permitted by law, including under Labor Code section 2699(g).

3 **ELEVENTH CAUSE OF ACTION**

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

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

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

12 102. Defendants knowingly and intentionally failed in their affirmative obligation provide
13 accurate itemized wage statements to Plaintiff and aggrieved employees. Specifically, the wage
14 statements issued to Plaintiff and the aggrieved employees did not accurately state each pay period
15 all of the information required by Labor Code section 226(a)(1)-(9).

16 103. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved employees
17 of accurate itemized wage statements, causing confusion and concealing wage and premium
18 underpayments.

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

23 **TWELFTH CAUSE OF ACTION**

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

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

26 106. Defendants willfully failed in their affirmative obligation to pay all wages earned and
27 unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within
28 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her

1 intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
2 Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are those
3 due to Defendants' failure to pay employees for all hours worked and for meal and rest period
4 premiums.

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

9 **THIRTEENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)**

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

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

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

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

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

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

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

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

1 112. As discussed above, Defendants provided Plaintiff with less sick leave (under the
2 accrual method) than she was entitled to accrue based on her hours worked. Plaintiff is informed
3 and believes that this issue impacted other aggrieved employees as well.

4 113. Defendants also failed to pay Plaintiff and aggrieved employees paid sick leave
5 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
6 calculation the additional remuneration received by Plaintiff and the aggrieved employees.
7 Defendants instead paid to Plaintiff and the aggrieved employees' sick leave wages at their base
8 hourly rate, resulting in wage underpayments to Plaintiff and the aggrieved employees.

9 114. Moreover, on information and belief, Defendants knowingly and intentionally failed
10 in their affirmative obligation to provide notice of and provide Covid-19 Supplemental Sick Leave to
11 Plaintiff and the aggrieved employees, in violation of Labor Code sections 246, 247, 247.5, 248.2,
12 and 248.6.

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

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

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

26 118. To the extent Covid-19 Supplemental Sick Leave was provided, Plaintiff is informed
27 and believes that Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate
28 because Defendants failed to factor in employees' bonuses, and other forms of remuneration.

1 Plaintiff is informed and believes that Defendants instead paid such sick leave at employees' base
2 hourly rates rather than one of the methods authorized by statute.

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

8 **FOURTEENTH CAUSE OF ACTION**

9 **RECORDKEEPING VIOLATIONS (PAGA)**

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

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

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

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

26 124. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
27 aggrieved employees, and the State of California for civil penalties as required by Labor Code
28

section 1174.5, in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the representative of the Class;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For injunctive relief;
- e. For compensatory damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA and for Plaintiff and counsel to be provided with all enforcement capability as of the action were brought by the State of California or the California Division of Labor Enforcement;
- j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under California Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure section 1021.5; and
- l. For such other relief the Court deems just and proper.

Respectfully submitted,

Dated: August 4, 2022

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Attorneys for Plaintiff Raquel Caro Santiago

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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www.ferrarovega.com

May 31, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Southwest Key Program, Inc.
6002 Jain Lane
Austin, TX 78721

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **05/31/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of RAQUEL CARO SANTIAGO (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against SOUTHWEST KEY PROGRAM, INC., along with any other related employer entities, including those who may be later added upon further investigation (collectively, “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 is a national organization that provides immigrant services, youth and family services, and home study programs throughout the country, including in Texas, California, Arizona, Georgia, New York, and Florida. 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 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. Defendant legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendant 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 RAQUEL ANAHI CARO worked for Defendant from December 2015 through January 2022, in the positions of Youth Care Worker, Teacher Assistant, and Teacher. Throughout her employment, Claimant worked as an hourly, non-exempt employee. Defendant operates nationwide, including throughout California.

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.

Underpaid Meal and Rest Period Premiums **Violation of Labor Code §§ 226.7, 512, 516, 1198; IWC Wage Orders**

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

compensation to 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 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").

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.

Claimant and the aggrieved employees were paid hazard pay premiums and other forms of remuneration. When Defendant paid premiums during the same pay periods employees were paid additional forms of compensation, Defendant failed to pay meal and rest period premiums at the "regular rate of compensation," which should have included the additional compensation. Instead, Defendant paid such premiums at Claimant and the aggrieved employees' base hourly rate. An illustrative example of this can be found in Claimant's pay statement for the pay period from 08/09/2021 to 08/23/2021 during which Claimant received a hazard pay premium for each hour worked, but was compensated for a meal period premium at her base hourly rate of \$23.67 instead of at the regular rate of compensation.

#97373 - Raquel Anahi Caro Santiago	Voucher #189061				Pay Date: 12/15/2021				
					Pay Period: 11/24/2021-12/08/2021				
Earnings					Earnings - Continued				
	Rate	Hours	Current	YTD		Rate	Hours	Current	YTD
ADMIN				139.26	OT				1,095.73
BNSN13				100.00	OT Premi				833.99
CSL				1,856.80	PERSON				1,685.43
GTL			3.80	87.40	PL-CA				348.15
HDP	5.00	76.95	384.74	7,219.13	REG	23.67	60.70	1,437.03	38,541.72
HOLIDAY				567.87	Retro Pay				84.64
Holiday W	23.67	16.25	384.70	1,279.44	SICK	23.67	8.00	189.39	891.96
Holiday W				35.59	SL-CA				148.08
Holiday W				20.88					
Holiday W	23.67	8.00	189.39	560.75	Gross Pay			2,637.72	55,995.49
MSTBRK	23.67	1.00	23.67	23.67	Hours Paid		170.90		
Medical Cr			25.00	475.00					
--More--									

SOUTHWEST KEY PROGRAMS, INC. 6002 JAIN LANE, Austin, TX 78721

1 of 2

SOUTHWEST KEY PROGRAMS, INC. 6002 JAIN LANE, Austin, TX 78721

1 of 3

Extract from Claimant's Pay Statement For the Pay Period From 11/24/2021 to 12/08/2021

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 Paid Sick Leave
Violation of Labor Code §§ 226, 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 the amount required by California law, rendering Defendant liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. An example of Defendant's violations can be seen by comparing Claimant's pay statements with the pay dates of 7/30/2021 and 8/13/2021. Claimant's pay statement with the pay date of 7/30/2021, shows that she had 8.49 hours or accrued and unused sick

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 provide 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 both provide Covid Covid-19 Supplemental Paid Sick Leave to the aggrieved employees. To the extent Defendant provided Covid-19 Supplemental Paid Sick Leave, Claimant is informed and believes that Defendant failed to pay the sick leave at rate authorized by statute for the same reasons as discussed in the sick leave section above (*i.e.*, failure to include additional remuneration). Claimant is informed and believes that 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 the aggrieved employees. 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 meal/rest premiums, paid sick leave, 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’ 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 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 wages, sick leave, and meal and rest period premiums at the lawful respective rates, Defendant failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. *See Naranjo v. Spectrum Security Services, Inc.* __ Cal. __ (May 23, 2022).

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—underpaid paid sick leave and meal and rest premiums—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned paid sick leave and meal and rest premiums, 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

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

the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub. *See Naranjo v. Spectrum Security Services, Inc.* __ Cal. __ (May 23, 2022).

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 paid sick leave and meal and rest period premiums that were not paid at the correct rate.

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. 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.

Failure to Provide Records in Response to Statutory Records Requests/Inspection
Violation of Labor Code §§ 226, 432, 1198, IWC Wage Orders

Claimant issued a records request to Defendant requesting all records due under the IWC Wage Orders (including the Records sections), and Labor Code sections 226 and 432. Labor Code section 432 requires all documents signed by an employee to be provided upon request, within 30 days from such request. Labor Code section 226 requires companies to provide a copy of wage statements and all records pertaining to the respective employee’s employment within 21 days from such request. Section 7 of IWC Wage Orders, which may be enforced via Labor Code section 1198, requires that employers maintain records of when an employee begins and ends each work period and when the employee takes meal periods. Section 7(C)

states that “[a]n employee’s records shall be made available for inspection by the employee upon reasonable request.”

On April 1, 2022, Claimant, through her attorneys, requested from Defendant the production of her personnel and payroll records. To comply with the statutory deadlines, Defendant was required to produce Claimant’s payroll records by April 22, 2022, and her personnel records by April 30, 2022. On April 21, 2022, Defendant produced Claimant’s personnel file, and some but not all her payroll records. Specifically, Defendant failed to produce Claimant’s time records from March 2020 to February 2021, in violation of Labor Code sections 226, 1198, and the applicable Wage Order.

As a result, Claimant is an aggrieved employees who seeks civil penalties on behalf of herself and others for these and other Labor Code violations. Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226 and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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 its 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 its 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.