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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/02/2022 at 10:30:00 AM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

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

PHILIP LAPAT, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

STAFF BENEFITS MANAGEMENT, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00022652-CU-OE-CTL

Assigned to the Hon. Carolyn Caietti
Department: C-70

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

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

1 Plaintiff PHILIP LAPAT (“Plaintiff”), as an individual and on behalf of all others similarly
2 situated current and former employees, and the State of California, brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants STAFF
4 BENEFITS MANAGEMENT, INC.; and DOES 1 through 50 (collectively, “Defendants”), and on
5 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 a further seeks civil penalties under the Private Attorneys General Act of
11 2004 for Defendants’ violations of the California Labor Code.

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

18 **PARTIES**

19 **A. Plaintiff Philip LaPat**

20 5. Plaintiff PHILIP LAPAT is an individual over 18 years of age who worked for
21 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until OCTOBER 2021.

22 **B. Class Members**

23 6. Plaintiff brings this action as an individual and on behalf of the following class under
24 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
25 State of California as hourly non-exempt employees at any time from four years preceding the filing
26 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).
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- 1 7. Further, Plaintiff proposes the following subclasses:
- 2 a. Unpaid Overtime Subclass: All Class Members who were not paid for all overtime
- 3 and doubletime hours worked each pay period.
- 4 b. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or
- 5 more without a duty-free meal period of at least 30 minutes, or worked shifts of 10
- 6 hours or more without a second duty-free meal period of at least 30 minutes, and
- 7 [2] who were not paid one hour of pay at the regular rate of compensation for each
- 8 of those days.
- 9 c. Rest Period Subclass: All Class Members who [1] were not authorized or
- 10 permitted to take a rest period of at least 10 minutes for every four hours worked
- 11 or major fraction thereof and [2] who were not paid one hour at the regular rate of
- 12 compensation for each of those days.
- 13 d. Untimely Payment of Wages Subclass: All individuals who are members of the
- 14 following classes: (i) Unpaid Overtime Subclass, (ii) Meal Period Subclass, or
- 15 (iii) Rest Period Subclass.
- 16 e. Wage Statement Subclass: All individuals who are members of the following
- 17 classes who received a wage statement from Defendants at any time during the
- 18 one-year period preceding the filing of this action through the present: (i) Unpaid
- 19 Overtime Subclass, (ii) Meal Period Subclass, or (iii) Rest Period Subclass.
- 20 f. Waiting Time Subclass: All individuals who are members of the following classes
- 21 at any time during the three-year period preceding the filing of this action through
- 22 the present, excluding current employees who have never previously separated
- 23 from employment with Defendants: (i) Unpaid Overtime Subclass, (ii) Meal
- 24 Period Subclass, or (iii) Rest Period Subclass.

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1 **C. Defendants**

2 8. Defendant STAFF BENEFITS MANAGEMENT, INC. is a corporation registered to
3 do business in the State of California, doing business and employing labor throughout San Diego
4 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.

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15. Specifically, Defendants failed to pay paid Plaintiff and the Class Members at for all overtime hours worked.

17. Plaintiff is informed and believes that the underpayment of overtime and doubletime was a common payroll practice that impacted other Class Members.

19. “[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.

20. Plaintiff's time records (and those of the Class) establish meal period violations by showing missed, short, and late meal periods throughout the duration of his employment.

21. When Defendants did not provide fully compliant meal periods, Defendants failed to pay Plaintiff and Class Members a meal period premium 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”).

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1 22. Moreover, also because of understaffing issues and business demands, Defendants
2 failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction
3 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage
4 Order. When Defendants did not provide a fully compliant rest periods to Plaintiff or other Class
5 Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium at the
6 lawful “regular rate of compensation” in violation of Labor Code section 226.7.

7 23. Because Defendants did not pay Plaintiff and the Class for all wages (including meal
8 and rest period premiums) owed each pay period of their employment, Defendants failed to timely
9 pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
10 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays). *See*
11 *Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

12 24. Defendants equally failed in their affirmative obligation to provide accurate itemized
13 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
14 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
15 two distinct types of violations.

16 25. First, on each wage statement furnished, Defendants failed to accurately state the
17 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
18 Plaintiff and Class Members earned overtime at one and one-half times their regular rate of pay, but
19 were not paid for all overtime hours suffered or permitted to work, and were deprived meal and rest
20 period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net
21 wages earned on those wage statements.

22 26. Second, on each wage statement furnished to Plaintiff and, on information and belief,
23 the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect during
24 the pay period and the corresponding number of hours worked at each hourly rate by the employee”
25 in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and Class
26 Members do not accurately reflect the total number of overtime hours worked but a reduced number
27 instead, and also fail to reflect earned meal or rest period premiums.

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

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

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

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

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

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

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1 **CLASS ALLEGATIONS**

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

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

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

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

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

23 **PAGA ALLEGATIONS**

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

26 All current and former non-exempt hourly employees who worked for Defendants in the
27 State of California during the period of May 27, 2021 through the current date and the date of
28 final judgment in this action ("PAGA Period").

1 39. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the
3 Private Attorney’s General Act. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The
4 “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])).

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

11 41. **On May 27, 2022**, Plaintiff gave written notice by online filing with the LWDA and
12 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
14 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice,
15 incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

5 46. This cause of action is brought by the Overtime Subclass pursuant to the IWC Wage
6 Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be
7 timely paid overtime wages all overtime hours worked, and which further provide a private right of
8 action for an employer's failure to pay all overtime compensation for overtime hours worked.

9 47. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
10 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
11 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
12 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
13 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
14 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
15 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

16 48. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
17 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
18 extent permitted by law.

19 **SECOND CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

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

22 50. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
23 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
24 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
25 provide a private right of action for an employer's failure to lawfully provide all meal periods and/or
26 pay meal period premiums at the lawful regular rate of compensation.

27 51. Defendants willfully failed in their affirmative obligation to consistently provide
28 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning

1 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
2 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
3 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal
4 Periods” sections of the applicable orders).

5 52. Further, Defendants willfully failed in their affirmative obligation to consistently pay
6 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
7 each workday that a fully compliant meal period was not provided, in violation of Labor Code
8 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
9 applicable orders).

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

13 **THIRD CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

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

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

21 56. Defendants willfully failed in their affirmative obligation to consistently authorize
22 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
23 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
24 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
25 applicable orders).

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

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

6 **FOURTH CAUSE OF ACTION**

7 **UNTIMELY PAYMENT OF WAGES**

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

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

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

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

12 66. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
13 itemized wage statements, causing confusion and concealing wage and premium underpayments.

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

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

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

22 69. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
23 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
24 termination of employment, and which further provide a private right of action to recover statutory
25 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
26 of 30 days wages.

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

73. Plaintiff brings this cause of action on behalf of all Classes.

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

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

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

1 77. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
2 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
3 interest and to prevent future damage and the public interest under Business and Professions Code §
4 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
5 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

6 **EIGHTH CAUSE OF ACTION**

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

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

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

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

20 **NINTH CAUSE OF ACTION**

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

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

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

83. Further, 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.

84. 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).

TENTH CAUSE OF ACTION

CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)

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

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

87. Further, Defendants willfully failed in its 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 and the IWC Wage Orders.

88. As a result, Defendants violated the Labor Code and IWC Wage Orders and is 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 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

14 **TWELFTH CAUSE OF ACTION**

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

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

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

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

1 95. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved employees
2 of accurate itemized wage statements, causing confusion and concealing wage and premium
3 underpayments.

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

8 **THIRTEENTH CAUSE OF ACTION**

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

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

11 98. Defendants willfully failed in their affirmative obligation to pay all wages earned and
12 unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within
13 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her
14 intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
15 Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are those
16 due to Defendants' failure to pay employees for all hours worked and for meal and rest period
17 premiums.

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

22 **FOURTEENTH CAUSE OF ACTION**

23 **RECORDKEEPING VIOLATIONS (PAGA)**

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

25 101. Labor Code section 1174 provides: "Every person employing labor in this state shall:
26 ...(d) Keep, at a central location in the state or at the plants or establishments at which employees
27 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
28 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at

1 the respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case shall be kept on file for not less than
3 three years.”

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

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

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

16 **PRAYER**

17 Plaintiff prays for judgment as follows:

- 18 a. For certification of this action as a class action;
19 b. For appointment of Plaintiff as the representative of the Class;
20 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
21 d. For recovery of damages in amount according to proof;
22 e. For all recoverable pre- and post-judgment interest;
23 f. For disgorgement of all amounts wrongfully obtained;
24 g. For this action to be maintained as a representative action under the PAGA and for
25 Plaintiff and counsel to be provided with all enforcement capability as if the action
26 were brought by the State of California or the California Division of Labor
27 Enforcement;
28 h. For recovery of all civil penalties and other recoverable amounts under the PAGA;

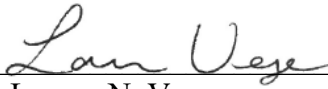
- 1 i. For restitution and injunctive relief;
- 2 j. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 3 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
- 4 1194, 2802, and Code of Civil Procedure section 1021.5; and
- 5 k. For such other relief the Court deems just and proper.
- 6

7 Respectfully submitted,

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9 Dated: August 2, 2022

Ferraro Vega Employment Lawyers, Inc.

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11 Lauren N. Vega

12 *Attorney for Plaintiff*

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Exhibit A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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May 27, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Staff Benefits Management Inc.
2365 Northside Drive, Suite 575
San Diego, CA 92108

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **05/27/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of PHILIP LAPAT (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against STAFF BENEFITS MANAGEMENT INC., dba Staff Benefits Management & Administrators, 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 provider and administrator of health care benefits. Defendant works with employers to offer and administer benefits that comply with the Affordable Care Act. 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 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 worked for Defendant from February 17, 2020 to October 2021. Claimant worked in the position of Technical Services Specialist. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

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

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

Claimant seeks all recoverable civil penalties for 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.

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.

Defendant failed to pay Claimant and the aggrieved employees an overtime rate for all overtime hours suffered or permitted to work and instead paid some overtime hours at Claimant’s base hourly rate. An illustrative example of this can be found in Claimant’s timesheets and pay statement for the pay period from September 27, 2021 through

October 10, 2021, which show that Claimant worked 4.86 overtime hours but was only compensated for 0.85 overtime hours. Claimant is informed and believes that this underpayment is part of a common practice of underpaying overtime and doubletime that impacted other aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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.

Because of understaffing, employee workload, and other issues, Claimant and the aggrieved employees were not provided the opportunity to take compliant first and second meal periods. Claimant and the aggrieved employees' time records establish meal period liability on their face. Claimant's time records show that he often experienced missed, short, and late meal periods. When Defendant failed to provide the opportunity to take compliant meal periods, Defendant also failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

As a result, Claimant may recover civil penalties on behalf of himself, 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. Defendant required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

For the same reasons identified in the meal period section, Claimant and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Claimant is informed and believes that Defendant had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

As a result, Claimant may recover civil penalties on behalf of himself, 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 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 provide any Covid Supplemental Paid Sick Leave to the aggrieved employees in the manner required by statute. On information and belief, 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 himself, 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, 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 meal and rest period premium 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 himself, 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, meal and rest period premiums, and sick leave owed to Claimant and the aggrieved employees during their employment, 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.*, S258966 __ Cal. __ (May 23, 2022).

As a result, Claimant may recover civil penalties on behalf of himself, 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 overtime wages, premiums, and paid sick leave—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned overtime, doubletime, and meal and rest period 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 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 wage statement. *See Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022). Defendant also violated Labor Code section 226(a)(9) by inaccurately listing all applicable hourly rates in effect and the hours worked at each rate as Claimant and the aggrieved employees worked overtime and doubletime hours and were not paid at overtime and doubletime rates.

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 himself, 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.

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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).

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

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against 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 his counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his lawsuit was a catalyst in motivating 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. Daimler-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,

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

Nicholas J. Ferraro

Cc Claimant
 Lauren N. Vega, Esq.