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

VLADIMIRO GUTIERREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

REDI-CARPET SALES OF CALIFORNIA,
LLC; CAL-MULTI, LLC; G.B. SALES; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00021779-CU-OE-CTL

Assigned to the Hon. John S. Meyer
Department: C-64

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Failure to Pay for Authorized Rest Periods &
Non-Productive Time
4. Meal Period Violations
5. Rest Period Violations
6. Failure to Reimburse Business Expenses
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Pay PSL & Supp. PSL Wages
11. Unfair Competition
- 12-22. Claims for Civil Penalties under the Private
Attorneys General Act of 2004

1 Plaintiff VLADIMIRO GUTIERREZ (“Plaintiff”), as an individual and on behalf of all
2 others similarly situated, and the State of California, brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants REDI-CARPET SALES OF
4 CALIFORNIA, LLC; CAL-MULTI, LLC, G.B. SALES; and DOES 1 through 50 (collectively,
5 “Defendants”), and 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 seek civil penalties under the Private Attorneys General Act of 2004
11 for Defendants’ violations of the California Labor Code.

12 3. Defendants’ employment policies and practices and payroll administration systems
13 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

14 **JURISDICTION & VENUE**

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

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

20 **PARTIES**

21 **A. Plaintiff Vladimiro Gutierrez**

22 6. Plaintiff VLADIMIRO GUTIERREZ is an individual over 18 years of age who
23 worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until
24 JUNE 2021.

25 **B. Class Members**

26 7. Plaintiff brings this action as an individual and on behalf of the following class under
27 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
28

1 State of California as hourly non-exempt employees at any time from four years preceding the filing
2 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

3 8. Further, Plaintiff proposes the following subclasses:

- 4 a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were
5 not paid all regular or minimum wages for all hours worked each pay period
6 (including for off-the-clock work or non-productive time.)
- 7 b. Unpaid Overtime Subclass: All Class Members who [1] were not paid for all
8 overtime hours worked each pay period or [2] who were paid overtime wages
9 in the same pay period in which they were also paid non-excludable forms of
10 remuneration (including production bonuses, piece-rate pay, supply and
11 mileage payments, or other forms of compensation).
- 12 c. Meal Period Subclass: All Class Members who [1] worked shifts of five hours
13 or more without a duty-free meal period of at least 30 minutes, or worked
14 shifts of 10 hours or more without a second duty-free meal period of at least
15 30 minutes, and [2] who were not paid one hour of pay at the regular rate of
16 compensation for each of those days.
- 17 d. Rest Period Subclass: All Class Members who [1] were not authorized or
18 permitted to take an uninterrupted rest period of at least 10 minutes for every
19 fours hours worked or major fraction thereof and who were not paid one hour
20 at the regular rate of compensation for each of those days or [2] who were
21 paid for a rest period at a rate less than what is required under Labor Code
22 section 226.2.
- 23 e. Reimbursement Subclass: All Class Members who incurred work-related
24 expenses, such as for mileage, work supplies, and for usage of their personal
25 cell phones, and were not fully reimbursed by Defendant for the expenses
26 incurred.

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- 1 f. Untimely Payment of Wages Subclass: All individuals who are members of
2 the following classes: (i) Unpaid Minimum or Regular Wage Subclass,
3 (ii) Unpaid Overtime Subclass, and (iii) Meal Period Subclass, (iv) Rest
4 Period Subclass, and (v) Paid Sick Leave Subclass.
- 5 g. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave
6 wages in the same pay period in which they were also paid non-excludable
7 forms of remuneration (including production bonuses, piece-rate pay, supply
8 and mileage payments, or other forms of remuneration) and were paid sick
9 leave at rate less than what is required by California law.
- 10 h. Wage Statement Subclass: All individuals who are members of the following
11 classes who received a wage statement from Defendants at any time during
12 the one-year period preceding the filing of this action through the present: All
13 individuals who are members of the following classes: (i) Unpaid Minimum
14 or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal
15 Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.
- 16 i. Waiting Time Class: All individuals who are members of the following
17 classes at any time during the three-year period preceding the filing of this
18 action through the present, excluding current employees who have never
19 previously separated from employment with Defendants: (i) Unpaid Minimum
20 or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal
21 Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.

22 **C. Defendants**

23 9. Defendant CAL-MULTI, LLC is a limited liability company registered to do business
24 in the State of California, doing business and employing labor throughout San Diego County.

25 10. Defendant REDI-CARPET SALES OF CALIFORNIA, LLC is a limited liability
26 company registered to do business in the State of California, doing business and employing labor
27 throughout San Diego County.

1 11. Defendant G.B. SALES is a company doing business in the State of California and
2 employing labor throughout San Diego County.

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

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

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

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

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

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GENERAL ALLEGATIONS

17. Plaintiff and Class Members were compensated on a piece rate and/or hourly basis, in addition to other forms of compensation including but not limited to, bonuses, production pay, supply payments, and mileage payments.

18. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or permitted to work, including for non-productive time, off the clock work, and rest periods, resulting in unpaid minimum, regular, and overtime wages. Defendants failed to pay all wages owed to Plaintiff and Class Members in several ways.

19. First, Prior to the start of Plaintiff's and Class Members' first off-site assignment for the day, Defendants required Plaintiff and Class Members to report to the workplace and perform various non-installation related tasks (*i.e.*, non-productive time) for which they were not compensated, in violation of Labor Code section 226.2(a)(1), which requires employers to compensate employees for "rest and recovery periods and other non-productive time spent separate from any piece rate compensation."

20. Plaintiff and Class Members were only permitted to record the start of their shift as beginning at the time they left Defendants' "left the GB warehouse," which did not account for the significant amount of time that Plaintiff and Class Members spent working prior to leaving the warehouse. The non-productive time tasks performed by Plaintiff and the Class Members include but is not limited to: waiting at the worksite for Defendants to provide information and instructions about the projects for the day, providing previous work orders to supervisors and await review of the work orders, selecting and purchasing materials from G.B. Sales for projects for the day, disposing of trash from jobs from the prior day, driving to the first job site, and driving between job sites.

21. Second, Plaintiff and Class Members were deprived of minimum and overtime wages when Defendants deducted up to an hour of wages for a meal period that they were not provided the opportunity to take. Although employees did not take a one-hour meal period, Defendants would nonetheless deduct a full hour from employees' hours worked each day.

22. Third, Plaintiff and Class Members frequently worked more than 8 hours in a day and over 40 hours in a workweek. However, Defendants failed to pay for all minimum and overtime

1 hours worked each workday in violation of California Labor Code sections 1197 and 510 because
2 employees were forced to work off the clock without pay. Despite working over 40 hours each week
3 (e.g., 50-60 hours), Defendant nonetheless paid Plaintiff and Class Members for less hours than they
4 worked and even instructed employees that they were not permitted to record the hours that they
5 actually worked.

6 23. Furthermore, Defendants separately compensated Plaintiff and Class Members for
7 *some* rest periods each day under the pay category “BREAK.” Defendants’ records show that they
8 undercompensated Plaintiff and Class Members for rest period time in two ways.

9 24. First, Defendants failed to pay rest period time at the rate required by Labor Code
10 section 226.2, which required Defendants to pay for rest periods at the *higher of* the minimum wage
11 or an hourly rate derived by dividing employees’ total weekly compensation (including all forms of
12 pay) by their total hours worked. Instead, Defendants paid rest periods at the minimum wage,
13 resulting in underpayments of wages to Plaintiff and Class Members.

14 25. Second, Defendants separately compensated Plaintiff and the Class Members under
15 the “BREAK” category for less rest periods than they were entitled to receive based on the hours
16 worked. This is due to Defendants’ common policy and practice that is memorialized in Defendants’
17 documents. Defendants paid Plaintiff and the Class Members for only one rest period for shifts of
18 over 6 hours, 7 hours, 7.5 hours, etc., resulting in Plaintiff and the Class Members not being paid for
19 all rest periods at the rate required by section 226.2. Defendants also paid Plaintiff and Class
20 Members for less rest periods than they were entitled to receive when their shifts exceeded 10 hours.

21 26. Moreover, in addition to the overtime underpayments described above (*e.g.*, for off
22 the clock work and non-productive time), when Plaintiff and Class Members earned overtime,
23 Defendants failed to pay the overtime “at the rate of no less than one and one-half times the regular
24 rate of pay for an employee” - as required by the plain language of Labor Code section 510(a) and
25 the IWC Wage Orders - because they failed to include Plaintiff’s and the Class Members’ additional
26 compensation in their calculation for the “regular rate of pay.”

27 27. Specifically, in addition to hourly wages, Defendants paid Plaintiff and the Class
28 Members several other categories of compensation that were included as part of employees’ “gross

1 pay” on their wage statements, including but not limited to bonuses, production payments (based on
2 sq. ft installed), mileage payments, and supply payments.

3 28. When Plaintiff and Class Members worked overtime, Defendants paid the overtime at
4 1.5x Plaintiff and Class Members’ base hourly rate rather than at the regular rate of pay, which
5 would have factored in employees’ additional remuneration.

6 29. Additionally, Defendants failed to provide compliant first and second meal periods to
7 Plaintiff and the Class Members.

8 30. Defendants assigned Plaintiff and the Class Members to multiple installation jobs and
9 pressured employees to finish these jobs as quickly as possible and to keep labor costs down.

10 31. As such, Plaintiff and the Class Members often experienced missed, short, and late
11 first and second meal periods in order to keep up with the demands of the job, in violation of Labor
12 Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Plaintiff and the Class
13 Members were rarely able to take compliant first meal periods and never received a second meal
14 period on days when they worked more than 10 hours.

15 32. Nonetheless, Defendants would still deduct a full hour of pay from employees’ hours
16 worked for a one-hour meal period despite the fact that meal periods of any length were rarely taken.

17 33. Plaintiff and the Class Members were all subject to Defendants’ common policy and
18 practice of not providing an opportunity to take a second meal period on days when employees
19 worked over 10 hours. Defendants’ records expressly state that employees are only entitled to single
20 30-minute meal period whenever employees work “more than 5 hours.”

21 34. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption
22 of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services,*
23 *LLC* (2021) 11 Cal. 5th 58, 61.

24 35. Defendants’ records do not show the start and end times when Plaintiff and the Class
25 Members allegedly took meal periods and raise a presumption of meal period non-compliance.

26 36. When Defendants did not provide fully compliant meal periods, Defendants failed to
27 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
28 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.

1 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section
2 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
3 payments, not just hourly wages”).

4 37. Furthermore, due to the heavy workload and pressures from Defendants, Defendants
5 failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction
6 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage
7 Order.

8 38. Furthermore, as described above, Defendants had a common policy and practice of
9 informing employees that they were only entitled to a single rest period for every “3 ½ hours of
10 work,” resulting in Plaintiff and Class Members not being authorized and permitted to take every
11 rest period to which they were entitled. As described above, because Defendants separately
12 compensated employees for rest periods, Defendants’ unlawful policy resulted in Plaintiff and Class
13 Members being deprived of rest periods that were paid at the rate required by Labor Code section
14 226.2.

15 39. Moreover, Defendants had a policy and practice of not paying rest period premiums
16 to employees who were unable to take rest periods.

17 40. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
18 Code section 226.7 because such premiums were not paid at the regular rate of compensation to
19 Plaintiff and Class Members, which would have factored in employees’ additional compensation that
20 they received each pay period.

21 41. Defendants also required Plaintiff and Class Members to incur costs for work-related
22 purposes without full reimbursement, including but not limited to mileage, the purchase of supplies
23 necessary for the performance of their jobs, and the use of their personal cell phones for work
24 purposes. Defendants required Plaintiff and Class Members to purchase materials such as wax, sable,
25 pet treatment enzyme, and tub molding that were to be used during the installation process. Plaintiff
26 and Class Members were required to purchase these materials from Defendants (*e.g.*, from G.B.
27 Sales, which is a Redi-Carpet company).

1 42. Plaintiff and Class Members were not fully reimbursed for their mileage or the
2 purchase of the materials.

3 43. Furthermore, Plaintiff and Class Members were required by Defendants to use their
4 personal cell phones for work-related purposes without reimbursement. For example, Defendants
5 required employees to make phone calls and send text messages regarding the status of the jobs for
6 the day.

7 44. In direct consequence of their job duties, Plaintiff and Class Members unavoidably
8 and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and
9 compliantly reimburse as a matter of policy and practice.

10 45. To the extent Defendants reimbursed Plaintiff and Class Members, those amounts
11 were underpaid. At all relevant times, Defendants were required to comply with the reimbursement
12 mandate of Labor Code sections 2800 and 2802.

13 46. With respect to the unpaid minimum and regular wages, overtime wages, sick leave,
14 and meal and rest period premiums owed to Plaintiff and Class Members, Defendants failed to pay
15 those wages on time each pay period or upon separation of employment. *See Naranjo v. Spectrum*
16 *Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

17 47. Because Defendants did not pay Plaintiff and the Class for all wages/premiums and
18 sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
19 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
20 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

21 48. Defendants equally failed in their affirmative obligation to provide accurate itemized
22 wage statements each pay period to Plaintiff and Class Members.

23 49. Defendants issued wage statements to Plaintiff and, on information and belief, other
24 Class Members, which contain at least four distinct types of violations.

25 50. First, on each wage statement furnished, Defendants failed to accurately state the
26 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
27 Plaintiff and Class Members were not paid for off the clock work and non-productive time, earned
28 overtime at one and one-half times their regular rate of pay, but were underpaid overtime on an

1 hourly basis (due to the regular rate of pay underpayment), and were deprived of all sick leave and
2 meal and rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of
3 gross and net wages earned on those wage statements.

4 51. Second, Defendants violated Labor Code section 226(a)(2) by failing to list
5 employees' "total hours worked," as aggrieved employees worked off-the-clock, including during
6 uncompensated meal and rest periods, rendering the total hours listed as an inaccurate reflection of
7 hours worked.

8 52. Third, the name and address of the legal entity that is the employer is incorrectly
9 listed on Claimant and aggrieved employees' wage statement as Cal-Multi in violation of Labor
10 Code section 226(a)(8).

11 53. Fourth, in violation of Labor Code section 226(a)(9), the hourly rates and
12 corresponding hours worked at those rates are incorrectly listed on Plaintiff's and Class Members'
13 wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime
14 hours that were not paid at the "regular rate of pay" with respect to overtime, meal and rest period
15 premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and
16 reflected as such on the wage statements of the aggrieved employees. The hourly rates are also
17 inaccurate with respect to Defendants' failure to pay rest and recovery pay at the correct rate.

18 54. Defendants' wage statement issues described above rendered the wage statements
19 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
20 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
21 Members as the sole documentary evidence of their respective earnings.

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

26 56. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
27 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
28 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe

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

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

7 58. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
8 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
9 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
10 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
11 under California law.

12 59. On information and belief, Defendants failed to provide sick leave and Covid-19
13 supplemental sick leave in the amounts required by statute.

14 60. In pay periods where Defendants provided Plaintiff and other Class Members with
15 remuneration in addition to their respective base hourly rate for hours worked—excluding any forms
16 of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants failed to
17 properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor
18 Code § 246. Defendants paid sick leave at employees' straight time hourly rate instead of one of the
19 methods authorized by statute, which required Defendants to factor in employees' additional
20 remuneration, such as bonuses, production payments, mileage payments, supply payments, etc.

21 61. Furthermore, Defendants also failed to pay Covid-19 Supplemental Sick Leave at a
22 rate authorized by statute because when paying such leave, Defendants failed to factor in employees'
23 bonuses, production payments, mileage payments, supply payments, and other compensation. On
24 information and belief, Defendants instead paid Supplemental Sick Leave at employees' straight
25 time hourly rate rather than by one of the methods authorized by Labor Code sections 248.1, 248.2,
26 and 248.6.

27 62. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
28 and Class Members.

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

CLASS ALLEGATIONS

64. ***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.

65. ***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.

66. ***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.

67. ***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.

68. ***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

69. 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 12, 2021** through the current date and the date of final judgment in this action (“PAGA Period”).

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

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

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

73. On **May 12, 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”). Plaintiff paid the requisite filing fee to the LWDA. A copy of the PAGA Notice is attached hereto as **Exhibit 1** and incorporated by reference.

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY ALL MINIMUM WAGES**

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

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

15 78. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass.

16 79. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
17 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
18 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
19 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
20 local and county minimum wage ordinances in effect.

21 80. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
22 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
23 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
24 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees,
25 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

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

12 84. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
13 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
14 extent permitted by law.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY FOR AUTHORIZED REST PERIODS/NON-PRODUCTIVE TIME**

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

18 86. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass
19 and the Rest Period Subclass.

20 87. Because Plaintiff and the Class Members were not separately compensated for rest
21 periods (a rate required by statute) and non-productive time, Plaintiff and the Class Members are
22 owed wages for this time.¹

23 88. The IWC Wage Orders state that Plaintiff and the Class Members must be paid for all
24 “hours worked” for time they are “subject to the control of the employer, and includes all the time
25 the employee is suffered or permitted to work.” Cal. Code Regs., tit. 8, § 11040, subd. 2(k).

26
27
28 ¹ See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98; *Bluford v. Safeway
Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

1 89. The IWC Wage Orders state that rest periods are “hours worked for which there will
2 be no deduction from wages.” Cal. Code Regs., tit. 8, § 11040, subd. 12(a).

3 90. Labor Code section 226.2 applies to employees who are compensated in whole, or in
4 part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for
5 “rest and recovery periods and other non-productive time spent separate from any piece rate
6 compensation.”

7 91. Non-productive time must be compensated at a rate no less than the applicable state
8 or local minimum wage. Cal. Lab. Code § 226.2(a)(4).

9 92. Rest and recovery periods must be compensated the *higher* of (1) an average hourly
10 rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime
11 and rest and recovery compensation) by the employee’s total hours worked or (2) the applicable
12 minimum wage. Cal. Lab. Code § 226.2(a)(3)(A).

13 93. Section 226.2 expressly requires that any employees paid in whole or in part on a
14 piece rate basis must receive at least minimum wage for all hours worked as well as any required
15 overtime compensation.

16 94. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
17 Members at least the lawful minimum wage for each hour worked (including all non-productive
18 time) in violation of Labor Code sections 226.2, 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC
19 Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable
20 orders), including payment at the lawful local and county minimum wage ordinances in effect.

21 95. Defendants also failed in their affirmative obligation to pay Plaintiff and the Class for
22 rest periods at the rate required by section 226.2(a)(3)(A), resulting in unpaid wages to Plaintiff and
23 the Class.

24 96. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
25 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
26 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
27 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees,
28 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

1 **FOURTH CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

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

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

9 99. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
11 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
12 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
13 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal
14 Periods" sections of the applicable orders).

15 100. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
17 each workday that a fully compliant meal period was not provided, in violation of Labor Code
18 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
19 applicable orders).

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

23 **FIFTH CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

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

26 103. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
27 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized
28 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.

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

105. Further, 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.

106. 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.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

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

108. Plaintiff brings this cause of action on behalf of the Reimbursement Subclass.

109. Defendants willfully failed in its affirmative obligation to reimburse Plaintiff and Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

110. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class Members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

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

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

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **WAGE STATEMENT VIOLATIONS**

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

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

27 117. Defendants knowingly and intentionally failed in their affirmative obligation provide
28 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and

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

3 118. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
4 itemized wage statements, causing confusion and concealing wage and premium underpayments.

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

10 **NINTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

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

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

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

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

26 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

17 128. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
18 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
19 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
20 Class.

21 129. Furthermore, Defendants knowingly and intentionally failed in their affirmative
22 obligation to pay Covid-19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the
23 correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

24 130. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
25 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
26 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
27 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
28 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires

1 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
2 January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

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

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

14 (III) The state minimum wage.

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

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

18 134. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
19 Leave in the manner described above because Defendants failed to include in their sick leave
20 calculation the additional remuneration received by the Paid Sick Leave Class.

21 135. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
22 Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and
23 costs.

24 **ELEVENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

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

27 137. Plaintiff brings this cause of action on behalf of all Classes.
28

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

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

10 140. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld,
13 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
14 17208.

15 141. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
16 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
17 interest and to prevent future damage and the public interest under Business and Professions Code
18 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
19 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

20 **TWELFTH CAUSE OF ACTION**

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

22 **MINIMUM AND REGULAR WAGES (PAGA)**

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

24 143. Labor Code section 2699(f) provides: "For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
26 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
27 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
28

1 pay period for the initial violation and two hundred (\$200) for each aggrieved employee per pay
2 period for each subsequent violation.”

3 144. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
4 of an employer who violates, or causes to be violated, a section of this chapter or any provision
5 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
6 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
7 each underpaid employee for each pay period for which the employee was underpaid in addition to
8 an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
9 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
10 was underpaid in addition to an amount sufficient to recover underpaid wages.”

11 145. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
12 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to

13 146. any employee a wage less than the minimum fixed by an applicable state or local law,
14 or by an order of the commission, shall be subject to a civil penalty ... and any applicable penalties
15 imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally
16 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
17 the employee is underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For
18 each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
19 underpaid employee for each pay period for which the employee is underpaid regardless of whether
20 the initial violation is intentionally committed.”

21 147. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
22 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
23 Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
24 Days of Work,” “Rest Periods,” and “Minimum Wages” sections of the applicable orders).

25 148. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable

26 149. to Plaintiff, the aggrieved employees and the State of California for civil penalties as
27 required by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest,
28

1 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section
2 2699(g).

3 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

17 **FOURTEENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES FOR FAILURE TO PAY FOR AUTHORIZED REST PERIODS**
19 **AND NON-PRODUCTIVE TIME (PAGA)**

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

21 154. Defendants willfully failed in their affirmative obligation to separately compensate
22 Plaintiff and aggrieved employees for rest periods and non-productive time in violation of Labor
23 Code section 226.2, which requires employers to compensate employees for "rest and recovery
24 periods and other non-productive time spent separate from any piece rate compensation" and the
25 "Rest Periods" sections of the applicable IWC Wage Orders, which state that: (1) employees must be
26 paid for all "hours worked," and (2) that rest periods are "hours worked for which there will be no
27 deduction from wages."
28

155. Defendants willfully failed in their affirmative obligation to pay non-productive time at a rate no less than the applicable state or local minimum wage, as required by Labor Code § 226.2(a)(4).

157. As a result, Defendants violated the California 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).

CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)

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

161. 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

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 **SIXTEENTH CAUSE OF ACTION**

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

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

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

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

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

19 **SEVENTEENTH CAUSE OF ACTION**

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

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

22 167. Defendants knowingly and intentionally failed in their affirmative obligation provide
23 and pay paid sick leave wages to Plaintiff and the aggrieved employees in violation of Labor Code
24 section 246.

25 168. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
26 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
27 entitles employees to use any accrued sick leave beginning on their 90th day of employment.
28

1 169. Labor Code section 246(1) governs how Defendants were required to calculate paid
2 sick leave:

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

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

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

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

15 170. Defendants also failed to provide sick leave to employees at the accrual rate required
16 by statute (*i.e.*, 1 hour for every 30 hours worked).

17 171. Defendants also failed to pay Plaintiff and aggrieved employees paid sick leave
18 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
19 calculation the additional remuneration received by Plaintiff and the aggrieved employees, including
20 but not limited to, bonuses and commissions. Defendants instead paid to Plaintiff and the aggrieved
21 employees at their base hourly rate, resulting in wage underpayments to Plaintiff and the aggrieved
22 employees.

23 172. Moreover, on information and belief, Defendants knowingly and intentionally failed
24 in their affirmative obligation to provide notice of and provide Covid-19 Supplemental Sick Leave to
25 Plaintiff and the aggrieved employees, in violation of Labor Code sections 246, 247, 247.5, 248.2,
26 and 248.6.

27 173. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80
28 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least

1 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
2 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
3 January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

12 176. To the extent Covid-19 Supplemental Sick Leave was provided, Plaintiff is informed
13 and believes that Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate
14 because Defendants failed to factor in employees' commissions and other forms of remuneration.
15 Plaintiff is informed and believes that Defendants instead paid such sick leave at employees' base
16 hourly rates rather than one of the methods authorized by statute.

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

22 **EIGHTEENTH CAUSE OF ACTION**

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

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

25 179. Defendants willfully failed in their affirmative obligation to timely pay all wages and
26 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
27 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
28 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in

violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

180. 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).

NINETEENTH CAUSE OF ACTION

CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)

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

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

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

184. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

185. 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 226.3 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).

1 **TWENTIETH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES UPON SEPARATION (PAGA)**

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

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

10 188. As a result, Defendants violated the Labor Code and IWC Wage Orders and are 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 **TWENTY-FIRST CAUSE OF ACTION**

15 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)**

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

17 190. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
18 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in
19 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

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

24 **TWENTY-SECOND CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

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

27 193. Labor Code section 1174 provides: "Every person employing labor in this state shall:
28 ...(d) Keep, at a central location in the state or at the plants or establishments at which employees

1 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
2 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
3 the respective plants or establishments. These records shall be kept in accordance with rules
4 established for this purpose by the commission, but in any case shall be kept on file for not less than
5 three years.”

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

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

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

18 **PRAYER**

19 Plaintiff prays for judgment as follows:

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

were brought by the State of California or the California Division of Labor Enforcement;

- i. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- j. For restitution and injunctive relief;
- k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5; and
- l. For such other relief the Court deems just and proper.

Respectfully submitted,

Dated: July 19, 2022

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro
Nicholas J. Ferraro
Attorneys for Plaintiff

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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Facsimile: 619-350-6855
www.ferrarovega.com

May 12, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

CAL-MULTI, LLC
7720 Kenamar Court, Suite A
San Diego, CA 92121

G.B. Sales
7720 Kenamar Court, Suite A
San Diego, CA 92121

Redi-Carpet Sales of California, LLC
7720 Kenamar Court, Suite A
San Diego, CA 92121

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **05/12/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of VLADIMIRO GUTIERREZ (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against CAL-MULTI, LLC, REDI-CARPET SALES OF CALIFORNIA, LLC, G.B. SALES, along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

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

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

FACTUAL STATEMENT

Defendants Cal-Multi and Redi-Carpet provide installation of flooring. Redi-Carpet also does business as G.B. Sales. Together defendants are the largest multi-family flooring provider in the country and employ aggrieved employees like Claimant in the State of California (including San Diego County) in non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Defendants operate nationwide, including throughout California.

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

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

Claimant VLADIMIRO GUTIERREZ worked for Defendants until June 2021. Claimant worked in the position of Installer. Throughout his employment, Claimant worked as a non-exempt employee who was paid both hourly and on a piece-rate basis, along with other forms of compensation.

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

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

/ / /

Overtime and Minimum Wage Violations
Violation of Labor Code §§ 200, 201-204, 210, 226.2, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

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

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

Labor Code section 226.2 applies to employees who are compensated in whole, or in part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.” Non-productive time must be compensated at a rate no less than the applicable state or local minimum wage. Cal. Lab. Code § 226.2(a)(4). Rest and recovery periods must be compensated the *higher of* (1) an average hourly rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee’s total hours worked or the applicable minimum wage. Cal. Lab. Code § 226.2(a)(3)(A). Section 226.2 expressly requires that any employees paid in whole or in part on a piece rate basis must receive at least minimum wage for all hours worked as well as any required overtime compensation.

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.

First, Defendants failed to compensate Claimant and the aggrieved employees for all hours suffered or permitted to work, resulting in unpaid minimum and overtime wages and non-productive time. Prior to the start of their first job, Defendants required Claimant and the aggrieved employees to report to the workplace and perform various non-installation related tasks (*i.e.*, non-productive time) for which they were not compensated, in violation of Labor Code section 226.2. Defendants’ records show that employees were only permitted to record the start of their shift as beginning at the time they “left the GB warehouse,” which did not account for the significant non-productive time that Claimant and the aggrieved employees spent prior to leaving the warehouse.

Furthermore, Defendants failed to pay for all minimum and overtime hours worked each workday. Claimant and the aggrieved employees frequently worked more than 8 hours in a day and over 40 hours in a workweek. However, Defendants failed to pay all overtime and doubletime owed to Claimant and the aggrieved employees and even instructed employees that they were not permitted to record the hours that they actually worked.

Second, Claimant and the aggrieved employees were deprived of minimum and overtime wages when Defendants deducted up to an hour of wages for a meal period that they were not provided the opportunity to take. Although employees did not take a one-hour meal period, Defendants would nonetheless deduct a full hour from employees’ hours worked each day.

// /

Third, Defendants separately compensated Claimant and the aggrieved employees for some rest periods each day under the pay category “BREAK.” Below is an example of this practice from Claimant’s records:

Pay Summary: 2021 - 23 - 1

Cal Multi Lic	Period Beginning Date 5/31/2021	Pay Date 6/1/2021	Co. 72Q	Clock	Home Dept CALMUL
VLADIMIRO Gutierrez	Period Ending Date 6/6/2021	WGPS Advance Pay Date	File # 990040	Number 00230012	

Gross Pay			\$ 1,232.99
Regular	Rate: 14.0000	Hours: 15.33	\$ 214.62
BREAK (field 3)	Rate: 14.0000	Hours: 0.67	\$ 9.38
MILE REIMB (field 3)			\$ 21.52
PRODUCTION (field 3)			\$ 953.92
SUPPLY REIMB (field 3)			\$ 33.55
Total Hours Worked: 16			

Claimant’s Pay Statement For the Pay Period From 5/31/2021 to 06/06/2021

Defendants’ records show that they undercompensated Claimant and the aggrieved employees for rest period time in two ways. Defendants failed to pay rest period time at the rate required by Labor Code section 226.2, which requires inclusion of Claimant and the aggrieved employees’ piece-rate pay into the hourly rate. Instead, Defendants paid rest periods at the minimum wage, resulting in underpayments of wages to Plaintiff and the aggrieved employees. Additionally, Defendants compensated Plaintiff and the aggrieved employees under the “BREAK” category for less rest periods than they were entitled to receive based on the hours worked. This is due to Defendants’ common policy and practice that is memorialized in Defendants’ documents. Defendants’ records inform employees that they are entitled to a single rest period for every “3 ½ hours of work,” resulting in Claimant and the aggrieved employees not being paid for all rest periods at the rate required by section 226.2. For example, Defendants paid Claimant and the aggrieved employees for only one rest period for shifts of over 6 hours, 7 hours, 7.5 hours, etc.

Fourth, in addition to hourly wages, Defendants paid Claimant and the aggrieved employees several other categories of compensation that were included as part of employees’ “gross pay” on their wage statements. This additional compensation includes but is not limited to production payments (based on sq. ft installed), mileage payments, and supply payments. When Claimant and the aggrieved employees worked overtime, Defendants failed to pay the overtime “at the rate of no less than *one and one-half times the regular rate of pay* for an employee” - as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders - because they failed to include Claimant and the aggrieved employees’ additional compensation in their calculation for the “regular rate of pay.” Instead, on the rare occasions that Defendants paid overtime, it was paid at a rate that was 1.5x Claimant and the aggrieved employees’ base hourly rate.

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.

Meal Period Violations

Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

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

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

Defendants failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. Claimant and the aggrieved employees were all subject to Defendants' common policy and practice of never providing an opportunity to take a second meal period on days when employees worked over 10 hours. In fact, Defendants records expressly state that employees are only entitled to single 30-minute meal period whenever employees work "more than 5 hours." Claimant and the aggrieved employees were rarely able to take compliant first meal periods and never received a second meal period on days when they worked more than 10 hours. Defendants assigned Claimant and the aggrieved employees to multiple installation jobs each day and pressured employees to finish these jobs as quickly as possible and to keep labor costs down. As such, Claimant and the aggrieved employees often experienced missed, short, and late first and second meal periods in order to keep up with the demands of the job. Nonetheless, Defendants would still deduct a full hour of pay from employees' hours worked for a one-hour meal period despite the fact that meal periods of any length were rarely taken. Defendants' records do not show the start and end times when Claimant and the aggrieved employees allegedly took meal periods and raise a presumption of meal period non-compliance.

Additionally, when Defendants did not provide Claimant and the aggrieved employees compliant meal periods, Defendants failed to pay them a meal period premium in violation of Labor Code section 226.7. To the extent Defendants ever paid any meal period premiums, the premiums were not paid at the “regular rate of compensation” because the premium did not factor in all forms of remuneration.

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 Periods and Rest Period Premiums
Violation of Labor Code §§ 226.2, 226.7, 516, 1198; IWC Wage Orders

Defendants failed to provide all rest periods to which employees were entitled and 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. Defendants also failed to pay Plaintiff and the aggrieved employees for all of their rest periods at the correct rate, as required by Labor Code section 226.2.

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

Due to the heavy workload and pressures from Defendants, Claimant and the aggrieved employees were not always authorized or permitted to take all their rest periods. Moreover, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Furthermore, as described above, Defendants had a common policy and practice of informing employees that they were only entitled to a single rest period for every “3 ½ hours of work,” resulting in Plaintiff and the aggrieved employees not being authorized and permitted to take every rest period to which they were entitled. Defendants also failed to pay Claimant and the aggrieved employees for all rest periods to which they were entitled at the correct rate, in violation of Labor Code section 226.2.

Moreover, to the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in employees’ additional compensation that they received each pay period.

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.

Failure to Reimburse Necessary Expenses
Violation of Labor Code §§ 2800, 2802

Defendants failed in their affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required Claimant and the aggrieved employees to incur costs for work-related purposes without full reimbursement, including but not limited to mileage, the purchase of supplies necessary for the performance of their jobs, and the use of their cell phones for work purposes. Defendants required Claimant and other employees to purchase materials such as wax, sable, pet treatment enzyme, and tub molding that were to be used during the installation process. Claimant and the aggrieved employees were required to purchase these materials from Defendants (*e.g.*, from G.B. Sales, which is a Redi-Carpet company). Claimant and the aggrieved employees were not fully reimbursed for their mileage or the purchase of the materials.

Furthermore, Claimant and the aggrieved employees were required by Defendants to use their personal cell phones for work-related purposes without reimbursement. For example, Defendants required employees to make phone calls and send text messages regarding the status of the jobs for the day.

In direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and compliantly reimburse as a matter of policy and practice. To the extent Defendants reimbursed aggrieved employees, those amounts were underpaid. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect

the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver.” *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.” In other words, if—as here—employees incur “necessary expenses” or “losses” for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses. Labor Code § 2804 prohibits waiver of these rights.

Such a pattern, practice and uniform administration of corporate practices as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney’s fees and costs of suit.

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

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

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

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

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

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

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

Because Defendants failed to pay all non-productive time, rest and recovery pay, sick leave pay, and premiums and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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

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

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

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

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

Furthermore, Defendants violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock, including during uncompensated meal and rest periods, rendering the total hours listed as an inaccurate reflection of hours worked.

Additionally, in violation of Labor Code section 226(a)(8), the name and address of the legal entity that is the employer is incorrectly listed on Claimant and aggrieved employees’ wage statement as Cal-Multi.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay” with respect to overtime, meal period premium, and paid sick leave hours, if any, as those hours were paid at the improper base rate and reflected as such on the wage statements of the aggrieved employees. The hourly rates are also inaccurate with respect to Defendants’ failure to pay rest and recovery pay 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

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

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.

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

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

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

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

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

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

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

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

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

However, as to sick leave paid, Defendants failed to pay (on an ongoing basis) sick leave under one of the methods required by statute. Defendants instead paid sick leave at the straight time hourly rate and failed to include Claimant and aggrieved employees' additional remuneration, such as production/piece rate pay and other payments, in the paid sick leave calculation, which would have resulted in a paid sick leave rate higher than the base rate at which Claimant was paid.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned additional payments, piece-rate pay, supply/mileage pay, or other forms of non-excludable remuneration and also received paid sick leave.

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.

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

Defendants violated Labor Code section 248.2 and 248.6 because they failed to 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. OR

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

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

On information and belief, Defendants violated California law by failing to provide and pay Covid Supplemental Paid Sick Leave at a rate authorized by statute. On information and belief, Claimant alleges that Defendants failed to pay Covid-19 Supplemental Paid Sick Leave at the correct rate for the same reasons identified in the Paid Sick Leave section of this Notice. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.2 and 248.6 was applied as a matter of common policy and practice to Claimant and the aggrieved employees. Defendants further failed to maintain the proper records required by the paid sick leave statutes.

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

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

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

Failure to Provide Records in Response to Statutory Records Requests/Inspection
Violation of Labor Code §§ 226, 432, 1198.5, and IWC Wage Orders

Claimant issued a records request to Defendants requesting all records due under the IWC Wage Orders (including the Records sections), and Labor Code sections 226, 432, and 1198.5. 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. The IWC Wage Orders, which may be enforced via Labor Code section 1198, also require production of the records requested by Claimants.

On **March 14, 2022**, Claimant, through his attorneys, requested from Defendants production of his personnel and payroll records. To comply with the statutory deadlines, Defendants

were required to produce Claimant's payroll records by April 5, 2022, and his personnel records by April 15, 2022.

As of the date of this Notice, Defendants have failed to produce *all* wage statements and time records for Claimant that it was required to maintain and produce. Defendants have also failed to produce a copy of the Employee Handbook. Claimant signed the acknowledgment page of the Employee Handbook, but Defendants only provided the acknowledgment page. This violates Labor Code section 432, which requires all documents signed by an employee to be provided upon request, and Labor Code section 226, which requires companies to provide a copy of all records pertaining to the respective employee's employment, as well as the inspection requirements of the IWC Wage Orders, which may be enforced via Labor Code section 1198.

As a result, Claimant is an aggrieved employee who seeks civil penalties on behalf of himself and others for these and other Labor Code violations. Claimant may recover civil penalties on behalf of himself, 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 his interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimants' 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) their lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

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

CONCLUSION

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

Thank you for your attention to this matter.

Sincerely,

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

Nicholas J. Ferraro

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