

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 facsimile
lauren@ferrarovega.com / nick@ferrarovega.com

Attorneys for Plaintiff Gabriel Lafarga

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/09/2023 at 03:13:00 PM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

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

GABRIEL LAFARGA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

G.I. TRUCKING COMPANY D/B/A ESTES
WEST; a corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00028993-CU-OE-CTL

[Consolidated with
Case No. 37-2022-00035709-CU-OE-CTL]

*Assigned to the Hon. Gregory W. Pollack
Dept. 71*

CLASS ACTION

**CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Minimum Wage Violations
3. Meal Period Violations
4. Rest Period Violations
5. Underpaid Paid Sick Leave Wages &
Supplemental Paid Sick Leave Wages
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
10. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: July 22, 2022

1 Plaintiff GABRIEL LAFARGA (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, brings this CLASS ACTION COMPLAINT against Defendants G.I. TRUCKING
3 COMPANY D/B/A ESTES WEST, a corporation; and DOES 1 through 50 (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **INTRODUCTION**

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

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

10 **JURISDICTION & VENUE**

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

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

16 **PARTIES**

17 **A. Plaintiff Gabriel LaFarga**

18 5. Plaintiff GABRIEL LAFARGA is an individual over 18 years of age who worked for
19 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until APRIL 2022.

20 **B. Class Members**

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

25 7. Further, Plaintiff proposes the following subclasses:

- 26 a. Underpaid Overtime Subclass: All Class Members who were paid overtime
27 wages in the same pay period in which they were also paid non-excludable
28

forms of remuneration (including, but not limited, to bonuses and remuneration marked as “Bonus Claims” on employee wage statements).

- b. Meal Period Subclass: All Class Members [1] who worked shifts of five hours or more without a duty-free meal period of at least 30 minutes or worked shifts of 10 or more hours without a second duty-free meal period of at least 30 minutes, who were not paid one hour of pay at the regular rate of compensation for each of those days, or [2] who were paid for a rest period at a rate less than what is required under Labor Code section 226.2.
- c. Rest Period Subclass: All Class Members [1] who worked shifts of four hours or major fraction thereof without being authorized or permitted an uninterrupted rest period of at least 10 minutes and who were not paid one hour at the regular rate of compensation for each of those days, or [2] who were paid for a rest period at a rate less than what is required under Labor Code section 226.2.
- d. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave wages in the same pay period in which they were also paid additional forms of non-excludable remuneration (including, but not limited, to bonuses and remuneration marked as “Bonus Claims” on employee wage statements).
- e. Untimely Payment of Wages Subclass: All individuals who are members of the following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass.
- f. Wage Statement Subclass: All individuals who: [1] are/were members of the following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass, and [2] who received a wage statement from Defendants at any time during the one-year period preceding the filing of this action through the present.
- g. Waiting Time Penalty Subclass: All individuals who are/were members of the following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period

Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass, at any time during the three-year period preceding the filing of this action through the present, excluding current employees who have never previously separated from employment with Defendants.

C. Defendants

8. Plaintiff is informed, believes, and alleges that Defendants G.I. TRUCKING COMPANY D/B/A ESTES WEST does business in the State of California and employs labor throughout the State of California.

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

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

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

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

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

GENERAL ALLEGATIONS

14. Plaintiff worked for Defendants in the positions of Cargo Handler Platform, Driver Trainee, and Driver from October 2014 to April 2022. Throughout his employment, Plaintiff was a non-exempt employee who was paid hourly wages, as well as bonuses labeled "Bonus Claim" and other forms of remuneration.

15. When Defendants paid overtime to Plaintiff and other Class Members, Defendants failed to pay the overtime at the lawful regular rate of pay. Plaintiff and other Class Members regularly worked overtime hours and earned bonuses and other forms of remuneration during the same pay period. In those pay periods, Defendants paid employees at their straight time hourly rate for the overtime hours, failing to pay overtime hours “at the rate of no less than one and one-half times the regular rate of pay for an employee[,]” or “at the rate of no less than twice the regular rate of pay for an employee” for any applicable double time hours, as required by Labor Code section 510 and the IWC Wage Orders. Accordingly, Defendants are liable for the underpaid overtime wages, civil and statutory penalties, interest, and waiting time penalties for each affected Class Member.

16. An illustrative example of the regular rate of pay violation is found on Plaintiff's pay statement for the pay period from 02/27/2022 through 03/11/2022. During this pay period, Plaintiff earned a production/efficiency bonus, but such amount was not factored into his overtime rate, as he was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay. Defendants committed this same "regular rate of pay" violation against the Class Members as well, when employees earned forms of pay like bonuses and commissions required to be included in the regular rate but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

1 17. On information and belief, Defendants failed to consistently provide timely, off-duty
2 30-minute meal periods to Class Members within the first five hours of work, and timely second
3 off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation
4 of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (See, e.g.,
5 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are
6 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
7 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”])
8 “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period
9 violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11
10 Cal. 5th 58. Defendants failed to provide compliant, non-interrupted meal periods, resulting in
11 premiums and minimum wage owed.

12 18. When Defendants did not provide fully compliant meal periods, Defendants failed to
13 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
14 violation of Labor Code section 226.7. *Ferra*, 11 Cal. 5th at 863. Defendants’ practice of not paying
15 all meal period premiums at the lawful rate (i.e, including all forms of remuneration in the “regular
16 rate of compensation”) is a matter of common corporate policy and payroll administration such that
17 it applies and affected all other Class Members.

18 19. Moreover, due to Defendants’ business practices and employees’ job responsibilities,
19 Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or
20 major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the
21 applicable IWC Wage Order. When Defendants did not provide a fully compliant rest period to
22 Plaintiff or other Class Members, Defendants failed to pay Plaintiff and other Class Members a rest
23 period premium at the lawful “regular rate of compensation” in violation of Labor Code section
24 226.7.

25 20. In pay periods where Defendants provided Plaintiff and other Class Members with
26 remuneration in addition to their respective base hourly rate for hours worked (e.g., bonus claim
27 payments—excluding any forms of pay subject to any applicable statutory exclusions from the
28 “regular rate”—Defendants failed to properly calculate and pay paid sick leave at rate of pay

1 required by Labor Code § 246. Defendants paid such sick leave at employees' base hourly rate
2 instead of one of the methods authorized by statute, which required Defendants to factor in
3 employees' additional remuneration into the sick leave wage rate.

4 21. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
5 and Class Members.

6 22. Because Defendants did not pay Plaintiff and the Class Members all wages,
7 premiums, and paid sick leave owed each pay period of their employment, Defendants failed to
8 timely pay Plaintiff and Class Members all wages owed each pay day or upon separation of
9 employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203
10 (waiting time) and 204 and 204b (paydays).

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

15 24. First, on each wage statement furnished, Defendants failed to accurately state the
16 "gross wages earned" and "net wages earned" in violation of Labor Code sections 226(a)(1), (5) by
17 not listing the correct "gross wages earned" or "net wages earned," as the employees earned
18 overtime, premiums, and sick pay at one and one-half times their regular rate of pay/compensation,
19 but were underpaid an hourly basis (due to the regular rate of pay underpayment), resulting in an
20 inaccurate reflection and recording of "gross/net wages earned" on those wage statements.

21 25. Second, on each wage statement furnished, Defendants failed to accurately state "all
22 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
23 each hourly rate by the employee" in violation of Labor Code § 226(a)(9), as the wage statements
24 issued to Plaintiff and Class Members do not accurately list the lawful applicable hourly overtime
25 rates, meal and rest period premiums, or paid sick leave rates in effect, but instead deflated rates that
26 do not include all forms of non-excepted remuneration in the regular rate required to calculate and
27 pay overtime, meal and rest period premiums, and paid sick leave rates. The hourly rates are
28

incorrect due to the regular rate violations. Additionally, failure to list the meal and rest period premiums owed but not paid further violates Labor Code § 226 (a)(9).

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

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

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

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

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

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

CLASS ALLEGATIONS

32. ***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 100 Class Members.

33. ***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.

34. ***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.

35. ***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.

36. ***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.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)

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

38. Plaintiff brings this cause of action on behalf of the Underpaid Overtime Subclass.

39. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh

1 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
2 Orders (the “Hours and Days of Work” sections of the applicable orders).

3 40. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of overtime
4 wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full
5 amount of the unpaid overtime wages, in addition to interest, attorneys’ fees, and costs to the extent
6 permitted by law, including under Labor Code section 1194.

7 **SECOND CAUSE OF ACTION**

8 **MINIMUM WAGE VIOLATIONS**

9 41. All outside paragraphs of this Complaint are incorporated into this section.

10 42. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
12 Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-
13 exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour
14 of work, and further provide a private right of action for an employer’s failure to pay all minimum
15 wages (plus liquidated damages).

16 43. 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, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
19 Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at
20 the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable
21 for all associated damages, including liquidated damages for the minimum wage violations
22 pursuant to Labor Code § 1194.2.

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

1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

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

4 46. Plaintiff brings this cause of action on behalf of the Meal Period Subclass.

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

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

16 49. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of meal
17 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
18 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees,
19 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

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

23 51. Plaintiff brings this cause of action on behalf of the Rest Period Subclass.

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

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

54. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of rest periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

UNDERPAID PAID SICK LEAVE WAGES & SUPPLEMENTAL PAID SICK LEAVE WAGES

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

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

57. Defendants knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave and Covid-19 Supplemental Sick Leave at the regular rate of pay to Plaintiff and Class Members in violation of Labor Code section 246.

58. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

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

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

(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.

59. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of the lawful rates set forth in the statute because Defendants failed to include in their calculation the commissions and additional remuneration received by Plaintiff and the Class Members.

60. Furthermore, Defendants knowingly and intentionally failed in their affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation of Labor Code sections 246, 247.5, 248.2, and 248.6.

61. Labor Code 248.2 requires 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.

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

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

64. Defendants failed to provide and pay Covid-19 supplemental paid sick leave in the manner described above because Defendants failed to pay Plaintiff and the Class Members such sick leave at one of the rates authorized by statute. Specifically, Defendants failed to include in their calculation the commissions and additional remuneration received by Plaintiff and the Class Members.

65. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

1

2

3

4

8

4

20

21

2

3

7

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

3 73. 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 74. 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
7 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
8 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
9 Code section 226(e).

10 **EIGHTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

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

13 76. 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 (including sick
15 leave wages) earned upon termination of employment, and which further provide a private right of
16 action to recover statutory waiting time penalties each day an employer fails to comply with this
17 obligation, up to a maximum of 30 days wages.

18 77. 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 Penalty Subclass
20 immediately upon termination of employment or within 72 hours thereafter for employees who did
21 not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay
22 those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC
23 Wage Orders.

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

27 **NINTH CAUSE OF ACTION**

28 **UNFAIR COMPETITION**

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

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

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

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

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

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

TENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

85. All outside paragraphs of this Complaint are incorporated into this section.

1 86. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
2 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
3 codified as Labor Code section 2698 et seq.:

4 a. All current and former non-exempt employees who worked for Defendants
5 in California at any time from one year prior to the postmark date of the
6 initial PAGA notice through date of trial.

7 87. Plaintiff reserves the right to amend, supplement, or add to this description of the
8 aggrieved employees, according to proof.

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

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

19 90. Labor Code section 2699(f) provides: “For all provisions of this code except those for
20 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
21 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
22 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
23 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
24 pay period for each subsequent violation.”

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

1 92. Labor Code section 2699.3 sets forth the procedure for commencing an action for
2 civil penalties under the PAGA.

3 93. On or about June 30, 2022, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

7 94. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
8 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
9 forth herein (the "PAGA notice").

10 95. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
11 written PAGA notice from the LWDA.

12 96. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
13 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
14 providing a description of any actions taken to cure the alleged violations.

15 97. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
16 violations, without notice of cure from Defendants or notice from the LWDA of its intent to
17 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff
18 exhausted all prerequisites and commenced this civil action under Labor Code section 2699 et seq.

19 98. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
20 Complaint, Defendants committed the following violations and are liable for all corresponding civil
21 penalties:

22 *a. Unpaid Overtime.* Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
23 Orders.

24 *b. Unpaid Hours Worked/Minimum Wage.* Violation of Labor Code §§ 1194,
25 1197, 1198; IWC Wage Orders.

26 *c. Unpaid Paid Sick Leave.* Violation of Labor Code §§ 246 through 248.7.

27 *d. Unpaid Meal Period Premium Wages.* Violation of Labor Code §§ 226.7,
28 512, 1198; IWC Wage Orders.

1 Dated: July 27, 2023

Ferraro Vega Employment Lawyers, Inc.

2
3 

Nicholas J. Ferraro

Attorneys for Plaintiff