

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

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

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

37-2022-00035709-CU-OE-CTL

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

Plaintiff,

vs.

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

Defendants.

Representative Action Complaint

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Underpaid Paid Sick Leave Wages
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Recordkeeping Violations

Representative Action Complaint

Gabriel Lafarga v. G.I. Trucking Company D/B/A Estes West

1 Plaintiff GABRIEL LAFARGA (“Plaintiff”), individually as the State of California’s
2 designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current
3 and former aggrieved employees, brings this representative action against Defendants G.I.
4 TRUCKING COMPANY D/B/A ESTES WEST; and DOES 1 through 50 (collectively,
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

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

12 **JURISDICTION & VENUE**

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

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

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

21 **PARTIES**

22 6. Plaintiff worked for Defendants in San Diego County from October 2014 through
23 April 2022 as an hourly, non-exempt employee. During his employment with Defendants, Plaintiff
24 held the positions of Cargo Handler Platform, Driver Trainee, and Driver.

25 7. Defendant G.I. TRUCKING COMPANY D/B/A ESTES WEST does business and
26 employs aggrieved employees throughout California, including in San Diego County.

27 8. The true names and capacities, whether individual, corporate, or otherwise, of the
28 parties sued as DOES 1 through 50, are presently uncertain to Plaintiff, who sues them by such

1 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
2 alleges that each of the fictitiously-named defendants is responsible in some manner for the acts and
3 omissions alleged herein.

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

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

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

21 **PAGA ALLEGATIONS**

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

24 All current and former non-exempt hourly employees who worked for Defendants in
25 the State of California at any time from June 30, 2021, through the date of final
26 judgment in this action (the “PAGA Period”)

27 13. The State of California, via the Labor and Workforce Development Agency
28 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

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

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

16 16. On **June 30, 2022**, Plaintiff gave written notice by online filing with the LWDA and
17 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
19 Plaintiff paid the requisite filing fee to the LWDA. A copy of the PAGA Notice is attached hereto as
20 **Exhibit 1** and incorporated by reference.

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

24 18. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
25 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
26 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
27 exhausted all prerequisites and commences this civil action under Labor Code § 2699.
28

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

GENERAL ALLEGATIONS

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

21. 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.

22. When Defendants paid overtime to Plaintiff and the aggrieved employees, Defendants failed to pay the overtime at the lawful regular rate of pay. Plaintiff and the aggrieved employees 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.

23. 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 aggrieved employees 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.

24. On information and belief, Defendants failed to consistently provide timely, off-duty 30-minute meal periods to aggrieved employees within the first five hours of work, and timely

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

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

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

21 27. In pay periods where Defendants provided Plaintiff and aggrieved employees with
22 remuneration in addition to their respective base hourly rate for hours worked (*e.g.*, bonus claim
23 payments—excluding any forms of pay subject to any applicable statutory exclusions from the
24 “regular rate”—Defendants failed to properly calculate and pay paid sick leave at rate of pay
25 required by Labor Code § 246 *et seq.* Defendants paid such sick leave at employees’ base hourly rate
26 instead of one of the methods authorized by statute, which required Defendants to factor in
27 employees’ additional remuneration into the sick leave wage rate.

1 28. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
2 and the aggrieved employees.

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

8 30. Defendants equally failed in their affirmative obligation to provide accurate, itemized
9 wage statements each pay period to Plaintiff and aggrieved employees. Defendants issued wage
10 statements to Plaintiff and, on information and belief, to aggrieved employees, which contain at least
11 two distinct types of violations.

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

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

27 ///

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

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

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

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

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

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

28 ///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Labor Code §§ 2698, *et seq.***

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

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

6 40. 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 41. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
14 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
15 Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to
16 the extent permitted by law, including under Labor Code section 2699(g).

17 **SECOND CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **Labor Code §§ 226.7**

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

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

27 44. Further, Defendants willfully failed in their affirmative obligation to consistently pay
28 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of

1 compensation for each workday that a fully compliant meal period was not provided, in violation of
2 Labor Code sections 226.7 and the IWC Wage Orders.

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

7 **THIRD CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **Labor Code §§ 226.7 and 516**

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

25 **UNDERPAID PAID SICK LEAVE WAGES & SUPPLEMENTAL SICK LEAVE WAGES**

26 **Labor Code §§ 246 et seq.**

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

1 51. Defendants knowingly and intentionally failed in their affirmative obligation provide
2 and pay paid sick leave wages to Plaintiff and the aggrieved employees in violation of Labor Code
3 section 246.

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

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

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

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

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

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

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

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

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

57. 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.

58. 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.

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

60. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 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). Plaintiff may also be entitled to penalties under Labor Code section 248.5.

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Labor Code §§ 204, *et seq.*

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

62. Defendants willfully failed in their affirmative obligation to timely pay all wages and premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly 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).

63. 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).

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Labor Code §§ 226 and 226.3

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

65. 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.”

66. 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).

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

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

5 **SEVENTH CAUSE OF ACTION**

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

7 **Labor Code §§ 201 through 203**

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

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

15 71. 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 **EIGHTH CAUSE OF ACTION**

20 **RECORDKEEPING VIOLATIONS**

21 **Labor Code § 1174**

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

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

1 established for this purpose by the commission, but in any case shall be kept on file for not less than
2 three years.”

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

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

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

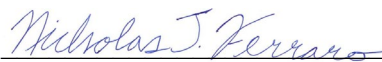
15 **PRAYER FOR RELIEF**

16 Plaintiff prays for judgment as follows:

- 17 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 18 b. For an award of reasonable attorneys’ fees and costs of suit, including expert fees, to
19 the extent permitted by law, including under Labor Code section 2699(g);
- 20 c. For any recoverable pre- and post-judgment interest; and
- 21 d. For such other relief the Court deems just and proper.
- 22

23 Dated: September 6, 2022

Ferraro Vega Employment Lawyers, Inc.

24
25 

Nicholas J. Ferraro

26 *Attorney for Plaintiff*

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

June 30, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

G.I. Trucking Company
d/b/a Estes West
14727 Alondra Boulevard
La Mirada, CA 90638

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **06/30/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of GABRIEL LAFARGA (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against G.I. TRUCKING COMPANY D/B/A ESTES WEST, 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 operate a national transportation company that employs aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

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 GABRIEL LAFARGA worked for Defendants from October 2014 to April 2022. Claimant worked in the positions of Cargo Handler Platform, Driver Trainee, and Driver. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

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

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

Claimant seeks all recoverable civil penalties for 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, 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 their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all

overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

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

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

When Claimant and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Claimant and the aggrieved employees non-discretionary bonuses labeled based on production/efficiency, that Defendants failed to include in the “regular rate of pay” when employees earned overtime. Defendants paid overtime and double-time to Claimant and the aggrieved employees at 1.5x and 2x their base hourly rate. For each overtime hour worked during the pay period in which Claimant and the

aggrieved employees earned bonuses, Defendants should have (but failed to) pay overtime “at the rate of no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example of the regular rate of pay violation is found on Claimant’s pay statement for the pay period from 02/27/2022 through 03/11/2022:

Employee Name	Payroll Relationship Number	Payroll
Gabriel Lafarga	59642	West
Person Number	Assignment Number	Salary Basis Name
59642	E59642	Hourly
Adjusted Hire Date	Job Title	Tax Reporting Unit Name
10/12/2014	Driver Trainee (Dock)-Field Opns	G.I. Trucking Company
Employee Address	Employee SSN	Tax Reporting Unit Address
Redacted	Redacted	3901 West Broad Street Richmond, VA 23230 US

Period Type	Period Start Date	Period End Date	Payment Date	Base Salary
Weekly	02/27/2022	03/05/2022	03/11/2022	26.35

Summary		
Description	Current	Year to Date
Gross Earnings	1,612.61	11,422.19
Nonpayroll Payment	2,000.00	2,000.00
Pretax Deductions	132.01	1,002.58
Employee Tax Deductions	414.99	2,576.98
Net Payment	3,065.61	9,842.63

Year To Date Earning Totals	YTD Units	YTD Wages
Bonus Claims		110.00
Dock Doubletime	0.03	1.52
Dock Overtime	52.95	2,067.84
Dock Regular	313.88	8,205.64
Dock Sick Pay	16.00	421.60
Hardship Loan Payment		2,000.00
Holiday Pay	16.00	404.80
Mechanics Sick Pay	8.00	210.80

Current Earnings	Units	Rate	Multiple	Amount
Dock Regular	40.00	26.3500	1.00	1,054.00
Dock Overtime	11.35	26.3500	1.50	448.61
Bonus Claims				110.00
Hardship Loan Payment				2,000.00

During this pay period, Claimant 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 his base hourly rate rather than 1.5x the regular rate of pay. Defendants committed this same “regular rate of pay” violation against the other aggrieved employees as well, when employees earned forms of pay like bonuses and other compensation required to be included in the regular rate but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

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

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

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.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

On information and belief, Defendants failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. When Defendants did not provide compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. To the extent Defendants paid any meal period premiums, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in bonuses and other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

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

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

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to employees' job responsibilities, Claimant and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. 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 bonuses and other compensation.

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

Underpaid 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, Defendants failed to maintain the records required by Labor Code § 246 *et seq.* with respect to the paid sick leave.

However, to the extent paid, Claimant is informed, believes and alleges Defendants instead paid sick leave at employees' base rate of pay and failed to factor in bonuses and/or other forms of remuneration. Specifically, Defendants did not pay paid sick leave "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek," as the regular rate should have included bonus wages for the reasons aforementioned. Additionally, Defendants did not use method two by dividing the employee's total wages by total hours worked in the full pay periods of the prior 90 days, as such calculation would have resulted in a paid sick leave rate higher than the base rate at which Claimant was paid.

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

As a result, Claimant may recover civil penalties on behalf of 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.
- (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 pay Covid Supplemental Paid Sick Leave at a rate authorized by statute, as such amounts did not include all forms of remuneration, including bonuses, in the calculation. 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.

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 overtime, meal/rest premiums, sick leave wages, 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’ 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 properly pay overtime wages, meal and rest premiums, and paid sick leave 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—underpaid overtime wages, meal and rest premiums, and paid sick leave—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees were 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 pay stub.

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)).

Additionally, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant's and the aggrieved employees' wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours, meal and rest period premiums, and paid sick leave that were not paid at the "regular rate of pay," as those hours were instead paid at the improper base rate and reflected as such on the wage statements of the aggrieved employees.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of 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.

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.

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 Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his 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.
 David L. Woodard, Esq. (Counsel for Estes West)