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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

NATHAN PEREZ, on behalf of others similarly situated and the State of California under the Private Attorneys General Act, Plaintiffs, vs. WATERCO OF THE CENTRAL STATES, INC.; CULLIGAN INTERNATIONAL COMPANY; and DOES 1 through 50, inclusive, Defendants.	Case No. 25CU026729C **REPRESENTATIVE ACTION COMPLAINT** 1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff NATHAN PEREZ, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants WATERCO OF THE CENTRAL STATES, INC.; CULLIGAN INTERNATIONAL COMPANY; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action for wage and hour violations of the California Labor Code.

2. Defendants failed to compensate Plaintiff and aggrieved employees for all hours suffered or permitted to work in violation of the applicable IWC Wage Order.

3. Defendants underpaid the aggrieved employees' wages by requiring uncompensated off-clock work and failing to include all additional forms of non-discretionary remuneration into the regular rate of pay.

4. Defendants failed to reimburse Plaintiff and aggrieved employees for necessary expenses incurred in furtherance of aggrieved employees' job duties.

5. Defendants failed to provide, authorize, and/or permit Plaintiff and the aggrieved employees to take compliant meal and rest periods to which they were entitled. Further, Defendants failed to pay meal and rest period premiums.

6. Defendants failed to provide all paid sick leave due to Defendants' policy and practice.

7. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

8. Defendants are further liable for derivative claims for wage statements, untimely payment, and other associated violations.

9. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests, attorney's fees, and costs.

JURISDICTION & VENUE

10. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

12. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

13. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Nathan Perez

14. Plaintiff Perez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2024 to January 2025. Plaintiff worked as a Field Technician.

15. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd*. (Feb. 26, 2025, D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

16. Defendant Waterco of the Central States, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

17. Defendant Culligan International Company is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

18. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

19. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

20. Upon information and belief, 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, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

21. Upon information and belief, Defendants 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.

GENERAL ALLEGATIONS

22. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

23. Defendants often required Plaintiff and the aggrieved employees to complete off the clock work. First, Defendants often encouraged Plaintiff and the aggrieved employees to complete remaining paperwork off-the-clock. Specifically, Defendants often scheduled Plaintiff and the aggrieved employees several back-to-back client appointments per day with far-spread appointment locations. On these days, Defendants required Plaintiff and the aggrieved employees to attend all their

scheduled appointments and complete all accompanying paperwork within their scheduled time. However, due to Defendants' scheduling practices, Plaintiff and the aggrieved employees did not have enough time to complete their assignments. On these days, Defendants encouraged Plaintiff and the aggrieved employees to complete accompanying paperwork at home, resulting in additional hours worked off-the-clock. However, as a matter of policy and practice, Defendants failed to pay Plaintiff and the aggrieved employees for all additional hours worked.

24. Second, Defendants required Plaintiff and the aggrieved employees to complete job duties off the clock. When Plaintiff and the aggrieved employees arrived before Defendants to work, they were required to open their work-site before they clocked in which included turning on the lights and unlocking all doors, resulting in unpaid hours worked.

25. Third, Defendants engaged in an unlawful practice of time editing resulting in unpaid hours worked. Specifically, as discussed further below, Plaintiff and the aggrieved employees often experienced missed meal periods to keep up with the demands of the job. Rather than pay Plaintiff and the aggrieved employees all owed missed meal premiums, Defendants often edited Plaintiff and the aggrieved employees' time sheets to reflect compliant, 30-minute, unpaid meal periods. When Plaintiff and the aggrieved employees were able to take a meal period before their fifth hour of work, they were often unable to clock back in before they began their next scheduled client appointment. Instead, Defendants required Plaintiff and the aggrieved employees to attend their scheduled appointments on time, while off-the-clock. As a result, Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked.

26. Finally, Defendants failed to pay Plaintiff and the aggrieved employees for all on-call hours worked. Rather than pay Plaintiff and the aggrieved employees at the lawful minimum wage for all on-call hours worked, Defendants engaged in a policy and practice of failing to pay plaintiff and the aggrieved employees for all on-call hours, resulting in unpaid wages.

27. Defendants failed to include all additional remuneration in the regular rate of pay for purposes of calculating overtime pay. Specifically, Plaintiff and the aggrieved employees earned bonuses for upselling clients on maintenance plans and on-call pay. To the extent these additional forms of remuneration constitute non-discretionary bonuses, Defendants failed to include these

additional payments in the regular rate of pay when calculating overtime. Instead, Defendants unlawfully paid Plaintiff and the aggrieved employees at 1.5x their base rate, resulting in unpaid overtime wages.

28. Defendants failed to pay all overtime wages earned due to its unlawful practices of requiring off-the-clock work and time editing. When these additional unpaid hours resulted in more than 8 hours worked in a day or more than 40 hours in a week, Defendants owed Plaintiff and the aggrieved employees pay at 1.5x their regular rate of pay. However, due to Defendants' unlawful policies of requiring off the clock work and time editing, Defendants failed to pay all overtime wages owed.

29. Defendants failed to include all additional remuneration in the regular rate of pay for purposes of calculating paid sick leave. Specifically, Plaintiff and the aggrieved employees earned bonuses and on-call pay. However, as a matter of policy and practice, Defendants failed to include these additional payments in the regular rate of pay when calculating paid sick leave. Instead, Defendants unlawfully paid Plaintiff and the aggrieved employees at 1.5x their base rate, resulting in unpaid sick leave.

30. Defendants failed to pay all earned paid sick leave. As discussed above, Defendants engaged in unlawful practices of requiring off-the-clock work and time editing. This practice often resulted in the miscalculation of hours worked, resulting in unpaid sick leave.

31. Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted meal periods to keep up with the demands of the job. Specifically, as mentioned above, Defendants often scheduled Plaintiff and the aggrieved employees several back-to-back client appointments per day with far-spread appointment locations. On these days, Defendants often required Plaintiff and the aggrieved employees to attend all scheduled appointments and complete all accompanying paperwork within the scheduled time. However, due to Defendants' scheduling practices, Plaintiff and the aggrieved employees did not have enough time to complete their assignments and take compliant meal periods. Due to Defendants' scheduling practice, Defendant often required Plaintiff and the aggrieved employees to work through their days without meal periods.

However, rather than pay all owed meal period premiums, Defendants often edited Plaintiff and the aggrieved employees to avoid meal period penalties.

32. Additionally, Defendants often instructed Plaintiff and the aggrieved employees to clock out for their meal period and continue to work. Each time Plaintiff and the aggrieved employees clocked out and continued to work through their meal periods, Defendants owed a meal period premium. However, as a matter of policy and practice, Defendants failed to pay all owed meal period premiums.

33. When Plaintiff and the aggrieved employees were able to take a meal period before their fifth hour of work, they were often interrupted. Specifically, due to Defendants' scheduling practice, Plaintiff's scheduled appointments often overlapped with the available meal period. However, as a matter of policy and practice, Defendants failed to pay meal period premiums for these interrupted meal periods.

34. To the extent Defendants did pay meal period premiums, they were underpaid. As discussed above, Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay, resulting in unpaid rest period premiums.

35. Defendants required Plaintiff and the aggrieved employees to work through their days without breaks. Each time Plaintiff and the aggrieved employees experienced a non-complaint rest period, Defendants owed a rest period premium. However, as a matter of policy and practice, Defendants failed to pay all rest period premiums owed. To the extent that Defendants did pay rest period premiums, they were underpaid. As discussed above, Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay, resulting in unpaid rest period premiums.

36. Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants required Plaintiff and the aggrieved employees to use their personal cell phones in furtherance of the job duties. Specifically, Defendants required Plaintiff and the aggrieved employees to download the UKG Pro application on their personal cell phones to clock in and out while they are in the field. Additionally, Defendants required Plaintiff and the

aggrieved employees to communicate with the home office and clients on their personal cell phones. For example, Plaintiff worked as a Field Technician and was required to visit several clients within a day. Defendants required Plaintiff to communicate with clients on his personal cell phone regarding arrival times and other job-related issues. However, Defendants failed to reimburse Plaintiff and the aggrieved employees for these cell-phone related expenses.

37. Defendants also required Plaintiff and the aggrieved employees to provide their own tools in furtherance of their job duties. Specifically, Defendants provided basic tools to Plaintiff and the aggrieved employees. However, Plaintiff and the aggrieved employees required specific tools including headlamps, channel locks, screwdrivers, and wrenches to effectively complete their job duties. However, as a matter of policy and practice, Defendants expected Plaintiff and the aggrieved employees to incur these costs on their own, without reimbursement.

38. Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period.

39. Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments.

40. Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as

Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

FIRST 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)

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

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

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

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

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

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

46. 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."

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

48. On or about **February 27, 2025**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

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

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

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

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

e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

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

g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

54. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: May 15, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorneys for Plaintiff Nathan Perez

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

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February 27, 2025

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

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Waterco of the Central States, Inc.
1910 S. Highland Ave, Suite 360
Lombard, IL 60148

Culligan International Company
9399 W Higgins Road, Suite 1100
Rosemont, IL 60018

Culligan by WaterCo, dba Culligan
1910 S. Highland Ave, Suite 360
Lombard, IL 60148

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **NATHAN PEREZ** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

WATERCO OF THE CENTRAL STATES, INC.; CULLIGAN INTERNATIONAL COMPANY; and CULLIGAN BY WATERCO, dba CULLIGAN

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. 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 65-day period under Labor Code section

2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the 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; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Field Technician from about March 2024 to January 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

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

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff 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.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[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." 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. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide 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." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

For example, Defendants often required Plaintiff and the aggrieved employees to complete off the clock work. First, Defendants often encouraged Plaintiff and the aggrieved employees to complete remaining paperwork off-the-clock. Specifically, Defendants often scheduled Plaintiff and the aggrieved employees several back-to-back client appointments per day with far-spread appointment locations. On these days, Defendants required Plaintiff and the aggrieved employees to attend all their scheduled appointments and complete all accompanying paperwork within their scheduled time. However, due to Defendants' scheduling practices, Plaintiff and the aggrieved employees did not have enough time to complete their assignments. On these days, Defendants encouraged Plaintiff and the aggrieved employees to complete accompanying paperwork at home, resulting in additional hours worked. However, as a matter of policy and practice, Defendants failed to pay Plaintiff and the aggrieved employees for all additional hours worked.

Second, Defendants required Plaintiff and the aggrieved employees to complete job duties off the clock. When Plaintiff and the aggrieved employees arrived before Defendants to work, they were required to open their work-site before they clocked in which included turning on the lights and unlocking all doors, resulting in unpaid hours worked.

Third, Defendants engaged in an unlawful practice of time editing resulting in unpaid hours worked. Specifically, as discussed in the "Unpaid Meal Premium" section below, Plaintiff and the aggrieved employees often experienced missed meal periods to keep up with the demands of the job. Rather than pay Plaintiff and the aggrieved employees all owed missed meal premiums, Defendants often edited Plaintiff and the aggrieved employees' time sheets to reflect compliant, 30-minute, unpaid meal periods. When Plaintiff and the aggrieved employees were able to take a meal period before their fifth hour of work, they were often unable to clock back in before they began their next scheduled client appointment. Instead, Defendants required Plaintiff and the aggrieved employees to attend their scheduled appointments on time, while off-the-clock. As a result, Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked.

Finally, Defendants failed to pay Plaintiff and the aggrieved employees for all on-call hours worked. Rather than pay Plaintiff and the aggrieved employees at the lawful minimum wage for all on-call hours worked, Defendants engaged in a policy and practice of failing to pay plaintiff and the aggrieved employees for all on-call hours, resulting in unpaid wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

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 section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. 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. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, Defendants failed to include all additional remuneration in the regular rate of pay for purposes of calculating overtime pay. Specifically, Plaintiff and the aggrieved employees earned bonuses for upselling clients on maintenance plans and on-call pay. To the extent these additional forms of remuneration constitute non-discretionary bonuses, Defendants failed to include these additional payments in the regular rate of pay when calculating overtime. Instead, Defendants unlawfully paid Plaintiff and the aggrieved employees at 1.5x their base rate, resulting in unpaid overtime wages.

Second, Defendants failed to pay all overtime wages earned. As discussed in the "Unpaid Hours Worked/Minimum Wages" section above, Defendants engaged in unlawful practices of requiring off-the-clock work and time editing. When these additional unpaid hours resulted in more than 8 hours worked in a day or more than 40 hours in a week, Defendants owed Plaintiff and the aggrieved employees pay at 1.5x their regular rate of pay. However, due to Defendants' unlawful policies of requiring off the clock work and time editing, Defendants failed to pay all overtime wages owed.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "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;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees.

First, Defendants failed to include all additional remuneration in the regular rate of pay for purposes of calculating paid sick leave. Specifically, Plaintiff and the aggrieved employees earned bonuses and on-call pay. However, as a matter of policy and practice, Defendants failed to include these additional payments in the regular rate of pay when calculating paid sick leave. Instead, Defendants unlawfully paid Plaintiff and the aggrieved employees at 1.5x their base rate, resulting in unpaid sick leave.

Second, Defendants failed to pay all earned paid sick leave. As discussed in the "Unpaid Hours Worked/Minimum Wages" section above, Defendants engaged in unlawful practices of requiring off-the-clock work and time editing. This practice often resulted in the miscalculation of hours worked, resulting in unpaid sick leave.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute 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 one additional 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. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, 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.

Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted meal periods to keep up with the demands of the job. Specifically, as mentioned in the "Unpaid Hours/Minimum Wages" section above, Defendants often scheduled Plaintiff and the aggrieved employees several back-to-back client appointments per day with far-spread appointment locations. On these days, Defendants often required Plaintiff and the aggrieved employees to attend all scheduled appointments and complete all accompanying paperwork within the scheduled time. However, due to Defendants' scheduling practices, Plaintiff and the aggrieved employees did not have enough time to complete their assignments and take compliant meal periods. Due to Defendants' scheduling practice, Defendant often required Plaintiff and the aggrieved employees to work through their days without meal periods. However, rather than pay all owed meal period premiums, Defendants often edited Plaintiff and the aggrieved employees to avoid meal period penalties.

Additionally, Defendants often instructed Plaintiff and the aggrieved employees to clock out for their meal period and continue to work. Each time Plaintiff and the aggrieved employees clocked out and continued to work through their meal periods, Defendants owed a meal period premium. However, as a matter of policy and practice, Defendants failed to pay all owed meal period premiums.

When Plaintiff and the aggrieved employees were able to take a meal period before their fifth hour of work, they were often interrupted. Specifically, due to Defendants' scheduling practice, Plaintiff's scheduled appointments often overlapped with the available meal period. However, as a matter of policy and practice, Defendants failed to pay meal period premiums for these interrupted meal periods.

To the extent Defendants did pay meal period premiums, they were underpaid. As discussed above, Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay, resulting in unpaid rest period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code 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. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

As discussed in the "Unpaid Meal Premium" section above, Defendants required Plaintiff and the aggrieved employees to work through their days without breaks. Each time Plaintiff and the aggrieved employees experienced a non-complaint rest period, Defendants owed a rest period premium. However, as a matter of policy and practice, Defendants failed to pay all rest period premiums owed.

To the extent that Defendants did pay rest period premiums, they were underpaid. As discussed above, Defendants failed to incorporate all additional forms of remuneration into the regular rate of pay, resulting in unpaid rest period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Untimely Payment of Wages During Employment</u>
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

<u>Labor Code section 204(a)</u> requires payment of "all wages" for non-exempt employees at least twice each calendar month. <u>Labor Code section 204(d)</u> states all wages due must be paid "not more than seven calendar days following the close of the payroll period." <u>Labor Code section 204b</u> applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. <u>Labor Code section 210</u> provides "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.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Untimely Payment of Wages Upon Separation of Employment</u>
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

<u>Labor Code section 201</u> requires that if an employer fires an employee, the wages must be paid immediately. <u>Labor Code section 202</u> requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. <u>Labor Code section 202</u> states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. <u>Labor Code section 203</u> 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 additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Non-Compliant Wage Statements</u>
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the 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).

<u>Labor Code section 226(a)</u> 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.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff 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 sow confusion among Plaintiff 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 or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Unreimbursed Employee Expenses</u>
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

<u>Labor Code section 2802</u> requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

<u>Labor Code section 2804</u> affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Defendants required Plaintiff and the aggrieved employees to incur out of pocket expenses in the furtherance of the job without reimbursement.

First, Defendants required Plaintiff and the aggrieved employees to use their personal cell phones in furtherance of the job duties. Specifically, Defendants required Plaintiff and the aggrieved employees to download the UKG Pro application on their personal cell-phones to clock in and out while they are in the field. Additionally, Defendants required Plaintiff and the aggrieved employees to communicate with the home office and clients on their personal cell phones. For example, Plaintiff worked as a Field Technician and was required to visit several clients within a day. Defendants required Plaintiff to communicate with clients on his personal cell phone regarding arrival times and other job-related issues. However, Defendants failed to reimburse Plaintiff and the aggrieved employees for these cell-phone related expenses.

Second, Defendants required Plaintiff and the aggrieved employees to provide their own tools in furtherance of their job duties. Specifically, Defendants provided basic tools to Plaintiff and the aggrieved employees. However, Plaintiff and the aggrieved employees required specific tools including headlamps, channel locks, screwdrivers, and wrenches to effectively complete their job duties. However, as a matter of policy and practice, Defendants expected Plaintiff and the aggrieved employee to incur these costs on their own, without reimbursement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold <u>must be suspended immediately</u>.

- CONCLUSION -

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

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Mariela Romo

Cc Plaintiff Nathan Perez

Defense Counsel, Jeffrey Gimble
jgimble@vedderprice.com

lmp