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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
4/28/2025 11:29:33 AM

Clerk of the Superior Court
By Y. Modica, Deputy Clerk

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

MONICA LEON, on behalf of others similarly
situated and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

VISTA HILL FOUNDATION and DOES 1
through 50, inclusive,

Defendants.

Case No. 25CU010649C

*Hon. Richard S. Whitney
Dept. 68*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed: February 27, 2025

1 Plaintiff MONICA LEON, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants VISTA HILL FOUNDATION and
4 DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

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

8 2. Defendant failed to compensate Plaintiff and class members for all hours suffered or
9 permitted to work in violation of the applicable IWC Wage Order.

10 3. Defendant’s underpayment of wages was facilitated by their company-wide practices
11 of requiring employees to complete work while off-the-clock.

12 4. Defendant failed to pay Plaintiff and the class members all minimum and overtime
13 wages due to unlawful policies and practices of requiring off-the-clock work.

14 5. Defendant also underpaid the class members’ wages by failing to include all forms of
15 remuneration, including bonuses, into the regular rate of pay calculation for overtime, sick pay, and
16 premiums.

17 6. Defendant failed to provide, authorize, and/or permit Plaintiff and the class members
18 to take compliant meal and rest periods to which they were entitled. Further, Defendant failed to pay
19 meal and rest period premiums at the regular rate of compensation.

20 7. Defendant failed to pay all accrued and unused vacation wages upon separation of
21 employment at the lawful rate of pay.

22 8. Defendant failed to reimburse Plaintiff and class members for necessary expenses
23 incurred in furtherance of the class members’ job duties.

24 9. Defendant violated Labor Code section 206.5 by requiring Plaintiff and class members
25 to sign a release of all employment-related claims in exchange for receiving payment for their non-
26 compliant meal periods.

27 10. Defendant’s employment policies, practices, and payroll administration systems
28 enabled and facilitated these violations on a company-wide basis with respect to the class members.

11. Defendant is further liable for derivative claims for wage statements, untimely payment, and other associated violations.

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

JURISDICTION & VENUE

13. 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.

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

15. 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.

16. 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 Monica Leon

17. Plaintiff Leon is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2013 to November 2024. Plaintiff worked as a Functional Skills Aide.

18. 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.

1 **B. Defendants**

2 19. Defendant Vista Hill Foundation is a California corporation that maintains operations
3 and conducts business throughout the State of California, including in this county.

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

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

14 22. Upon information and belief, at least some of the Defendants have common ownership,
15 common management, interrelationship of operations, and centralized control over labor relations and
16 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
17 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

22 **CLASS ALLEGATIONS**

23 24. This action is brought individually and on behalf of the following class pursuant to
24 Code of Civil Procedure section 382:

- 25 a. All current and former non-exempt employees who worked for Defendants in
26 California at any time from four years (plus the additional 178-day statutory
27 tolling period under Emergency Rule 9) prior to the filing of this action through
28 date of class certification.

1 25. Plaintiff reserves the right to establish various subclass definitions as appropriate at the
2 class certification stage, according to proof.

3 26. The class is ascertainable and shares a well-defined community of interest in this
4 litigation:

5 b. Numerosity: The class is estimated to exceed 50 individuals, although the
6 precise membership of the entire class is unknown at this time. The class is so
7 numerous that joinder of all class members is impracticable. The identities of
8 class members are ascertainable by inspection of Defendants' employment and
9 payroll records.

10 c. Typicality: Plaintiff's claims are typical of the claims of the other class
11 members. They were subject to the same policies and practices of Defendants,
12 which resulted in losses to the class. Proof of common unlawful business
13 practices, which Plaintiff experienced, will establish the right of the class to
14 recover on the causes of action alleged herein.

15 d. Adequacy: Plaintiff is an adequate class representative; will take all necessary
16 steps to protect the class members' interests adequately and fairly; has no
17 interest antagonistic to other class members; and is represented by attorneys
18 who have substantial experience prosecuting, defending, resolving, and
19 litigating wage and hour class, collective, and representative actions in
20 California state and federal courts.

21 e. Superiority: A class action is superior to other means for adjudicating this
22 dispute. Individual joinder is impractical. Class treatment will allow for
23 common issues to be resolved in a single forum, simultaneously, and without
24 duplication of effort and expense.

25 f. Public Policy Considerations: Certification of this lawsuit as a class action
26 advances the State of California's strong public interest in ensuring its
27 approximately millions of employed residents are properly paid the wages they
28 earned for the hours they worked. Class actions provide a mechanism for

1 enforcement of labor laws and allow for vindication of employee rights by
2 unnamed class members.

3 27. Common questions of law and fact as to the class members predominate over questions
4 affecting only individual members. The common questions of law and fact exist as to whether the
5 employment policies and practices formulated by Defendants and applied to the class members
6 constitute violations of California law.

7 **GENERAL ALLEGATIONS**

8 28. Plaintiff and class members worked for Defendant as non-exempt employees and were
9 compensated on an hourly basis.

10 29. Defendant failed to pay Plaintiff and the class members at the lawful minimum wage
11 rate for all hours worked, resulting in unpaid minimum wages.

12 30. Defendant engaged in an unlawful policy and practice of requiring Plaintiff and class
13 members to complete work while off-the-clock, without compensation. For example, Plaintiff and
14 other class members regularly had to work through their off-the-clock meal periods because of the
15 high volume of work, understaffing and high turnover rate. As discussed in more detail below, Plaintiff
16 and the class members' meal periods would be interrupted and/or cut short and they would have to
17 return to work to resolve emergency issues. When Plaintiff and the class members were clocked out
18 for a meal period, this issue resulted in unpaid minimum wages. Due to this unlawful practice, all
19 hours worked were not directly compensated, resulting in the underpayment of wages to Plaintiff and
20 the class members.

21 31. Furthermore, Plaintiff and the class members were made to answer phone calls and
22 respond to messages after being clocked out for the day or on days they were not scheduled. Plaintiff
23 and the class members were also made to get to their bus stops early prepared to begin work but would
24 have to wait until the bus they were working on came; they were prevented from clocking in during
25 this time.

26 32. Moreover, Plaintiff and the class members were required to complete and sign
27 onboarding documents and/or new policy agreements while off-the-clock, without compensation. For
28 example, Plaintiff was required to review and sign documents at home when Defendant updated their

1 policies. Defendant would call or text Plaintiff while she was off-the-clock, requiring her to sign
2 various documents immediately.

3 33. Additionally, When Plaintiff and class members changed roles, they were required to
4 log in and out of the timekeeping system and at each transfer there was a delay which would prevent
5 them from being paid during that period despite being made to work through the transitional time.
6 These unlawful practices resulted in off-the-clock work without compensation.

7 34. Defendant failed to pay Plaintiff and the class members overtime wages and the lawful
8 rate of pay for overtime hours worked, resulting in unpaid overtime wages.

9 35. As described above, Defendant compelled Plaintiff and other class members to work
10 off-the-clock during unpaid meal periods and after clocking out. Each time this practice resulted in
11 unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

12 36. Moreover, Defendant failed to pay overtime and double time at the “regular rate of
13 pay.” Defendant paid Plaintiff and class members gift cards, retro pay, and other forms of remuneration
14 that Defendant failed to include in the overtime and double time rates in the pay periods when
15 employees worked overtime hours. Defendant unlawfully paid overtime to Plaintiff and the class
16 members at 1.5x their straight hourly rate. An illustrative example of this violation is shown in
17 Plaintiff’s wage statement for the pay period of 03/10/2024 to 03/23/2024, where Plaintiff worked
18 0.60 hours of overtime and earned \$2.06 in “NO Tax Retro” pay. However, Defendant paid overtime
19 at a deficient rate.

20 37. For each overtime hour worked during the period in which Plaintiff and the class
21 members earned the additional forms of remuneration, Defendants failed to pay overtime “at a rate no
22 less than one and one-half times the regular rate of pay for an employee” and “twice the regular rate
23 of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the
24 IWC Wage Orders.

25 38. Defendant failed to comply with California’s paid sick leave laws with respect to the
26 class members. Defendant failed to provide Plaintiff and the class members with all sick leave accrued.
27 To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the
28 proper rate of pay because they failed to incorporate the hours that Plaintiff and the class members

1 worked off-the-clock. Each time Plaintiff and the class members worked off-the-clock that resulted
2 in unpaid overtime, the overtime hours were not accounted for when calculating an employee's
3 accrued paid sick leave. Therefore, Plaintiff and other class members were not awarded the total
4 accrued sick leave time they had earned.

5 39. Additionally, to the extent the class members earned sick pay in the same period they
6 earned other non-excludable remuneration, Defendant underpaid those wages due to the regular rate
7 violations addressed above. Specifically, Defendant did not pay the class members sick leave "in the
8 same manner as the regular rate of pay for the worked week in which the employee uses paid sick
9 leave, whether or not the employee actually worked overtime in that workweek," as the regular rate
10 should have included commissions and all other forms of additional non-excludable remuneration.

11 40. Defendant maintained an unlawful policy and practice of failing to pay all accrued and
12 unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture
13 of vested vacation time and wages.

14 41. As described above, Defendant failed to record all of the time that Plaintiff and other
15 class members worked for Defendant and undercounted their hours worked. Consequently, Defendant
16 failed to credit the class members with all vacation time they had accrued. Therefore, vacation wages
17 were not paid out at the lawful rate of pay inclusive of all earnings.

18 42. Furthermore, Plaintiff and the class members often experienced missed, late, short, and
19 interrupted meal periods in order to keep up with the high demands of the job and as a result of
20 understaffing. For example, Defendant had a policy that, even if an employee was on break, if they
21 heard a whistle, they were required to go to where the whistle was being blown to assist. This policy
22 resulted in Plaintiff's meal period being interrupted, late, or other non-compliant. Each time Plaintiff
23 and the class members experienced a non-compliant meal period, they were owed a meal period
24 premium. As a matter of policy and practice, Defendant failed to pay all owed meal period premiums.

25 43. Defendant failed to provide all rest periods to which Plaintiff and the class members
26 were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff
27 and the class members experienced non-compliant meal periods, like understaffing, a high turnover
28 rate, being interrupted by emergencies, and the pressure to keep up with the high demands of the job,

1 they also experienced non-complaint rest periods. For example, Plaintiff's rest breaks would also be
2 interrupted by the same whistle policy that interrupted her meals.

3 44. As a matter of policy and practice, Defendant failed to pay all owed rest period
4 premiums. To the extent Defendant paid rest periods, these premiums were underpaid as a result of
5 the Defendant's failure to pay premiums at the regular rate of compensation.

6 45. Additionally, Defendant required Plaintiff and, on information and belief, other class
7 members to sign a release of all employment-related claims in exchange for receiving payment for
8 their non-compliant meal periods (to which they were already entitled) and an additional 25% payment
9 to what is owed. Receipt of the meal period premium wages and additionally 25% of what is owed
10 was also expressly contingent on Plaintiff and, on information and belief, other class members'
11 agreement to an unlawful release of all wage claims, without proper consideration.

12 46. Defendant provided no ability to negotiate the amount of the meal period premium
13 payments and made no attempt to determine whether such amount was sufficient to compensate
14 Plaintiff, and on information and belief, other class members, for unpaid wages and premiums that
15 they were owed at the time the release was signed. Defendant were aware of Plaintiff's unpaid wages
16 due to off-the-clock work and noncompliant meal periods, and Plaintiff's unpaid wages and premiums
17 far exceeds the \$110.29 or \$137.86 payment, which makes Defendant's requirement that she sign the
18 release agreement in exchange for \$110.29 or \$137.86 a violation of Labor Code section 206.5.

19 47. Defendant required Plaintiff and the class members to incur costs for work-related
20 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the class
21 members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of
22 policy and practice.

23 48. Defendant required Plaintiff and the class members to utilize their personal cell phones
24 to complete necessary work tasks, such as to communicate with management regarding scheduling,
25 clock in and out, and provide GPS location data throughout the work day. Plaintiff and class members
26 received calls, and messages from managers about work hours and switching shifts with other
27 employees and were expected to keep up with the scheduling while off-the-clock. Plaintiff and the
28

1 class members were not reimbursed for the expenses associated with cell phone usage. Instead,
2 Plaintiff and the class members bore the cost of these requirements without reimbursement.

3 49. These violations create derivative liability for failure to timely pay all wages owed each
4 payday or upon separation of employment.

5 50. Defendant failed to provide accurate itemized wage statements to the class members
6 each pay period as a result of the policies and practices set forth in this notice. Defendants violated
7 Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages
8 earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate
9 reflection, and recording of “gross wages earned” on those wage statements.

10 51. Likewise, in violation of Labor Code section 226(a)(9), Defendant failed to state on
11 employee wage statements each pay period the applicable hourly rates in effect and the number of
12 hours worked at that rate, as Defendant failed to pay all wages and premiums owed to employees. The
13 amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay
14 stub.

15 52. Defendant violated Labor Code section 226(a)(2) by failing to accurately list
16 employees’ “total hours worked,” as the wage statements did not accurately include the
17 uncompensated time Plaintiff and other class members worked due to Defendant’s policy and practice
18 of time editing and requiring off-the-clock work. Thus, Plaintiff and other class members cannot
19 promptly and easily determine from the wage statement alone the wages paid or earned without
20 reference to other documents or information. Indeed, these wage statement violations are significant
21 because they sow confusion among Plaintiff and other class members with respect to what amounts
22 were owed and paid, at what rates, the number of hours worked, and how those amounts were or
23 should be calculated. The wage statements reflect a false statement of earnings and conceal the
24 underlying problems and underpayments of employee wages.

25 53. Because of the policies and practices set forth above, including the failure to accurately
26 account for wages earned or hours worked, Defendant failed to accurately maintain records in
27 accordance with Labor Code section 1174 and the IWC Wage Orders
28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES OWED**

3 **Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197**

4 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

5 54. All outside paragraphs of this Complaint are incorporated into this section.

6 55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours
8 and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-
9 exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of
10 work, and further provide a private right of action for an employer’s failure to pay all minimum wages
11 (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that “‘wages’
12 includes all amounts for labor performed by employees of every description, whether the amount is
13 fixed or ascertained by the standard of time, task, piece, commission basis, or other method of
14 calculation.”

15 56. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
16 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
17 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
18 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
19 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
20 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
21 Code § 1194.2.

22 57. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
23 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
24 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
25 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
26 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2,
27 218.6 and any other applicable statutes.

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

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

66. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

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

72. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

73. Labor Code section 246(1), in conjunction with Labor Code section 248 *et seq.*, 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class members, govern how Defendants were required to calculate paid sick leave.

74. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

75. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

76. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

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84. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members 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 weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

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

EIGHTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

89. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

90. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for

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

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

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

92. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

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

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

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

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

97. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class

members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

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

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

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

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

102. Defendant has engaged in acts of unfair competition by requiring employees to agree to unlawful releases of their wage claims.

103. Labor Code section 206.5(a) states that, "An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor."

104. Labor Code section 206.5(b) affirms that, “For the purposes of this section, execution of a release includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.”

105. Defendant violated Labor Code section 206.5(a) and (b) with respect to Plaintiff and other class members by requiring that they agree to release wage claims without proper consideration. Defendant required Plaintiff and, on information and belief, other aggrieved employees to sign a release of all employment-related claims in exchange for receiving payment for their non-compliant meal periods (to which they were already entitled) and an additional 25% payment to what is owed. Receipt of the meal period premium wages and additionally 25% of what is owed was also expressly contingent on Plaintiff and, on information and belief, other aggrieved employees' agreement to an unlawful release of all wage claims without proper consideration.

106. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

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

TWELFTH 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)

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

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

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

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

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

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

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

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

25 115. On or about **February 19, 2025**, Plaintiff paid the requisite PAGA filing fee and
26 provided written notice (by online electronic filing with the LWDA and by certified mail to
27 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
28 the alleged violations.

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

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

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

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

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

- 16 g. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 h. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 i. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 j. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- 22 k. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
23 1198; IWC Wage Orders.
- 24 l. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
25 1198; IWC Wage Orders.
- 26 m. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
27 §§ 204, 204b, 210.

- n. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- o. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- p. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- q. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- r. ***Unlawful Release of Wage Claims.*** Violation of Labor Code § 206.5.

121. 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).

PRAAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;

- 1 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
6 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
7 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
8 o. For such other relief the Court deems just and proper.

9
10 Dated: April 28, 2025

Ferraro Vega Employment Lawyers, Inc.

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12 Nicholas J. Ferraro

13 Xavier L. Woodford

14 Attorneys for Plaintiff Monica Leon
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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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February 19, 2025

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

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

Vista Hill Foundation
8910 Clairemont Mesa Blvd
San Diego, California 92123

- 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 **MONICA LEON** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

VISTA HILL FOUNDATION

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. 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 Functional Skills Aide from about September 3, 2013 to November 18, 2024. 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. Defendants engaged in an unlawful policy and practice of requiring Plaintiff and aggrieved employees to complete work while off-the-clock, without compensation. For example, Plaintiff and other aggrieved employees regularly had to work through their off-the-clock meal periods because of the high volume of work, understaffing and high turnover rate. As discussed in more detail in the meal periods section, Plaintiff and the aggrieved employees’ meal periods would be interrupted and/or cut short and they would have to return to work to resolve emergency issues. During the times when Plaintiff and the aggrieved employees were clocked out for a meal period, this issue resulted in unpaid minimum wages. Due to this unlawful practice, all hours worked were not directly compensated, resulting in the underpayment of wages to Plaintiff and the aggrieved employees.

Furthermore, Plaintiff and the aggrieved employees were made to answer phone calls and respond to messages after being clocked out for the day or on days they were not scheduled. Plaintiff and the aggrieved employees were also made to get to their bus stops early prepared to begin work but would have to wait until the bus they were working on came, they were prevented from clocking in during this time.

Moreover, Plaintiff and the aggrieved employees were required to complete and sign onboarding documents and/or new policy agreements while off-the-clock, without compensation. For example, Plaintiff was required to review and sign documents at home when Defendants updated their policies. Defendants would call or text Plaintiff while she was off-the-clock, requiring her to sign various documents immediately.

Additionally, When Plaintiff and aggrieved employees changed roles they were required to log in and out of the timekeeping system. At each transfer there was a delay which would prevent them from being paid during that period despite being made to work through the transitional time. These unlawful practices resulted in off-the-clock work without compensation.

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. As described above, Defendants compelled Plaintiff and other aggrieved employees to work off-the-clock during unpaid meal periods and after clocking out. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Moreover, Defendants failed to pay overtime at the regular rate of pay. Defendants failed to pay overtime and double time at the “regular rate of pay.” Defendants paid Plaintiff and aggrieved employees gift cards, retro pay, and other forms of remuneration that Defendants failed to include in the overtime and double time rates in the pay periods when employees worked overtime hours. Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. An illustrative example of this violation is shown below:

EARNINGS	HRS/UNITS	RATE	CURRENT AMOUNT
Regular Pay	70.51	18.08	1,274.83
Overtime	0.60	27.12	16.27
NO Tax Retro	0.00	0.00	2.06
Holiday	0.00	0.00	0.00
PremPay	0.00	0.00	0.00
Med Plan Waive	0.00	0.00	0.00
SICK	0.00		0.00
VACNE	5.33		96.37

Extract of Plaintiff's Wage Statement for the pay period from 03/10/2024 to 03/23/2024.

Here, Plaintiff worked 0.60 hours of overtime and earned \$2.06 in “NO Tax Retro” pay. However, Defendants paid overtime at a deficient rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate 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.

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 24 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. Defendant failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the aggrieved employees worked off-the-clock. Additionally, each time Plaintiff and the aggrieved employees worked off-the-clock that resulted in unpaid overtime, the overtime hours were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

Finally, to the extent the aggrieved employees earned sick pay in the same period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate should have included commissions and all other forms of additional non-excludable remuneration.

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 Vacation Wages **Violation of Labor Code § 227.3**

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served;

provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. As described above, Defendant failed to record all of the time that Plaintiff and other aggrieved employees worked for Defendant and undercounted their hours worked. Consequently, Defendant failed to credit the aggrieved employees with all vacation time they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

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 in order to keep up with the high demands of the job and as a result of understaffing. For example, Defendants had a policy that even if an employee was on break if they heard a whistle they were required to go to where the whistle was being blown to assist. This policy resulted in Plaintiff's meal period being interrupted, late, or other non-compliant.

Each time Plaintiff and the aggrieved employees experienced a non-compliant meal period, they were owed a meal period premium. As a matter of policy and practice, Defendants failed to pay all owed meal 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 fraction 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.

Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff and the aggrieved employees experienced non-compliant meal periods, like understaffing, a high turnover rate, being interrupted by emergencies, and the pressure to keep up with the high demands of the job, they also experienced non-complaint rest periods.

For example, Plaintiff's rest breaks would also be interrupted by the same whistle policy that interrupted her meals.

As a matter of policy and practice, Defendants failed to pay all owed rest period premiums. To the extent Defendants paid rest periods, these premiums were underpaid as a result of the Defendants' failure to pay premiums at the regular rate of compensation.

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.

Untimely Payment of Wages During Employment **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.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." 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 "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. Indeed, Defendants failed to pay all regular, overtime, premiums, sick leave, and other earnings on time each payday.

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.

Untimely Payment of Wages Upon Separation of Employment **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.

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 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.

Non-Compliant Wage Statements **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).

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.

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.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendant's policy and practice of time editing and requiring off-the-clock work.

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.

Unreimbursed Employee Expenses **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.

Labor Code section 2802 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)).

Labor Code section 2804 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 utilize their personal cell phone to complete necessary work tasks, such as to communicate with management regarding

scheduling, clock in and out, and provide GPS location data throughout the work day. Plaintiff and aggrieved employees received calls, and messages from managers about work hours and switching shifts with other employees and were expected to keep up with the scheduling while off-the-clock. Plaintiff and the aggrieved employees were not reimbursed for the expenses associated with cell phone usage. Instead, Plaintiff and the aggrieved employees bore the cost of these requirements, 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.

Unlawful Release of Wage Claims
Labor Code § 206.5

Defendants violated Labor Code section 206.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to release wage claims without proper consideration.

Labor Code section 206.5(a) states that, “An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or

executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.”

Labor Code section 206.5(b) affirms that, “For the purposes of this section, execution of a release includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.”

Defendants required Plaintiff and, on information and belief, other aggrieved employees to sign a release of all employment-related claims in exchange for receiving payment for their non-compliant meal periods (to which they were already entitled) and an additional 25% payment to what is owed. Receipt of the meal period premium wages and additionally 25% of what is owed was also expressly contingent on Plaintiff and, on information and belief, other aggrieved employees’ agreement to an unlawful release of all wage claims, without proper consideration. Additionally, Defendants provided no ability to negotiate the amount of the meal period premium payments and made no attempt to determine whether such amount was sufficient to compensate Plaintiff, and on information and belief, other aggrieved employees, for unpaid wages and premiums that they were owed at the time the release was signed. Defendants were aware of Plaintiff’s unpaid wages due to off-the-clock work and noncompliant meal periods, and Plaintiff’s unpaid wages and premiums far exceeds the \$110.29 or \$137.86 payment, which makes Defendants’ requirement that she sign the release agreement in exchange for \$110.29 or \$137.86 a violation of Labor Code section 206.5.

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 must be suspended immediately.

- 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,



Xavier L. Woodford

Cc Plaintiff Monica Leon

Human Resources Director
Amber Herrmann - aherrmann@vistahill.org