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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By J. Tinajero ,Deputy Clerk

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

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

Plaintiffs,

vs.

ZILLOW, INC.; ZILLOW GROUP, INC.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU021580C

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed:

1 Plaintiff JAZMIN HERNANDEZ, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants ZILLOW, INC.; ZILLOW GROUP, INC.; and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action complaint brought under the California Private Attorneys
7 General Act (Labor Code sections 2968 et seq.).

8 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to include all
9 forms of remuneration in the regular rate of pay calculations.

10 3. Defendants failed to pay Plaintiff and the aggrieved employees all minimum and
11 overtime wages due to unlawful policies and practices of requiring off-the-clock work.

12 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the aggrieved
13 employees to take all meal and rest periods to which they were entitled.

14 5. Defendants failed to reimburse Plaintiff and the aggrieved employees for using their
15 personal cell phones, internet, and office supplies to complete work-related duties.

16 6. Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and
17 the aggrieved employees sign non-competition agreements prohibited by California law.

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

20 8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
21 attorney’s fees and costs.

22 **JURISDICTION & VENUE**

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

25 10. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
26 the Superior Court.

27 11. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

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

6 **PARTIES**

7 **A. Plaintiff Jazmin Hernandez**

8 13. Plaintiff Hernandez is an individual over 18 years of age who worked for Defendants
9 in California as a non-exempt employee from about April 2024 to December 2024. Plaintiff worked
10 as a Sales Executive.

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

18 **B. Defendants**

19 15. Defendant Zillow, Inc., is a Washington corporation that maintains operations and
20 conducts business throughout the State of California, including in this county.

21 16. Defendant Zillow Group, Inc., is a Washington corporation that maintains operations
22 and conducts business throughout the State of California, including in this county.

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

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

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

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

13 **GENERAL ALLEGATIONS**

14 21. Plaintiff and the aggrieved employees worked for Defendants as non-exempt
15 employees and were compensated on an hourly basis.

16 22. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum
17 wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged
18 in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work
19 while off-the-clock, without compensation.

20 23. First, Defendants required Plaintiff and the aggrieved employees to answer phone calls,
21 reach out to clients, respond to emails, watch educational videos, and attend meetings while off-the-
22 clock. Plaintiff also received phone calls after her 8-hour shift had ended but was required to continue
23 working off-the-clock. For example, Plaintiff worked from 6:30 a.m. to 8:00 p.m. and had clocked out
24 for the day at 5:00 p.m. after her shift had ended and was never compensated for her off-the-clock
25 work. Therefore, Defendants failed to compensate Plaintiff and the aggrieved employees for all hours
26 worked. Plaintiff is informed and believes that Defendants engaged in the same practice with respect
27 to other aggrieved employees.

1 24. Second, due to high demands of the job and understaffing, Plaintiff and the aggrieved
2 employees routinely experienced interrupted or otherwise non-compliant meal periods. For example,
3 Plaintiff and, on information and belief, other aggrieved employees continued working during their
4 unpaid meal periods because they would be required to receive and respond to phone calls and text
5 messages.

6 25. Defendants failed to retroactively input the hours Plaintiff, and the aggrieved employee
7 spent working while off-the-clock and otherwise compensate Plaintiff and the aggrieved employees
8 for their time. Due to this unlawful practice of failing to pay for off-the-clock work, all hours were not
9 directly compensated, resulting in the underpayment of regular and overtime wages to Plaintiff and
10 the aggrieved employees. Each time Plaintiff and the aggrieved employees worked through their
11 unpaid meal period of otherwise engaged in off-the-clock work, this resulted in unpaid hours worked.

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

14 27. First, as stated above, Defendants forced Plaintiff and the aggrieved employees to work
15 off-the-clock, without compensation. Thus, when Plaintiff and the aggrieved employees worked more
16 than 8 hours a day or more than 40 hours in one week, these practices resulted in unpaid overtime
17 wages.

18 28. Second, Defendants failed to pay overtime and double time at the “regular rate of pay.”
19 Defendants paid Plaintiff and the aggrieved employees’ bonuses, incentives, and other forms of
20 remuneration that Defendants failed to include in the overtime and double time rates in the pay periods
21 when employees worked overtime hours.

22 29. Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x
23 their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the
24 aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed
25 to) pay overtime “at a rate no less than one and one-half times the regular rate of pay for an employee”
26 and “twice the regular rate of pay” for double time hours as required by the plain language of Labor
27 Code section 510(a) and the IWC Wage Orders.

1 30. An illustrative example of Defendants’ regular rate of pay violation as it pertains to
2 overtime is shown in Plaintiff’s wage statement for the pay period of 07/25/2024 to 08/08/2024.
3 During this pay period, Plaintiff earned a bonus (“Referral”) of \$1,000.00 and an incentive
4 (“AwardCo”) of \$100.00 that was not factored into Plaintiff’s overtime rate. Instead, Plaintiff was paid
5 at a rate of 1.5x the base hourly rate of \$30.00, rather than 1.5x the regular rate of pay which would
6 have factored in the \$1,000.00 bonus and \$100.00 incentive. To the extent other aggrieved employees
7 earned bonuses, incentives, and other forms of remuneration each must be factored into the regular
8 rate of pay during the statutory period, Defendants violated the Labor Code accordingly.

9 31. Defendants failed to comply with California’s paid sick leave laws with respect to the
10 aggrieved employees. Defendants failed to provide Plaintiff and the aggrieved employees with all sick
11 leave accrued. Plaintiff and the aggrieved employees worked off-the-clock and overtime hours that
12 were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff
13 and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

14 32. To the extent that Plaintiff and the aggrieved employees took paid sick leave in the
15 same pay period they earned bonuses or additional remuneration, based on Defendants’ failure to pay
16 overtime and premiums at the regular rate of pay, Plaintiff alleges and believes, Defendants failed to
17 pay paid sick leave at the regular rate of pay.

18 33. As stated above, Defendants failed to provide compliant meal periods. For example,
19 Plaintiff routinely experienced interrupted meal periods because she was required to take phone calls,
20 answer texts messages, attend meetings and trainings while on her meal period. Plaintiff and the
21 aggrieved employees were specifically told to “do everything they can to hit quota” regardless of if
22 they were on their meal period. When Defendants failed to provide compliant meal periods,
23 Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums, in violation
24 of Labor Code section 226.7.

25 34. Second, to the extent that Defendants paid meal period premiums, Defendants failed to
26 pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of
27 compensation” because premiums paid did not factor in all forms of remuneration including
28

incentives, bonuses, and/or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate.

35. An illustrative example of Defendants' regular rate of pay violation as it pertains to meal premiums is shown in Plaintiff's wage statement for the pay period of 07/25/2024 to 08/08/2024. During this pay period, Plaintiff earned a bonus ("Referral") of \$1,000.00 and an incentive ("AwardCo") of \$100.00 that was not factored into Plaintiff's meal period premium rate ("Meal Break"). Instead, Plaintiff was paid at her base hourly rate of \$30.00, for all meal period premiums. Defendants committed the same regular rate violation against the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

36. Similarly to the above Plaintiff often experienced interrupted rest periods. Defendants maintained the unlawful policy and practice of prohibiting Plaintiff and the aggrieved employees from taking their compliant rest periods and failing to pay rest period premiums for interrupted rest periods.

37. Specifically, Plaintiff suffered non-compliant rest periods due to the pressures from management to keep up with quotas. Thus, Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and the aggrieved employees. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the "regular rate of compensation" to Plaintiff and the aggrieved employees, which should have factored in bonuses and other forms of non-excludable remuneration.

38. 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.

39. Defendants required Plaintiff and the aggrieved employees to use their personal cellphones and internet to contact clients while working from home. However, Defendants did not reimburse Plaintiff and the aggrieved employees for expenses incurred from using their cellphones and internet for work-related purposes. For example, Defendants required Plaintiff and the aggrieved

1 employees to use their personal cell phones and download an app called “Slack” to communicate with
2 the team and to meet quotas.

3 40. Further, Plaintiff and the aggrieved employees were required to use and purchase office
4 supplies such as sticky notes and headphones. However, Defendants did not reimburse Plaintiff or the
5 aggrieved employees for cost incurred from purchasing these office supplies for work-related
6 purposes.

7 41. Defendants required that Plaintiff and the aggrieved employees sign non-competition
8 agreements restricting their ability to accept certain work on behalf of themselves or other employers.
9 As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the
10 aggrieved employees sign non-competition agreements prohibited by California law.

11 42. Defendants required Plaintiff and aggrieved employees to sign a non-competition
12 agreement detailing that Plaintiff and aggrieved employees are prohibited from affiliation or
13 employment with any competing business within a restricted territory during employment. This is an
14 unlawful employment condition and restraint on Plaintiff’s and aggrieved employees’ professions.
15 Below is an excerpt of the 4.3 non-competition from the Propriety Rights Agreement that Plaintiff was
16 required to sign on March 15, 2024:

17
18 **4.3 Non-Competition.** In consideration for my employment with the Company and
19 other valuable consideration, I agree that, during the period of my employment with the
20 Company, I will not, within the Territory or for the benefit of a Competing Business’s
21 operations within the Territory, directly or indirectly, engage in, be employed by, perform
22 services for, participate in the ownership, management, control or operation of, or otherwise
23 be connected with, any Competing Business, in a capacity that is the same as or similar to the
24 capacity in which I performed services for the Company during the Look Back Period or any
25 such other capacities that would result in the use or disclosure of Confidential Information. I
26 acknowledge and agree that engaging in conduct while employed that violates this Section 4.3
27 would create a conflict of interest with the Company. For purposes of this paragraph, I will not
28 be considered to be connected with any Competing Business solely on account of: my
ownership of less than five percent of the outstanding capital stock or other equity interests in
any Person carrying on the Competing Business. The Company, in its sole discretion, may
determine to waive the noncompetition provisions of this Section 4.3 in whole or in part. Any
such waiver shall not constitute a waiver of any noncompetition or forfeiture provisions of any
other agreement between the Company and me. I acknowledge that I have read Appendix
A of this Agreement and understand that the applicability of this Section may be limited
and / or may be subject to change, depending on the location of my work.

26 43. These violations create derivative liability for failure to timely pay all wages owed each
27 payday or upon separation of employment
28

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

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

11 46. Defendants violated Labor Code section 226(a)(2) by failing to accurately list
12 employees’ “total hours worked,” as the wage statements did not accurately include the
13 uncompensated time Plaintiff and other aggrieved employees worked due to Defendants’ policy and
14 practice of requiring employees to work off-the-clock.

15 47. Plaintiff and other aggrieved employees cannot promptly and easily determine from the
16 wage statement alone the wages paid or earned without reference to other documents or information.
17 Indeed, these wage statement violations are significant because they sow confusion among Plaintiff
18 and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the
19 number of hours worked, and how those amounts were or should be calculated. The wage statements
20 reflect a false statement of earnings and concealed the underlying problems and underpayments of
21 employee wages.

22 48. Because of these policies and practices set forth above, Defendants failed to accurately
23 maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

24 **FIRST CAUSE OF ACTION**

25 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

28 49. All outside paragraphs of this Complaint are incorporated into this section.

1 50. 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 51. Plaintiff reserves the right to amend, supplement, or add to this description of the
8 aggrieved employees, according to proof.

9 52. 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 53. 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 54. 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 55. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
24 penalties under the PAGA.

25 56. 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 57. 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 58. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

6 59. 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 60. 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 61. 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 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
22 1198; IWC Wage Orders.
- 23 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
24 1198; IWC Wage Orders.
- 25 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
26 §§ 204, 204b, 210.
- 27 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
28 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.
- k. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

62. 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: April 24, 2025

Ferraro Vega Employment Lawyers, Inc.



Xavier L. Woodford
Attorney for Plaintiff Jazmin Hernandez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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February 18, 2025

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

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

Zillow, Inc.
1301 Second Ave., Floor 36
Seattle, Washington 98101

Zillow Group, Inc.
1301 Second Ave, Floor 36
Seattle, Washington 98101

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

ZILLOW, INC.; ZILLOW GROUP, INC.

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 Sales Executive from about April 2024 to December 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. Specifically, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock, without compensation.

First, Defendants required Plaintiff and the aggrieved employees to answer phone calls, reach out to clients, respond to emails, watch educational videos, and attend meetings while off-the-clock. Plaintiff also received phone calls after her 8-hour shift had ended but was required to continue working off-the-clock. For example, Plaintiff worked from 6:30 a.m. to 8:00 p.m. and had clocked out for the day at 5:00 p.m. after her shift had ended and was never compensated for her off-the-clock work. Therefore, Defendants failed to compensate Plaintiff and the aggrieved employees for all hours worked. Plaintiff is informed and believes that Defendants engaged in the same practice with respect to other aggrieved employees.

Second, due to high demands of the job and understaffing, Plaintiff and the aggrieved employees routinely experienced interrupted or otherwise non-compliant meal periods. For example, Plaintiff and, on information and belief, other aggrieved employees continued working during their unpaid meal periods because they would be required to receive and respond to phone calls and text messages.

Defendants failed to retroactively input the hours Plaintiff and the aggrieved employee spent working while off-the-clock and otherwise compensate Plaintiff and the aggrieved employees for their time. Due to this unlawful practice of failing to pay for off-the-clock work, all hours were not directly compensated, resulting in the underpayment of regular and overtime wages

to Plaintiff and the aggrieved employees. Each time Plaintiff and the aggrieved employees worked through their unpaid meal period or otherwise engaged in off-the-clock work, this resulted in unpaid hours worked.

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, as stated in the “Unpaid Hours Worked” section above, Defendants forced Plaintiff and the aggrieved employees to work off-the-clock, without compensation. Thus, when Plaintiff and the aggrieved employees worked more than 8 hours a day or more than 40 hours in one week, these practices resulted in unpaid overtime wages.

Second, Defendants failed to pay overtime and double time at the “regular rate of pay.” Defendants paid Plaintiff and the aggrieved employees’ bonuses, incentives, 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. 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.

An illustrative example of Defendants’ regular rate of pay violation as it pertains to overtime is shown below:

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
AwardCo			0		100.00
GTL Imputed			0		34.00
Holiday Pay			0		720.00
Regular Hourly Rate			0		16,593.04
Meal Break			0		1,470.00
Overtime Daily Premium			0		261.79
Overtime Daily Straight Time			0		523.54
PTO			0		1,380.00
Referral	08/04/2024 - 08/08/2024	0	0	1,000.00	1,000.00
Sick Pay			0		435.00
Earnings				1,000.00	22,517.37

Extract from Plaintiff’s Wage Statement for the pay period between 08/04/2024 to 08/08/2024.

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
AwardCo	07/25/2024 - 08/08/2024	0	0	100.00	100.00
GTL Imputed	07/25/2024 - 08/08/2024	0	0	4.40	34.00
Holiday Pay			0		720.00
Regular Hourly Rate	07/25/2024 - 07/27/2024	11	30	330.00	
Regular Hourly Rate	07/28/2024 - 08/03/2024	39.96666	30	1,199.01	
Regular Hourly Rate	08/04/2024 - 08/08/2024	24	30	720.00	16,593.04
Meal Break	07/25/2024 - 08/08/2024	8	30	240.00	1,470.00
Overtime Daily Premium	07/28/2024 - 08/03/2024	2	15	30.00	
Overtime Daily Premium	08/04/2024 - 08/08/2024	1.5	15	22.50	261.79
Overtime Daily Straight Time	07/28/2024 - 08/03/2024	2	30	60.00	
Overtime Daily Straight Time	08/04/2024 - 08/08/2024	1.5	30	45.00	523.54
PTO	08/04/2024 - 08/08/2024	8	30	240.00	1,380.00
Sick Pay			0		435.00
Earnings				2,990.91	21,517.37

Extract from Plaintiff’s Wage Statement for the pay period between 07/25/2024 to 08/08/2024.

During this pay period, Plaintiff earned a bonus (“Referral”) of \$1,000.00 and an incentive (“AwardCo”) of \$100.00 that was not factored into Plaintiff’s overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base hourly rate of \$30.00, rather than 1.5x the regular rate of pay which would have factored in the \$1,000.00 bonus and \$100.00 incentive. To the extent other aggrieved employees earned bonuses, incentives, and other forms of remuneration each

must be factored into the regular rate of pay during the statutory period, Defendants violated the Labor Code accordingly.

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. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock and overtime hours that 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.

To the extent Plaintiff and the aggrieved employees took paid sick leave in the same pay period they earned bonuses or additional remuneration, based on Defendants' failure to pay overtime and premiums at the regular rate of pay, Plaintiff alleges and believes, Defendants failed to pay paid sick leave at the regular rate of pay.

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.

As stated in the "Unpaid Hours Worked" section above, Defendants failed to provide compliant meal periods. For example, Plaintiff routinely experienced interrupted meal periods because she was required to take phone calls, answer texts messages, attend meetings and

trainings while on her meal period. Plaintiff and the aggrieved employees were specifically told to “do everything they can to hit quota” regardless of if they were on their meal period. When Defendants failed to provide compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums, in violation of Labor Code section 226.7.

Second, to the extent that Defendants paid meal period premiums, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because premiums paid did not factor in all forms of remuneration including incentives, bonuses, and/or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate. An illustrative example of Defendants’ regular rate of pay violation as it pertains to meal premiums is shown below:

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
AwardCo			0		100.00
GTL Imputed			0		34.00
Holiday Pay			0		720.00
Regular Hourly Rate			0		16,593.04
Meal Break			0		1,470.00
Overtime Daily Premium			0		261.79
Overtime Daily Straight Time			0		523.54
PTO			0		1,380.00
Referral	08/04/2024 - 08/08/2024	0	0	1,000.00	1,000.00
Sick Pay			0		435.00
Earnings				1,000.00	22,517.37

Extract from Plaintiff’s Wage Statement for the pay period between 08/04/2024 to 08/08/2024.

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
AwardCo	07/25/2024 - 08/08/2024	0	0	100.00	100.00
GTL Imputed	07/25/2024 - 08/08/2024	0	0	4.40	34.00
Holiday Pay			0		720.00
Regular Hourly Rate	07/25/2024 - 07/27/2024	11	30	330.00	
Regular Hourly Rate	07/28/2024 - 08/03/2024	39.96666	30	1,199.01	
Regular Hourly Rate	08/04/2024 - 08/08/2024	24	30	720.00	16,593.04
Meal Break	07/25/2024 - 08/08/2024	8	30	240.00	1,470.00
Overtime Daily Premium	07/28/2024 - 08/03/2024	2	15	30.00	
Overtime Daily Premium	08/04/2024 - 08/08/2024	1.5	15	22.50	261.79
Overtime Daily Straight Time	07/28/2024 - 08/03/2024	2	30	60.00	
Overtime Daily Straight Time	08/04/2024 - 08/08/2024	1.5	30	45.00	523.54
PTO	08/04/2024 - 08/08/2024	8	30	240.00	1,380.00
Sick Pay			0		435.00
Earnings				2,990.91	21,517.37

Extract from Plaintiff’s Wage Statement for the pay period between 07/25/2024 to 08/08/2024.

During this pay period, Plaintiff earned a bonus (“Referral”) of \$1,000.00 and an incentive (“AwardCo”) of \$100.00 that was not factored into Plaintiff’s meal period premium rate (“Meal Break”). Instead, Plaintiff was paid at her base hourly rate of \$30.00, for all meal period premiums. Defendants committed the same regular rate violation against the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

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.

Similarly to the “Unpaid Meal Period Premium” above Plaintiff often experienced interrupted rest periods. Defendants maintained the unlawful policy and practice of prohibiting Plaintiff and the aggrieved employees from taking their compliant rest periods and failing to pay rest period premiums for interrupted rest periods. For example, Plaintiff suffered non-compliant rest periods due to the pressures from management to keep up with quotas. Thus, Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and the aggrieved employees. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the “regular rate of compensation” to Plaintiff and the aggrieved employees, which should have factored in bonuses and other forms of 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.

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 premiums, overtime, regular, 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 Defendants’ policy and practice of requiring employees to work off-the-clock.

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 use their personal cellphones and internet to contact clients while working from home. However, Defendants did not reimburse Plaintiff and the aggrieved employees for expenses incurred from using their cellphones and internet for work-related purposes. For example, Defendants required Plaintiff and the aggrieved employees to use their personal cell phones and download an app called “Slack” to communicate with the team and to meet quotas. Further, Plaintiff and the aggrieved employees were required to use and purchase office supplies such as sticky notes and

headphones. However, Defendants did not reimburse Plaintiff or the aggrieved employees for cost incurred from purchasing these office supplies for work-related purposes.

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 Employment Condition **Violation of Labor Code § 432.5**

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability

to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

Defendants required Plaintiff and aggrieved employees to sign a non-competition agreement, detailing that Plaintiff and aggrieved employees are prohibited from affiliation or employment with any competing business within a restricted territory during employment. This is an unlawful employment condition and restraint on Plaintiff's and aggrieved employees' professions.

4.3 Non-Competition. In consideration for my employment with the Company and other valuable consideration, I agree that, during the period of my employment with the Company, I will not, within the Territory or for the benefit of a Competing Business's operations within the Territory, directly or indirectly, engage in, be employed by, perform services for, participate in the ownership, management, control or operation of, or otherwise be connected with, any Competing Business, in a capacity that is the same as or similar to the capacity in which I performed services for the Company during the Look Back Period or any such other capacities that would result in the use or disclosure of Confidential Information. I acknowledge and agree that engaging in conduct while employed that violates this Section 4.3 would create a conflict of interest with the Company. For purposes of this paragraph, I will not be considered to be connected with any Competing Business solely on account of: my ownership of less than five percent of the outstanding capital stock or other equity interests in any Person carrying on the Competing Business. The Company, in its sole discretion, may determine to waive the noncompetition provisions of this Section 4.3 in whole or in part. Any such waiver shall not constitute a waiver of any noncompetition or forfeiture provisions of any other agreement between the Company and me. **I acknowledge that I have read Appendix A of this Agreement and understand that the applicability of this Section may be limited and / or may be subject to change, depending on the location of my work.**

An excerpt of the 4.3 Non-Competition from the Proprietary Rights Agreement that Plaintiff was required to sign on March 15, 2024.

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,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro".

Nicholas J. Ferraro

Cc Plaintiff Jazmin Hernandez

Counsel for Defendant: Carrie A Stringham, Esq.
cstringham@littler.com