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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Eric Rowe, DEPUTY

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

SCOTT STEWARD, on behalf of other similarly
situated and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

USAA CASUALTY INSURANCE COMPANY;
UNITED SERVICES AUTOMOBILE
ASSOCIATION; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2513842

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff SCOTT STEWARD, on behalf of all other aggrieved employees and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants USAA CASUALTY INSURANCE COMPANY;
4 UNITED SERVICES AUTOMOBILE ASSOCIATION; and DOES 1 through 50, inclusive
5 (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a representative action brought under the California Labor Code §§ 2698 *et seq.*

8 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to include
9 incentive payments and all other forms of non-excludable remuneration into the regular rate of pay
10 calculations.

11 3. Defendants failed to provide, authorize, and/or permit Plaintiff and other aggrieved
12 employees to take all complaint meal and rest periods to which they were entitled. Further, Defendants
13 did not pay Plaintiff and other aggrieved employees all meal and rest premiums.

14 4. Defendants’ employment policies, practices, and payroll administration systems
15 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
16 employees.

17 5. Defendants are further liable for derivative claims for wage statements, untimely
18 payment, and other associated violations. Plaintiff seeks to recover the underpaid damages, plus
19 associated penalties, interests, attorney’s fees and costs.

20 **JURISDICTION & VENUE**

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

23 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
24 the Superior Court.

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

9. 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 Scott Steward

10. Plaintiff Steward is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2022 to present. Plaintiff works as a Special Investigator.

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

B. Defendants

12. Defendant USAA Casualty Insurance Company is a Texas corporation that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant United Services Automobile Association is a Texas corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

1 15. 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 16. 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 17. 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 18. Defendants failed to pay overtime at the “regular rate of pay.”

15 19. Plaintiff and the aggrieved employees earned incentives and other forms of additional
16 non-excludable remuneration which Defendants failed to include in the overtime rate calculation.

17 20. An illustrative example of Defendants’ regular rate of pay violation is found on
18 Plaintiff’s wage statement for the pay period from February 11, 2024 to February 24, 2024.

19 21. During this pay period, Plaintiff earned a \$6,504.42 incentive payment. However,
20 Defendants failed to properly include the additional pay in Plaintiff’s overtime rate, as the 2.50
21 overtime hours were paid at 1.5x Plaintiff’s base rate of \$45.13, rather than 1.5x his regular rate of
22 pay.

23 22. Defendants committed the same “regular rate of pay” violation against Plaintiff and
24 other aggrieved employees as a matter of common payroll administration and company policy in a
25 manner susceptible to common proof.

26 23. Defendants further failed to issue “true-up” payments for all overtime hours earned in
27 the previous year for which the incentive was issued.

28 24. This resulted in the underpayment of wages to employees.

1 25. For each overtime hour worked during the period in which Plaintiff and the aggrieved
2 employees earned the additional forms of remuneration, Defendants should have (but failed to) pay
3 overtime “at a rate no less than one and one-half times the regular rate of pay for an employee” and
4 “twice the regular rate of pay” for double time hours as required by the plain language of Labor Code
5 section 510(a) and the IWC Wage Orders.

6 26. Defendants failed to comply with California’s paid sick leave laws with respect to the
7 aggrieved employees.

8 27. Defendants violated Labor Code section 246(l) because sick leave was not paid at the
9 lawful statutory rate of pay throughout the relevant period.

10 28. To the extent Defendants paid sick leave hours in the same pay period that the
11 aggrieved employees earned annual incentive payments and other forms of non-excludable
12 remuneration, Plaintiff believes and alleges that Defendants as a matter of common policy and practice
13 underpaid the paid sick leave by failing to factor all forms of non-discretionary income into the regular
14 rate of pay.

15 29. Further, Defendants further failed to issue “true-up” payments for all paid sick leave
16 hours earned in the previous year for which the incentive was issued. This resulted in the
17 underpayment of wages to employees.

18 30. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in
19 Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to
20 aggrieved employees in those periods where they earned additional payments, incentive payments, or
21 other forms of non-excludable remuneration and also received paid sick leave.

22 31. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and
23 interrupted meal periods due to the high demands of the job.

24 32. Each time Plaintiff and the aggrieved employees worked through their meal period or
25 otherwise experienced a non-compliant meal period, Plaintiff and the aggrieved employees were owed
26 a meal period premium.

27 33. As a matter of common practice, Defendants failed to pay all owed meal period
28 premiums to Plaintiff and the aggrieved employees.

1 34. Each time Plaintiff and the aggrieved employees experienced a noncompliant meal
2 period, they were owed a meal period premium. However, as a matter of policy and practice,
3 Defendant failed to pay Plaintiff and other aggrieved employees a meal period premium in violation
4 of Labor Code section 226.7.

5 35. To the extent Plaintiff and the aggrieved employees received a meal period premium
6 in the same pay period they earned annual incentives, bonuses, or other non-excludable remuneration,
7 based on Defendants' failure to pay all overtime at the regular rate of pay as discussed in the above
8 section, Plaintiff believes and alleges Defendants failed to pay meal period premiums at the regular
9 rate of pay or otherwise failed to issue "true-up" payments for all meal premiums earned in the
10 previous year for which the incentive was issued.

11 36. This resulted in the underpayment of wages to employees.

12 37. As stated above, due to the high demands of the job and the pressure to keep up with
13 the heavy workload, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or
14 permitted to take all their rest periods.

15 38. Further, Defendants had a policy and practice of not paying rest period premiums to
16 employees who were unable to take rest periods.

17 39. Each time Plaintiff and the aggrieved employees experienced a noncompliant rest
18 period, they were owed a rest period premium at the lawful rate. However, as a matter of policy and
19 practice, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium at
20 the lawful rate of pay.

21 40. To the extent a rest period premium was ever paid, Defendants failed to pay these
22 premiums at the regular rate of compensation.

23 41. As discussed above, Defendants had a non-compliant policy and practice of
24 miscalculating and underpaying the regular rate of pay applicable to overtime, paid sick leave, and
25 other premiums. Based on this practice, Plaintiff alleges that any rest period premiums were equally
26 deficient with respect to payments made to the aggrieved employees

27 42. Defendants failed to accurately state the "gross wages earned" and "net wages earned"
28 in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and aggrieved employees were underpaid

1 for overtime wages, meal and rest period premiums, and paid sick leave, resulting in an inaccurate and
2 depreciated itemization of gross and net wages earned on those wage statements.

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

8 44. These violations create derivative liability for failure to pay all wages owed each
9 payday or upon separation of employment.

10 **FIRST CAUSE OF ACTION**

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

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

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

14 45. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

27 49. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
28 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor

1 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
2 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of the employee and other current or former
4 employees against whom a violation of the same provision was committed pursuant to the procedures
5 specified in Section 2699.3. “

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

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

11 52. On or about **February 12, 2025**, Plaintiff paid the requisite PAGA filing fee and
12 provided written notice (by online electronic filing with the LWDA and by certified mail to
13 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
14 the alleged violations.

15 53. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
16 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
17 forth herein (the “PAGA notice”).

18 54. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
19 written PAGA notice from the LWDA.

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

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

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

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

58. 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;

- 1 d. 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 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 f. 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 g. For such other relief the Court deems just and proper.

9
10 Dated: April 25, 2025

Ferraro Vega Employment Lawyers, Inc.

11 

12 _____
Nicholas J. Ferraro

Dorota A. James

Attorneys for Plaintiff Scott Steward

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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February 12, 2025

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

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

**United Services Automobile
Association**
9800 Fredericksburg Road
San Antonio, TX 78288

USAA Casualty Insurance Company
9800 Fredericksburg Road
San Antonio, TX 78288

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

**UNITED SERVICES AUTOMOBILE ASSOCIATION;
USAA CASUALTY INSURANCE COMPANY;
dba USAA**

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 Special Investigator from about December 2022 to present. 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 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 overtime at the regular rate of pay. Plaintiff and the aggrieved employees earned non-discretionary annual incentives and other forms of non-excludable remuneration which Defendants failed to include in the overtime rate.

An illustrative example of Defendants’ regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from 02/11/2024 to 02/24/2024 as it pertains to overtime is shown below:

United Services Automobile Assn 9800 Fredericksburg Road San Antonio, TX 78288 +1 800-210-8722

Scott Steward

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Scott Steward	United Services Automobile Assn	4H381	02/11/2024	02/24/2024	02/29/2024	

	Hours Worked	Gross Pay	Before Tax Deductions	Taxes	After Tax Deductions	Net Pay
Current	82.50	10,284.07	849.73	3,253.67	0.00	6,180.67
YTD	376.50	24,935.90	2,129.70	6,295.96	0.00	16,510.24

Earnings						Taxes			
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount	Description	Amount	YTD
*Child Life Imputed	02/11/2024 - 02/24/2024	0	0	0.23	0	1.15	OASDI	637.58	1,546.18
*Employee Life/ADK02	02/11/2024 - 02/24/2024	0	0	26.20	0	131.00	Medicare	149.11	361.61
*Reward Tax Fringe		0	0	0	0	5.28	Federal Withholding	1,690.64	3,082.43
Regular Pay	02/11/2024 - 02/24/2024	80	45.13	3,610.40	374	16,428.80	State Tax - CA	663.51	1,032.87
Annual Incentive	02/11/2024 - 02/24/2024	0	0	6,504.42	0	6,504.42	CA SDI - CASDI	112.83	272.87
CA Premium Over	02/11/2024 - 02/24/2024	2.5	22.565	56.42	2.5	56.42			
CA Premium Over	02/11/2024 - 02/24/2024	2.5	45.13	112.83	2.5	112.83			
Holiday		0	0	0	24	1,046.40			
PTO Payout		0	0	0	16	697.60			
PTO Elig Cash Out		0	0	0	2	87.20			
Recognition Tax		0	0	0	0	2.23			
Earnings				10,310.50		25,073.33	Taxes	3,253.67	6,295.96

Extract from Plaintiff’s wage statement for pay period 02/11/2024 to 02/24/2024

During this pay period, Plaintiff earned a \$6,504.42 incentive payment. However, Defendants failed to properly include the additional pay in Plaintiff's overtime rate, as the 2.50 overtime hours were paid at 1.5x Plaintiff's base rate of \$45.13, rather than 1.5x her regular rate of pay. Defendants committed the same "regular rate of pay" violation against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof. Defendants further failed to issue "true-up" payments for all overtime hours earned in the previous year for which the incentive was issued. This resulted in the underpayment of wages to employees.

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.

To the extent Defendants paid sick leave hours in the same pay period that the aggrieved employees earned annual incentive payments and other forms of non-excludable remuneration, Plaintiff believes and alleges that Defendants as a matter of common policy and practice underpaid the paid sick leave by failing to factor all forms of non-discretionary income into the regular rate of pay. Further, Defendants further failed to issue “true-up” payments for all paid sick leave hours earned in the previous year for which the incentive was issued. This resulted in the underpayment of wages to employees.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, non-discretionary bonuses, or other forms of non-excludable remuneration and also received paid sick leave.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders

“employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

First, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to the high demands of the job. Thus, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods.

Each time Plaintiff and the aggrieved employees worked through their meal period or otherwise experienced a non-compliant meal period, Plaintiff and the aggrieved employees were owed a meal period premium. As a matter of common practice, Defendants failed to pay all owed meal period premiums to Plaintiff and the aggrieved employees.

Second, to the extent Plaintiff and the aggrieved employees received a meal period premium in the same pay period they earned annual incentives, bonuses, or other non-excludable remuneration, based on Defendants’ failure to pay all overtime at the regular rate of pay as discussed in the above section, Plaintiff believes and alleges Defendants failed to pay meal period premiums at the regular rate of pay or otherwise failed to issue “true-up” payments for all meal premiums earned in the previous year for which the incentive was issued. This resulted in the underpayment of wages to employees.

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 employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. Plaintiff and other aggrieved employees were rarely, if at all, authorized or permitted to take all their rest periods.

Each time Plaintiff and the aggrieved employees experienced a noncompliant rest period, they were owed a rest period premium at the lawful rate. However, as a matter of policy and practice, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium at the lawful rate of pay.

To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in all additional non-excludable remuneration including annual incentives and bonuses into the premium rate. Defendants further failed to issue "true-up" payments for all rest premiums earned in the previous year for which the incentive was issued. This resulted in the underpayment of wages to employees.

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, 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.

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.

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

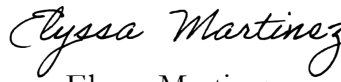
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- 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,


Elyssa Martinez

Cc Plaintiff Scott Steward
 Tammy Hallmon (tammy.hallmon@usaa.com)
 Defendant's HR Representative