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Superior Court of California,
County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DAISY MACIAS and KARLA OCHOA, on behalf of others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU025541C

Hon. Michael T. Smyth
Dept. 67

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

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

Action Filed: March 14, 2025

Plaintiffs DAISY MACIAS and KARLA OCHOA, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiffs") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

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

2. Defendants' underpayment of wages was facilitated by their unlawful company-wide practice of editing time records to show fewer hours worked than Plaintiffs and the aggrieved employees actually worked.

3. Defendants failed to pay Plaintiffs and the aggrieved employees all overtime wages, sick pay, and premiums due to unlawful policies and practices of failing to properly include shift differentials and other forms of remuneration in the regular rate of pay/compensation.

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

5. Defendants also failed to reimburse Plaintiffs and the aggrieved employees for necessary expenses incurred in furtherance of the aggrieved employees' job duties.

6. Defendants failed to pay all accrued and unused vacation wages upon separation of employment.

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

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

9. Plaintiffs seek to recover the unpaid damages, plus associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

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

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

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

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

PARTIES

A. Plaintiffs

14. Plaintiff Macias is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2014 to Present. Plaintiff Macias worked as a Medical Assistant.

15. Plaintiff Ochoa is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2019 to Present. Plaintiff Ochoa worked as a Front Office Representative.

16. 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

17. Defendant Planned Parenthood of the Pacific Southwest is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

GENERAL ALLEGATIONS

22. Plaintiffs and the aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

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

24. Specifically, Defendants engaged in an unlawful policy and practice of editing Plaintiff Macias' and the aggrieved employees' time records. For example, Plaintiff Macias' time records have been manually edited by her supervisor, which resulted in less hours worked. Plaintiffs and the aggrieved employees were deprived of regular wages each time Defendants altered their time records to reflect fewer hours worked. Plaintiffs are informed and believe that other employees suffered the same violations.

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

26. First, as discussed above, Plaintiffs and the aggrieved employees were not paid for all hours worked, Plaintiffs and the aggrieved employees often worked over 8 hours in a day and over 40 hours in a week completing work-related tasks required by Defendants. To the extent Defendants paid overtime, such compensation was underpaid due to Defendants practice of time editing. When Plaintiffs and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages.

27. Second, Defendants failed to pay overtime and double time at the "regular rate of pay." Defendants paid Plaintiffs and the aggrieved employees shift differentials, incentives, and other forms of remuneration that Defendants failed to incorporate into the overtime and double time rates in the pay periods when employees worked overtime and double time hours.

28. Defendants unlawfully paid overtime to Plaintiffs and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiffs 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 ICW Wage Orders.

29. An illustrative example of this violation is shown in Plaintiff Macias' wage statement for the pay period of 09/09/2024 to 09/22/2024. Here Plaintiff Macias' paystub included a shift differential "Pay Differ" in the amount of $34.22 in the same pay period she worked overtime. However, Plaintiff Macias' overtime was paid at 1.5x her base hourly rate or an otherwise deficient

rate. Thus, Defendants failed to properly factor Plaintiff Macias' differential pay into the overtime rate.

30. An illustrative example of this violation is also shown in Plaintiff Ochoa's wage statement for the pay period of 10/07/2024 to 10/20/2024. Here, Plaintiff Ochoa earned an incentive or differential ("Language 1") in the amount of $66.47 and another form of remuneration ("Pay Differ") in the amount of $241.81. Plaintiff Ochoa also worked 0.70 overtime hours. However, Defendants failed to include these payments into Plaintiff Ochoa's regular rate of pay for the purpose of paying overtime wages. Even without additional forms of remuneration, Defendants failed to pay Plaintiff Ochoa's overtime wages at the proper rate. For example, Plaintiff Ochoa's base hourly rate during this pay period was $27.76 per hour and overtime should have been paid at a rate of $41.64 for overtime hours worked [$27.76 x 1.5 = $41.64]. Therefore, Defendants paid Plaintiffs and the aggrieved employees overtime and double time at a deficient rate.

31. Additionally, Defendants failed to factor Plaintiff Macias' "Language" payment into the regular rate of pay for overtime. An illustrative example of this violation is shown in Plaintiff Macias' wage statement for the pay period of 10/21/2024 to 11/03/2024. Therefore, Defendants paid Plaintiffs and the aggrieved employees overtime and double time at a deficient rate.

32. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Because Defendants failed to record and pay for all hours that Plaintiffs and other aggrieved employees worked, Defendants failed to credit them all sick leave hours that they actually accrued. Moreover, Defendants failed to provide Plaintiffs and the aggrieved employees with written notice of the amount of paid sick leave available.

33. To the extent the aggrieved employees earned sick pay in the same period they earned other shift differentials and other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above.

34. Specifically, Defendants did not pay the aggrieved employees sick leave "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek," as the regular rate should have included shift differentials and all other forms of additional non-excludable remuneration. An

example of this violation is shown in Plaintiff Macias' wage statements for the pay periods of 03/11/2024 to 03/24/2024 and 07/29/2024 to 08/11/2024.

35. During the pay period from 03/11/2024 to 03/24/2024, Plaintiff Macias' utilized 24 hours of what she believes to be paid sick leave ("COVID19"). Plaintiff Macias' also earned two forms of pay differential ("Pay Differ") and a shift differential ("Regular"). However, Defendants failed to incorporate these forms of remuneration when calculating the paid sick leave rate. Thus, Defendants paid Plaintiff Macias' sick leave at a deficient rate during this pay period.

36. During the pay period from 06/03/2024 to 06/16/2024 Plaintiff Ochoa utilized 0.48 hours of paid sick leave ("Agency Sic"). Plaintiff Ochoa also earned a pay differential ("Pay Differ") that Defendants also failed to incorporate into Plaintiff Ochoa's paid sick leave rate.

37. During the pay period from 07/29/2024 to 08/11/2024, Plaintiff Macias utilized 8 hours of what she believes to be paid sick leave ("Agency Sic"). Plaintiff Macias also earned a pay differential ("Pay Differ") and a shift differential ("Regular") that Defendants also failed to incorporate into Plaintiff Macias' paid sick leave rate. Plaintiffs are informed and believes other aggrieved employees suffered the same violations.

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

39. As described above, Defendants failed to record all of the time that Plaintiffs and other aggrieved employees worked for Defendants and undercounted their hours worked by editing time records. Consequently, Defendants failed to credit the aggrieved employees with all vacation time they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

40. Plaintiffs and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to pressure from Defendants to keep up with high demands of the job. For example, Plaintiff Macias would often take her meal period past the 5th hour resulting in frequent non-compliant meal periods.

41. Each time Plaintiffs and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiffs and the aggrieved employees were not provided meal period premiums in lieu of non-compliant meal periods as required by Labor Code section 226.7. An illustrative example of this violation is shown in Plaintiff Macias' wage statement for the pay period of 05/20/2024 to 06/02/2024. During this pay period, Plaintiff Macias earned a meal premium ("CA Meal Pr") in the amount of $32.42 and shift differentials in the same pay period. However, Defendants paid Plaintiff Macias' meal premium at a deficient rate because the premiums did not factor in all forms of remuneration.

42. To the extent Defendants paid other aggrieved employees meal period premiums, the premiums were not paid at the regular rate of compensation because the premiums did not factor in shift differentials or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

43. As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiffs and the aggrieved employees were entitled. Due to the reasons explained above, such as understaffing and the pressures to keep up with the continuous demands of the job, Plaintiffs and the aggrieved employees were not always authorized or permitted to take their rest periods.

44. When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiffs and other aggrieved employees all rest period premiums in violation of Labor Code section 226.7. To the extent Defendants paid rest period premiums, 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 shift differentials and other forms of remuneration. An illustrative example of this violation is shown in Plaintiff Macias' wage statement for the pay period of 04/22/2024 to 05/05/2024. During this pay period, Plaintiff Macias earned a rest period premium ("PAID RST") and shift differentials in the same pay period. Yet, Defendants failed to factor in all forms of remuneration in the rest period premium rate and therefore paid Plaintiff Macias' rest period premium at a deficient rate.

45. Defendants required Plaintiffs and the aggrieved employees to incur costs for work-related purposes without full reimbursement.

46. In direct consequence of their job duties, Plaintiffs and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiffs and the aggrieved employees to utilize their personal cell phones for work-related purposes without full reimbursement. Defendants did not reimburse Plaintiffs and the aggrieved employees for expenses incurred from using their personal cell phones that were necessary for the job.

47. For example, Plaintiff Ochoa was required to use her personal cell phone when she was directed to authenticate an item. Plaintiff Ochoa and other aggrieved employees would have to download and use an app called "the authenticator" to scan the bar code of specific items. Defendants did not fully reimburse Plaintiff Ochoa and the aggrieved employees for expenses incurred from using their personal cell phones that were necessary for the job. For example, during the pay period from 12/20/2024 – 12/15/2024, Plaintiff Ochoa was only reimbursed $5 for her cell phone usage.

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

49. For example, Defendants did not pay Plaintiff Ochoa's shift differential payments on time and instead would reimburse Plaintiff Ochoa's shift differential payments on the following pay period.

50. 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.

51. 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.

52. 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 plaintiffs and other aggrieved employees worked due to Defendants' policy and practice of time editing.

53. Plaintiffs 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 Plaintiffs 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.

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

<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

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

56. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("<u>PAGA</u>"), codified as Labor Code section 2698 *et seq.*:

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

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

58. The State of California, via the Labor and Workforce Development Agency ("<u>LWDA</u>"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*

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

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

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

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

62. On or about **March 14, 2025**, Plaintiff Macias paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

63. On or about **April 9, 2025**, Plaintiff Ochoa paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

64. A true and correct copy of Plaintiffs' written PAGA notices, entitled "Notice of Labor Code Violations" are attached hereto as Exhibit 1 and Exhibit 2 and incorporated by reference as though fully set forth herein (the "PAGA notice").

65. To date, neither Plaintiffs nor Plaintiffs' counsel has received a response to Plaintiffs' written PAGA notice from the LWDA.

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

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

68. As set forth in the PAGA notices attached as Exhibit 1 and Exhibit 2 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

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

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

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

d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.

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

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

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

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

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

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

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

69. Plaintiffs seek 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

Plaintiffs pray 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 Plaintiffs 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: July 7, 2025

Ferraro Vega Employment Lawyers, Inc.

Xavier L. Woodford

Xavier L. Woodford
Nicholas J. Ferraro
Attorneys for Plaintiffs Daisy Macias and Karla Ochoa

<u>EXHIBIT 1</u>

Plaintiff Macias' Notice of Labor Code Violations

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SAN DIEGO EMPLOYMENT LAWYERS

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March 14, 2025

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

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

Planned Parenthood of the Pacific Southwest
1075 Camino Del Rio South
San Diego, California 92108

- 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 **DAISY MACIAS** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Medical Assistant from about December 2014 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 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 editing Plaintiff and the aggrieved employees time records. For example, Plaintiff's time records have been manually edited by her supervisor, which resulted in less hours worked. Plaintiff and the aggrieved employees were deprived of regular wages each time Defendants altered their time records to reflect fewer hours worked. Plaintiff is informed and believes that other employees suffered the same violations.

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.

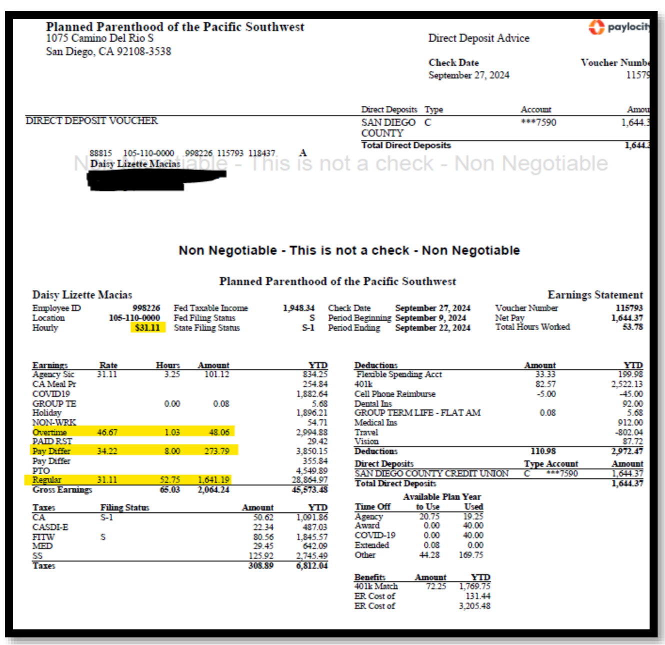
Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular 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 discussed above, Plaintiff and the aggrieved employees were not paid for all hours worked, Plaintiff and the aggrieved employees often worked over 8 hours in a day and over 40 hours in a week completing work-related tasks required by Defendants. To the extent Defendants paid overtime, such compensation was underpaid due to Defendants practice of time editing. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 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 shift differentials, incentives, and other forms of remuneration that Defendants failed to incorporate into the overtime and double time rates in the pay periods when employees worked overtime and double time 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 ICW Wage Orders. An illustrative example of this violation is shown below:



Planned Parenthood of the Pacific Southwest
1075 Camino Del Rio S
San Diego, CA 92108-3538

paylocity

Direct Deposit Advice

Check Date September 27, 2024

Voucher Numbe 1157

DIRECT DEPOSIT VOUCHER

Direct Deposits	Type	Account	Amou
SAN DIEGO COUNTY	C	***7590	1,644.3
Total Direct Deposits			**1,644.**

88815 105-110-0000 998226 115793 118437 A
Daisy Lizette Macias
[redacted]

Non Negotiable - This is not a check - Non Negotiable

Non Negotiable - This is not a check - Non Negotiable

Planned Parenthood of the Pacific Southwest

Daisy Lizette Macias

Earnings Statement

Employee ID	**998226**	Fed Taxable Income	**1,948.34**	Check Date	**September 27, 2024**	Voucher Number	**115793**
Location	**105-110-0000**	Fed Filing Status	**S**	Period Beginning	**September 9, 2024**	Net Pay	**1,644.37**
Hourly	**$31.11**	State Filing Status	**S-1**	Period Ending	**September 22, 2024**	Total Hours Worked	**53.78**

Earnings	Rate	Hours	Amount	YTD
Agency Sic	31.11	3.25	101.12	834.25
CA Meal Pr				254.84
COVID19				1,882.64
GROUP TE		0.00	0.08	5.68
Holiday				1,896.21
NON-WRK				54.71
Overtime	46.67	1.03	48.06	2,994.88
PAID RST				29.42
Pay Differ	34.22	8.00	273.79	3,850.15
Pay Differ				355.84
PTO				4,549.89
Regular	31.11	52.75	1,641.19	28,864.97
Gross Earnings		**65.03**	**2,064.24**	**45,573.48**

Taxes	Filing Status	Amount	YTD
CA	S-1	50.62	1,091.86
CASDI-E		22.34	487.03
FITW	S	80.56	1,845.57
MED		29.45	642.09
SS		125.92	2,745.49
Taxes		**308.89**	**6,812.04**

Deductions	Amount	YTD
Flexible Spending Acct	33.33	199.98
401k	82.57	2,522.13
Cell Phone Reimburse	-5.00	-45.00
Dental Ins		92.00
GROUP TERM LIFE - FLAT AM	0.08	5.68
Medical Ins		912.00
Travel		-802.04
Vision		87.72
Deductions	**110.98**	**2,972.47**

Direct Deposits	Type	Account	Amount
SAN DIEGO COUNTY CREDIT UNION	C	***7590	1,644.37
Total Direct Deposits			**1,644.37**

Time Off	Available to Use	Plan Year Used
Agency	20.75	19.25
Award	0.00	40.00
COVID-19	0.00	40.00
Extended	0.08	0.00
Other	44.28	169.75

Benefits	Amount	YTD
401k Match	72.25	1,769.75
ER Cost of		131.44
ER Cost of		3,205.48

Extract of Plaintiff's Wage Statement for the Pay Period from 09/09/2024 to 09/22/2024.

Here, Plaintiff paystub included a shift differential "Pay Differ" in the amount of $34.22 in the same pay period she worked overtime. However, Plaintiff's overtime was paid at 1.5x her base hourly rate or an otherwise deficient rate. Thus, Defendants failed to properly factor Plaintiff's differential pay into the overtime rate.

Additionally, Defendants failed to factor her "Language" payment into the regular rate of pay for overtime. An illustrative example of this violation is also below:

Direct Deposits	Type	Account	Amount
SAN DIEGO COUNTY	C	***7590	1,644.5
Total Direct Deposits			**1,644.5**

DIRECT DEPOSIT VOUCHER

88815 105-110-0000 998226 119263 121940 **A**
Daisy Lizette Macias
[redacted]

Non Negotiable - This is not a check - Non Negotiable

Non Negotiable - This is not a check - Non Negotiable

Planned Parenthood of the Pacific Southwest

Daisy Lizette Macias — **Earnings Statement**

Employee ID	**998226**	Fed Taxable Income	**2,006.42**	Check Date	**November 8, 2024**	Voucher Number	**119263**
Location	**105-110-0000**	Fed Filing Status	S	Period Beginning	**October 21, 2024**	Net Pay	**1,644.57**
Hourly	**$30.36**	State Filing Status	S-1	Period Ending	**November 3, 2024**	Total Hours Worked	**54.26**

Earnings	Rate	Hours	Amount	YTD
Agency Sic				866.92
CA Meal Pr				287.69
COVID19				1,882.64
GROUP TE		0.00	0.04	5.88
Holiday				1,896.21
Language 1	0.75	0.00	49.06	49.06
NON-WRK	31.11	2.00	62.23	116.94
Overtime	46.67	0.26	12.13	3,134.66
PAID RST				29.42
Pay Differ	38.07	8.00	304.59	4,459.34
Pay Differ	57.11	1.15	65.68	488.34
PTO				5,770.39
Regular	31.11	54.00	1,680.07	32,086.10
Gross Earnings		**65.41**	**2,124.74**	**51,024.53**

Taxes	Filing Status	Amount	YTD
CA	S-1	54.46	1,220.09
CASDI-E		23.01	545.89
FITW	S	87.54	2,047.13
MED		30.33	719.69
SS		129.67	3,077.26
Taxes		**325.01**	**7,610.06**

Deductions	Amount	YTD
Flexible Spending Acct	33.33	299.97
401k	84.99	2,740.16
Cell Phone Reimburse		-50.00
Dental Ins		92.00
GROUP TERM LIFE - FLAT AM	0.04	5.88
Medical Ins		912.00
Travel		-802.04
Union Dues	36.80	36.80
Vision		87.72
Deductions	**155.16**	**3,322.49**

Direct Deposits	Type	Account	Amount
SAN DIEGO COUNTY CREDIT UNION	C	***7590	1,644.57
Total Direct Deposits			**1,644.57**

Time Off	Available to Use	Plan Year Used
Agency	19.70	20.30
Award	0.00	40.00
COVID-19	0.00	40.00
Extended	0.08	0.00
Other	20.82	209.75

Benefits	Amount	YTD
401k Match	74.37	1,960.54
ER Cost of		131.44
ER Cost of		3,205.48

Extract from Plaintiff's Wage Statement for the Pay Period from 10/21/2024 to 11/03/2024.

Therefore, Defendants paid Plaintiff and the aggrieved employees overtime and double time at a deficient rate.

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

<u>Unpaid Paid Sick Leave</u>
Violation of Labor Code §§ 246 through 248.7

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

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

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

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

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Because Defendants failed to record and pay for all hours that Plaintiff and other aggrieved employees worked, Defendants failed to credit them all sick leave hours that they actually accrued. Moreover, Defendants failed to provide Plaintiff and the aggrieved employees with written notice of the amount of paid sick leave available.

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

An example of this violation is illustrated in the examples below:

Hourly		$29.42	State Filing Status		S-1
Earnings	**Rate**	**Hours**	**Amount**		**YTD**
Agency Sic					235.33
CA Meal Pr					61.09
COVID19	29.42	24.00	705.99		1,411.98
GROUP TE		0.00	0.48		3.36
Holiday					941.32
Overtime	44.13	0.33	14.56		631.70
Overtime	48.63	0.83	40.36		
Pay Differ	32.36	8.00	258.87		1,314.79
Pay Differ	48.54	0.05	2.43		127.45
PTO					1,676.73
Regular	29.42	31.30	920.74		9,824.85
Regular	32.42	8.00	259.34		
Gross Earnings		72.51	2,202.77		16,228.60

Extract from Plaintiff's Wage Statement for the Pay Period from 03/11/2024 – 03/24/2024.

Earnings	Rate	Hours	Amount	YTD
Agency Sic	31.11	8.00	248.90	733.13
CA Meal Pr				254.84
COVID19				1,882.64
GROUP TE		0.00	0.08	5.44
Holiday				1,647.31
NON-WRK				54.71
Overtime	46.67	0.17	7.93	2,924.43
Overtime	51.92	2.24	116.30	
PAID RST				29.42
Pay Differ	38.07	8.00	304.59	3,303.25
Pay Differ				355.84
PTO	31.11	8.00	248.90	4,300.99
Regular	31.11	23.94	744.84	24,237.91
Regular	34.61	15.99	553.45	
Gross Earnings		66.34	2,224.99	39,729.91

Extract from Plaintiff's Wage Statement for the Pay Period from 07/29/2024 - 08/11/2024

During the pay period from 03/11/2024 to 03/24/2024, Plaintiff utilized 24 hours of what she believes to be paid sick leave ("COVID19"). Plaintiff also earned two forms of pay differential ("Pay Differ") and a shift differential ("Regular"). However, Defendants failed to incorporate these forms of remuneration when calculating the paid sick leave rate. Thus, Defendants paid Plaintiff's sick leave at a deficient rate during this pay period.

During the pay period from 07/29/2024 to 08/11/2024, Plaintiff utilized 8 hours of what she believes to be paid sick leave ("Agency Sic"). Plaintiff also earned a pay differential ("Pay Differ") and a shift differential ("Regular") that Defendants also failed to incorporate into Plaintiff's paid sick leave rate. Plaintiff is informed and believes other aggrieved employees suffered the same violations.

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

Unpaid Vacation Wages
Violation of Labor Code § 227.3

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

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

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

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to pressure from Defendants to keep up with high demands of the job. For example, Plaintiff would often take her meal period past the 5th hour resulting in frequent non-compliant meal periods.

Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of non-compliant meal periods as required by Labor Code section 226.7. An illustrative example of this violation is shown below:

Earnings	Rate	Hours	Amount	YTD
Agency Sic				235.33
CA Meal Pr	32.42	1.00	32.42	254.84
COVID19				1,411.98
GROUP TE				5.28
Holiday	29.42	8.00	235.33	1,176.65
NON-WRK	29.42	1.18	34.71	54.71
Overtime	44.13	0.15	6.62	1,639.68
Overtime	48.63	3.83	186.24	
PAID RST				29.42
Pay Differ	35.66	8.00	285.27	2,428.50
Pay Differ	53.49	0.92	49.21	228.54
PTO				3,110.77
Regular	29.42	23.98	705.42	17,436.26
Regular	32.42	24.00	778.03	
Gross Earnings		**71.06**	**2,313.25**	**28,011.96**

Extract from Plaintiff's Wage Statement for the Pay Period from 05/20/2024 - 06/02/2024.

Here, Plaintiff earned a meal premium ("CA Meal Pr") in the amount of $32.42 and shift differentials in the same pay period. However, Defendants paid Plaintiff's meal premium at a deficient rate because the premiums did not factor in all forms of remuneration.

To the extent Defendants paid other aggrieved employees meal period premiums, the premiums were not paid at the regular rate of compensation because the premiums did not factor in shift differentials or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. Due to the reasons explained in the "Unpaid Meal Period" section above, such as understaffing and the pressures to keep up with the continuous demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take their rest periods.

An illustrative example of this violation is shown below:

Earnings	Rate	Hours	Amount	YTD
Agency Sic				235.33
CA Meal Pr	33.07	2.00	66.14	159.04
COVID19				1,411.98
GROUP TE		0.00	0.48	4.80
Holiday				941.32
NON-WRK	29.42	0.58	17.06	17.06
Overtime	44.13	0.03	1.32	1,199.31
Overtime	48.63	6.43	312.67	
PAID RST	29.42	1.00	29.42	29.42
Pay Differ	35.66	8.00	285.27	1,857.96
Pay Differ	53.49	0.74	39.58	167.03
PTO	29.42	0.75	22.06	2,875.44
Regular	29.42	22.67	666.87	14,456.91
Regular	32.42	40.00	1,296.66	
Gross Earnings		82.20	2,737.53	23,355.60

Extract from Plaintiff's Wage Statement for the Pay Period from 04/22/2024 - 05/05/2024

Here, Plaintiff earned a rest period premium ("PAID RST") and shift differentials in the same pay period. Yet, Defendants failed to factor in all forms of remuneration in the rest period premium rate and therefore paid Plaintiff's rest period premium at a deficient rate.

When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees all rest period premiums in violation of Labor Code section 226.7. To the extent Defendants paid rest period premiums, 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 shift differentials and other forms of 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.

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

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

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

penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

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

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

<u>Labor Code section 201</u> requires that if an employer fires an employee, the wages must be paid immediately. <u>Labor Code section 202</u> requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. <u>Labor Code section 202</u> states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. <u>Labor Code section 203</u> requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

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

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

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

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

<u>Labor Code section 226(a)</u> requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

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

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 time editing.

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. Specifically, Defendants required Plaintiff and the aggrieved employees to utilize their personal cell phones for work-related purposes without full reimbursement. Defendants did not reimburse Plaintiff and the aggrieved employees for expenses incurred from using their personal cell phones that were necessary for the job.

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,

Xavier L. Woodford

Xavier L. Woodford

Cc Plaintiff Daisy Macias

Cea Ishikawa – VP of Humar Resources
cishikawa@planned.org

<u>EXHIBIT 2</u>

Plaintiff Ochoa's Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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April 9, 2025

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

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

Planned Parenthood of the Pacific Southwest
1075 Camino Del Rio South
San Diego, California 92108

- 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 **KARLA OCHOA**("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Front Office Representative from about May 2019 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 Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

Defendants failed to pay overtime and double time at the "regular rate of pay." Defendants paid Plaintiff and the aggrieved employees shift differentials, incentives, and other forms of remuneration that Defendants failed to incorporate into the overtime and double time rates in the pay periods when employees worked overtime and double time 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 ICW Wage Orders. An illustrative example of this violation is shown below:

Earnings	Rate	Hours	Amount	YTD
Agency Sic				1,172.33
GROUP TE		0.00	0.40	5.48
Holiday				1,736.41
Language 1	0.75	0.00	66.47	66.47
NON-WRK				36.90
Overtime	41.63	0.70	29.14	119.95
Pay Differ				33.56
Pay Differ	30.53	7.92	241.81	1,015.15
Pay Differ				1,134.49
PTO	27.76	8.00	222.05	4,254.14
Regular	27.76	72.00	1,998.45	28,951.28
Gross Earnings		**88.62**	**2,558.32**	**38,526.16**

Extract of Plaintiff's Wage Statement for the Pay Period from 10/07/2024 to 10/20/2024.

Here, Plaintiff earned an incentive or differential ("Language 1") in the amount of $66.47 and another form of remuneration ("Pay Differ") in the amount of $241.81. Plaintiff also worked 0.70 overtime hours. However, Defendants failed to include these payments into Plaintiff's regular rate of pay for the purpose of paying overtime wages. Even without additional forms of remuneration, Defendants failed to pay Plaintiff's overtime wages at the proper rate. For example, Plaintiff's base hourly rate during this pay period was $27.76 per hour and overtime should have been paid at a rate of **<u>$41.64</u>** for overtime hours worked [$27.76 x 1.5 = $41.64]. Therefore, Defendants paid Plaintiff and the aggrieved employees overtime and double time at a deficient rate.

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

<u>Unpaid Paid Sick Leave</u>
Violation of Labor Code §§ 246 through 248.7

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

<u>Labor Code section 246</u> 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 <u>Labor Code sections 246, 246.5, 247</u>, and must further ensure that they maintain the paid sick leave records required by <u>Labor Code section 247.5</u>. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in <u>Labor Code section 246(b)(1)</u>. 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 <u>Labor Code section 246(l)</u>: (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." <u>Labor Code sections 248.6</u> and <u>248.7</u> 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 <u>Labor Code section 246(i)</u>, 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 written notice of the amount of paid sick leave available.

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

An example of this violation is illustrated in the examples below:

Earnings	Rate	Hours	Amount	YTD
Agency Sic	26.93	0.48	12.93	52.79
GROUP TE		0.00	0.28	2.24
Holiday				1,077.40
NON-WRK				36.90
Overtime				38.79
Pay Differ				236.43
Pay Differ	44.44	8.00	355.53	355.53
PTO	26.93	17.14	461.67	2,215.13
Regular	26.93	62.39	1,680.43	12,558.35
Gross Earnings		**88.01**	**2,510.84**	**16,573.56**

Extract from Plaintiff's Wage Statement for the Pay Period from 06/3/2024 - 06/16/2024.

During this pay period, Plaintiff utilized 0.48 hours of paid sick leave ("Agency Sic"). Plaintiff also earned a pay differential ("Pay Differ") that Defendants also failed to incorporate into Plaintiff's paid sick leave rate. Plaintiff is informed and believes other aggrieved employees suffered the same violations.

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

Unpaid Vacation Wages
Violation of Labor Code § 227.3

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

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Consequently, Defendants failed to credit the aggrieved employees with all vacation time they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to pressure from Defendants to keep up with high demands of the job. Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of non-compliant meal periods as required by Labor Code section 226.7. To the extent Defendants paid other aggrieved employees meal period premiums, the premiums were not paid at the regular rate of compensation due to the regular rate violations discussed above.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. Due to the reasons explained in the "Unpaid Meal Period" section above, such as understaffing and the pressures to keep up with the continuous demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take their rest periods.

When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees all rest period premiums in violation of Labor Code section 226.7. To the extent Defendants paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation due to the regular rate violations discussed above.

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, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earning on time each payday. For example, Defendants did not pay Plaintiff's shift differential payments on time and instead would reimburse Plaintiff's shift differential payments on the following pay period.

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.

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. Specifically, Defendants required Plaintiff and the aggrieved employees to utilize their personal cell phones for work-related purposes without full reimbursement. For example, Plaintiff was required to use her personal cell phone when she was directed to authenticate an item. Plaintiff and other aggrieved employees would have to download and use an app called "the authenticator" to scan the bar code of specific items. Defendants did not fully reimburse Plaintiff and the aggrieved employees for expenses incurred from using their personal cell phones that were necessary for the job. For example, during the pay period from 12/20/2024 – 12/15/2024, Plaintiff was only reimbursed $5 for her cell phone usage.

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

<u>Failure to Maintain Accurate Records</u>
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.

<u>Labor Code section 1174</u> 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." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, 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.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(k)(1)

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

- LITIGATION HOLD NOTICE –

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

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

- CONCLUSION -

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

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

Sincerely,

Xavier L. Woodford

Xavier L. Woodford

Cc Plaintiff Karla Ochoa

Cea Ishikawa – VP of Humar Resources
cishikawa@planned.org