

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Dorota A. James (State Bar No. 309933)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
dorota@ferrarovega.com

Attorneys for Plaintiff Melita Barros

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/25/2025 2:09:52 PM

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

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

MELITA BARROS, on behalf of all other
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

ADVANCED DME SERVICE, INC.; ADP
TOTALSOURCE, INC.; and DOES 1 through
50, inclusive,

Defendants.

Case No. 25CU026363C

*Judge: Hon. Loren Freestone
Department: 64*

CLASS ACTION

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed: May 21, 2025

1 Plaintiff MELITA BARROS, on behalf of all other similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this SECOND AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants ADVANCED DME
4 SERVICE, INC.; ADP TOTALSOURCE, INC.; and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

8 2. Defendant also underpaid the Class Members’ wages by failing to include all forms of
9 remuneration, including bonuses and commissions, into the regular rate of pay calculation for
10 overtime, sick pay, and premiums.

11 3. Defendants failed to provide, authorize, and/or permit Plaintiff and the Class Members
12 to take compliant meal and rest periods to which they were entitled.

13 4. Defendants failed to pay all wages owed to Plaintiff and the Class Members in violation
14 of California law. Defendants’ employment policies, practices, and payroll administration systems
15 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

16 **JURISDICTION & VENUE**

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

19 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
20 the Superior Court.

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

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

PARTIES

A. Plaintiff Melita Barros

9. Plaintiff Barros is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 2024 to February 2025. Plaintiff worked as a Resupply Representative.

10. 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

11. Defendant Advanced DME Service, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant ADP Totalsource, Inc. is a Florida corporation that maintains operations and conducts business throughout the State of California, including in this county.

13. 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.

14. Upon information and belief, Defendants Advanced DME Service, Inc. and ADP Totalsource, Inc. 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 Plaintiff and the similarly-situated employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

1 15. While Plaintiff's payroll records and new hire documents including Notice to
2 Employee issued pursuant to Labor Code § 2810.5, identify Advanced DME Service, Inc. as the
3 worksite employer, Plaintiff is informed and believes that ADP Totalsource, Inc maintained and
4 enforced wage and hour policies, issued employment handbooks, administered benefits, processed
5 payroll, and was involved in disciplinary and termination decisions, thereby exerting joint employer
6 authority.

7 16. For example, the Basic Employment Policies Handbook provided to Plaintiff includes
8 express language identifying ADP as a co-employer. It states, in relevant part:

9 "[...] throughout these Basic Employment Policies the term "the Companies" refers to your
10 Company and ADP TotalSource and the terms "the Company, your Company or my
11 company" refers to your employer;" "Your co-employment relationship with ADP
12 TotalSource and the Company is that of an employee-at-will and is entered into voluntarily.
13 Your at-will status with ADP TotalSource may only be altered IN AN INDIVIDUAL CASE
14 OR GENERALLY in a writing signed by the President of ADP TotalSource. If the contractual
15 relationship between ADP TotalSource and your Company is terminated for any reason, you
16 will no longer be a co-employee of ADP TotalSource."

17 17. Additionally, Plaintiff received a termination letter issued to Plaintiff on February 19,
18 2025 by ADP Totalsource, Inc. which stated:

19 "ADP TotalSource provides human resources services to worksite employees like you through
20 a co-employment relationship with HXM - Advanced DME Service Inc."

21 18. Based on the foregoing, Plaintiff alleges that ADP Totalsource, Inc. shared or allocated
22 with Advanced DME Service, Inc responsibilities for hiring, discipline, termination, payroll
23 processing, employment policies, and the provision of employee benefits, establishing a co-
24 employment or joint employer relationship under California law.

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

20. 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.

CLASS ALLEGATIONS

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

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years prior to the filing of this action through date of class certification.

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

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

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

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

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and

litigating wage and hour class, collective, and representative actions in California state and federal courts.

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

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

24. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law. These common questions of law and fact include, without limitation:

i. Whether Defendants failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

ii. Whether Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods and failing to provide required meal periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of meal periods;

iii. Whether Defendant violated Labor Code § 226(a) and the applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11160 by failing to

provide an accurate itemized wage statements that identifies all hours worked and wages earned to Plaintiff and the Proposed Class;

iv. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any proposed Class Member's employment with Defendant terminated;

v. Whether Defendants provided a compliant writing pursuant to Labor Code Section 2810.5 at the outset of employment; and

vi. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged.

GENERAL ALLEGATIONS

25. Plaintiff and Class Members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

26. Defendants failed to pay Plaintiff and the Class Members overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid wages.

27. Plaintiff and Class Members earned other forms of non-discretionary remuneration in addition to their base hourly wages.

28. Plaintiff and the Class Members were entitled to non-discretionary bonuses/commissions calculated based on the number of orders, calls made per day, and sales.

29. In particular, Plaintiff and other Class Members were entitled to one (1) dollar per order made and 10% of their monthly sales. The bonuses/commissions range from \$300 to \$500 per month.

30. Notably, Plaintiff and the Class Members received bonus and commissions payments in the form of gift cards or credit cards. As result, the bonuses and commissions were paid without taxes and other appropriate withholdings which in long term impacts the employees Social Security and other relevant benefits calculated based on employees' wages earned over their lifetime.

31. Likewise, the employer-side of taxes were not withheld which led to an unfair advantage of Defendants against other businesses that comply with the California law.

32. Moreover, Defendants failed to include the bonuses/commissions paid in the regular rate of pay calculation for Plaintiff and the Class Members' overtime wages.

1 33. For each overtime hour worked during the periods in which Plaintiff and the Class
2 Members earned the additional forms of remuneration, Defendants should have (but failed to) pay
3 overtime “at a rate not less than one and one-half times the regular rate of pay for an employee” and
4 “twice the regular rate of pay” for double time hours as required by the plain language of Labor Code
5 section 510(a) and the IWC Wage Orders. While Defendants attempted to pay overtime at the regular
6 rate of pay, they still underpaid the overtime rate.

7 34. Defendants failed to comply with California’s paid sick leave laws with respect to the
8 Class Members. Upon information and belief, Defendants failed to pay sick leave at the correct rate
9 because they failed to factor in bonuses, commissions, and/or other forms of remuneration, as required
10 by section 246. Instead, Defendants paid sick leave to Plaintiff and the Class Members at their base
11 hourly rate, resulting in inaccurate sick leave accrual.

12 35. Although Plaintiff and other similarly putative Class Members were non-exempt
13 employees under California law, Plaintiff and other employees were regularly prevented from taking
14 timely meal periods and/or were required to miss their meal periods completely due to the working
15 conditions and job duties imposed by Defendants.

16 36. At times, Defendants failed to pay Plaintiff and the other Class Members a meal period
17 premium for missed, late, short, and interrupted meal periods.

18 37. An illustrative example of Defendants’ failure to pay the meal period premium, is found
19 in Plaintiff wage statement for the pay period of January 13, 2025 through January 26, 2025. Here,
20 Plaintiff worked more than five (5) hours prior to her meal period, as shown on her timecard for
21 January 23, 2025. However, Defendants failed to pay Plaintiff her owed meal period premium.

22 38. On information and belief, the other Class Members were also not paid the meal
23 premium for missed, late, short, and interrupted meal periods.

24 39. Second, to the extent Defendants paid meal period premiums, at times, Defendants
25 failed to pay Plaintiff and the other Class Members a meal period premium at the “regular rate of
26 compensation” because premiums paid did not factor in all forms of remuneration and instead paid
27 Class Members at their base hourly rate.

28 40. These violations create derivative liability for failure to timely pay all wages owed each

1 payday or upon separation of employment.

2 41. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
3 statements to Plaintiff and Class Members each pay period as a result of the policies set forth above.
4 Defendants failed to list the correct “gross wages earned” as employees earned wages and premiums
5 that were not paid, resulting in an inaccurate reflection and recording of “gross wages earned” on those
6 wage statements. Likewise, Defendants failed to state on employee wage statements each pay period
7 the applicable hourly rates in effect and the number of hours worked at that rate as Defendants failed
8 to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and
9 underpaid, resulting in an inaccurate reflection on the pay stub.

10 42. Thus, Plaintiff and Class Members cannot promptly and easily determine from the
11 wage statement alone the wages paid or earned without reference to other documents or information.
12 These wage statement violations are significant because they create confusion among Plaintiff and
13 Class Members with respect to what amounts were owed and paid, at what rate, the number of
14 hours worked, and how those amounts were or should be calculated. The wage statements reflect
15 a false statement of earnings and conceal the underpayments of employee wages.

16 43. Defendants unlawfully retaliated against Plaintiff after, on February 13, 2025, she
17 advised Defendant that she would need to take a medical leave to address her health problems and
18 requested a clarification regarding Defendants’ failure to pay commissions and bonuses as promised.
19 In particular, Plaintiff and other Class Members did not receive their bonuses and commissions for
20 January and February. In response and as a result of Plaintiff’s inquiries about her unpaid bonuses and
21 request for medical leave, Defendants retaliated against her by terminating her employment on
22 February 19, 2024.

23 44. To the extent that Defendants retaliated against Plaintiff for complaining to her
24 supervisor about violations of wage and hour laws and improper working conditions, said conduct
25 constitutes unlawful retaliation in violation of Labor Code §§ 98.6 and 1102.5.

26 45. Specifically, Plaintiff was assigned to work in a reception area where temperatures
27 dropped below 60 degrees during the fall and winter months. Despite informing her supervisors that
28 the cold indoor environment adversely affected her health and exacerbated existing medical

1 conditions, Defendants failed to relocate her to a properly heated workspace. Instead, Defendants
2 engaged in retaliatory conduct against Plaintiff.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **Violation of Labor Code §§ 510 and 1194**

6 46. All outside paragraphs of this Complaint are incorporated into this section.

7 47. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
9 wages all overtime hours worked, and which further provide a private right of action for an employer's
10 failure to pay all overtime compensation for overtime hours worked.

11 48. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
12 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
13 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
14 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
15 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
16 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
17 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

18 49. Plaintiff and class members are entitled to recover the full amount of the unpaid
19 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
20 extent permitted by law.

21 **SECOND CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **Violation of Labor Code §§ 226.7 and 512**

24 50. All outside paragraphs of this Complaint are incorporated into this section.

25 51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
27 meal period premiums in lieu thereof), and which further provide a private right of action for an
28

1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

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

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

27 57. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
28 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class

members, govern how Defendants were required to calculate paid sick leave.

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

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

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

FOURTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

62. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

63. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

64. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay

1 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
2 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
3 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

4 **FIFTH CAUSE OF ACTION**

5 **WAGE STATEMENT VIOLATIONS**

6 **Violation of Labor Code § 226**

7 65. All outside paragraphs of this Complaint are incorporated into this section.

8 66. This cause of action is brought by a wage statement subclass pursuant to Labor Code
9 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
10 pay period, and which further provide a private right of action for an employer's failure to comply
11 with this obligation.

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

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

19 69. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
20 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
21 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
22 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
23 Code section 226(e).

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

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

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

1 71. This cause of action is brought by a waiting time subclass pursuant to Labor Code
2 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
3 employment, and which further provide a private right of action to recover statutory waiting time
4 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
5 wages.

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 74. All outside paragraphs of this Complaint are incorporated into this section.

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

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

26 77. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,

1 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

6 79. Plaintiff and class members are entitled to injunctive relief against Defendants,
7 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
8 an ownership interest and to prevent future damage and the public interest under Business and
9 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
10 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
11 § 1021.5.

12 **EIGHTH CAUSE OF ACTION**

13 **RETALIATION**

14 **Violation of Labor Code §§ 98.6, 233, 246.5, 1102.5**

15 **(Alleged by Plaintiff Individually)**

16 80. All outside paragraphs of this Complaint are incorporated into this section.

17 81. At all times herein mentioned, Labor Code § 98.6 was in full force and effect, and was
18 binding upon Defendants. Said section prohibits employers from discriminating or retaliating against
19 employees who complain to the Labor Commissioner regarding an employer's violations of wage and
20 hour laws.

21 82. At all times herein mentioned, Labor Code § 1102.5 was in full force and effect, and
22 was binding upon Defendants. Said section provides that an employer may not retaliate against an
23 employee for reporting or refusing to participate in an activity that would result in a violation of a state
24 or federal statute, rule or regulation.

25 83. Plaintiff is informed and believes that her employment was terminated because she was
26 seeking medical leave to address her health problems and requested a clarification regarding
27 Defendants' failure to pay commissions and bonuses.

84. To the extent that Defendant retaliated against Plaintiff for complaining to her supervisor about violations of wage and hour laws and improper working conditions, said conduct constitutes unlawful retaliation in violation of Labor Code §§ 98.6, 233, 234, 246.5 and 1102.5. Likewise, Plaintiff's attempts to enforce her rights to paid sick leave and/or CFRA guaranteed under California law are protected as public policy. Defendants discharged Plaintiff for attempting to enforce her protected rights. Therefore, Defendants' termination of Plaintiff was a wrongful termination in violation of public policy. Said violation caused substantial injury and damage to Plaintiff including, but not limited to, lost wages, benefits and emotional distress in amounts to be determined at trial according to proof.

85. As a result of Defendant's wrongful conduct, Plaintiff is entitled to all damages and penalties allowed by law in amounts to be determined at trial according to proof. Plaintiff also seeks all interest, attorney's fees, and costs allowed by law, including but not limited to, common law and Labor Code §§ 98.6, 233, 234, 246.5, 1102.5, and 2699.

NINTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

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

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

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

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

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

15 93. On or about **May 13, 2025**, Plaintiff paid the requisite PAGA filing fee and provided
16 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
17 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
18 violations.

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

22 95. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
23 written PAGA notice from the LWDA.

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

27 97. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
28 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate

the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

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

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- e. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- g. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- h. ***Retaliation.*** Violation of Labor Code §§ 98.6, 1102.5.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- 1 d. For division of class members into appropriate classes and/or subclasses according to
2 proof;
- 3 e. For recovery of all statutory penalties and liquidated damages;
- 4 f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- 5 g. For restitution and injunctive relief;
- 6 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by
7 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, and Code
8 of Civil Procedure § 1021.5.
- 9 i. For recovery of damages in amount according to proof;
- 10 j. For all recoverable pre- and post-judgment interest;
- 11 k. For this action to be maintained as a representative action under the PAGA;
- 12 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
13 the action were brought by the State of California or the California Division of Labor
14 Enforcement;
- 15 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 16 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
17 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
18 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 19 o. For such other relief the Court deems just and proper.

20
21 Dated: August 25, 2025

Ferraro Vega Employment Lawyers, Inc.

22
23 

Nicholas J. Ferraro

Attorney for Plaintiff Melita Barros

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

May 13, 2025

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

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

Advanced DME Service, Inc.
27349 Jefferson Ave., Ste. 100
Temecula, California 92590

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

ADP Totalsource, Inc.
1 ADP Blvd., MS 433
Roseland, NJ 07068

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **MELITA BARROS** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendants”:

ADVANCED DME SERVICE, INC. AND ADP TOTALSOURCE, INC.

Defendants 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 Resupply Representative from about July 2024 to February 2025. During her 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 at the lawful rate of pay for overtime hours worked, resulting in unpaid wages. Plaintiff and aggrieved employees earned other forms of non-discretionary remuneration in addition their base hourly wages.

Plaintiff and the aggrieved employees were entitled to non-discretionary bonuses/commissions calculated based on the number of orders, calls made per day, and sales. In particular, Plaintiff and other aggrieved employees were entitled to one (1) dollar per order made and 10% of their monthly sales. The bonuses/commissions range from \$300 to \$500 per month. Notably, Plaintiff and the aggrieved employees received bonus and commissions payments in the form of gift cards or credit cards. As result, the bonuses and commissions were paid without taxes and other appropriate withholdings which in long term impacts the employees Social Security and other relevant benefits calculated based on employees’ wages earned over their lifetime. Likewise, the employer-side of taxes were not withheld which led to an unfair advantage of Defendants against other businesses that comply with the California law.

Moreover, Defendants failed to include the bonuses/commissions paid in the regular rate of pay calculation for Plaintiff and the aggrieved employees’ overtime wages.

For each overtime hour worked during the periods in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate not less than one and one-half times the regular rate of pay for an employee” and “twice the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. While Defendants attempted to pay overtime at the regular rate of pay, they still underpaid the overtime 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.

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Upon information and belief, Defendants failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions, and/or other forms of

remuneration, as required by section 246. Instead, Defendants paid sick leave to Plaintiff and the aggrieved employees at their base hourly rate, resulting in inaccurate sick leave accrual.

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

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

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

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

First, Defendants failed to pay Plaintiff and the other aggrieved employees a meal period premium for missed, late, short, and interrupted meal periods. Below is an illustrative example of Defendants failure to pay the meal period premium to Plaintiff.

P Thu 01/23/2025 07:57 AM - 01:00 PM 5.05
P Thu 01/23/2025 02:00 PM - 04:56 PM 2.93

Plaintiff's timecard for January 23, 2025

Advanced DME Service Inc
4333 Viewridge Ave
San Diego, CA 92123

Melita Barros



Period Beginning Date 1/13/2025	Pay Date 1/31/2025	Co. HXM	Clock	Home Dept
Period Ending Date 1/26/2025	WGPS Advance Pay Date	File # 000146	Number 00050001	

Gross Pay			\$ 1,464.47
Regular	Rate: 18.5000	Hours: 79.13	\$ 1,463.91
Overtime	Rate: 27.7500	Hours: 0.02	\$ 0.56

Basis of Pay: HOURLY

Plaintiff's wage statement for the pay period of January 13, 2025 through January 26, 2025

Here, Plaintiff worked more than five (5) hours prior to her meal period. However, Defendant failed to pay Plaintiff her owed meal period premium. On information and belief, the other aggrieved employees were also not paid the meal premium for missed, late, short, and interrupted meal periods.

Second, to the extent Defendants paid meal period premiums, Defendants failed to pay Plaintiff and the other aggrieved employees a meal period premium at the "regular rate of compensation" because premiums paid did not factor in all forms of remuneration and instead paid aggrieved employees at their base hourly 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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Retaliation
Violation of Labor Code §§ 98.6, 1102.5

Defendants violated Labor Code section 98.6 by retaliating against Plaintiff for making complaints about workplace conditions.

Labor Code Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”

Labor Code § 1102.5 provides that an employer may not retaliate against an employee for reporting or refusing to participate in an activity that would result in a violation of a state or federal statute, rule or regulation.

Defendants unlawfully retaliated against Plaintiff after, on February 13, 2025, she advised Defendant that she would need to take a medical leave to address her health problems

and requested a clarification regarding Defendants' failure to pay commissions and bonuses as promised. In particular, Plaintiff and other aggrieved employees did not receive their bonuses and commissions for January and February. In response and as a result of Plaintiff's inquiries about her unpaid bonuses and request for medical leave, Defendants retaliated against her by terminating her employment on February 19, 2024.

To the extent that Defendants retaliated against Plaintiff for complaining to about violations of wage and hour laws, said conduct constitutes unlawful retaliation in violation of Labor Code §§ 98.6 and 1102.5. Likewise, Plaintiff's attempts to enforce her rights to paid sick leave and/or CFRA guaranteed under California law are protected as public policy. Defendants discharged Plaintiff for attempting to enforce her protected rights. Therefore, Defendants' termination of Plaintiff was a wrongful termination in violation of public policy. Said violation caused substantial injury and damage to Plaintiff including, but not limited to, lost wages, benefits, and emotional distress in amounts to be determined at trial according to proof.

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,

Dorota James
Dorota A. James

Cc Anthony Amoroso (anthony.amoroso@advancedhomecareonline.com)
Defendant's Regional Operations Manager