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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/26/2024 at 10:37:00 AM

Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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

ROBERT BENNETT, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

PATRIOT ENVIRONMENTAL SERVICES,
INC. and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00044044-CU-OE-CTL

*Assigned to the Hon. Matthew C. Braner
Dept. C-60*

CLASS ACTION

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Minimum Wage Violations
8. Failure to Pay All Overtime Wages
9. Failure to Reimburse Business Expenses
10. Civil Penalties under the Private Attorneys
General Act

Action Filed: Nov. 1, 2022

1 Plaintiff ROBERT BENNETT (“Plaintiff”), individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act brings this SECOND
3 AMENDED CLASS AND REPRESENTATIVE ACTION against Defendants PATRIOT
4 ENVIRONMENTAL SERVICES, INC. and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action filed for wage and hour violations of the
8 California Labor Code. Defendants provide field and industrial services including handling,
9 collecting, and disposing hazardous waste.

10 2. Plaintiff worked shifts of 8 and often more than 10- and 12- hours per day for
11 Defendants as a Field Technician. Defendants did not schedule lunch or rest periods and instead paid
12 for the full shift length without providing first or second lunch breaks and without paying meal period
13 premium payments for missed meal periods. Time records show that Plaintiff and Class Members
14 worked 8-, 10-, 12-hours and longer per day, without first or second unpaid meal periods and without
15 corresponding payment of a meal period premium.

16 3. Similarly, Defendants also did not provide fully complaint rest periods during those
17 shifts, and Defendants failed to pay Plaintiff and Class Members rest period premiums in violation of
18 the California Labor Code.

19 4. Defendants’ employment policies and practices and payroll administration systems
20 enabled and facilitated these violations on a company-wide basis with respect to Class Members.

21 **JURISDICTION & VENUE**

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

24 6. The monetary damages and restitution sought by Plaintiff exceed the minimal
25 jurisdiction limits of the Superior Court.

26 7. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
28 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.

8. Venue is proper in this Court under Code of Civil Procedure section 395 because Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiff Robert Bennett

9. Plaintiff Bennett is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2022 to August 2022. Plaintiff worked as a Field Technician.

10. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action 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.”])

B. Defendants

11. Defendant Patriot Environmental Services, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. 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 to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this Complaint to reflect their true names and capacities once ascertained.

13. Plaintiff is informed, believes, and alleges that all 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 Plaintiff and other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

14. Plaintiff is informed, believes, and alleges that 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

15. Plaintiff is informed, believes, and alleges that each defendant 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

16. Plaintiff brings this action 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 (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

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

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

a. Numerosity: Although the precise membership of the entire class is unknown to Plaintiff at this time, Plaintiff estimates the class to exceed 50 individuals. The class members are so numerous that joinder of all class members is impracticable. The identity of class members is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. Plaintiff and class members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class

Members. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative. Plaintiff will take all necessary steps to adequately and fairly represent and protect the interests of the class. Plaintiff has no interest antagonistic to other class members. Plaintiff 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.

19. 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 violate California law.

GENERAL ALLEGATIONS

20. Plaintiff and other Class Members worked long days without compliant lunch breaks. Defendants failed to maintain a record of meal periods for Plaintiff and other aggrieved employees, and instead simply paid Plaintiff and other aggrieved employees for full 8-, 10-, or 12-hour days (and longer), as examples, without first or second lunch breaks and without premium payments.

1 21. The time records provided and maintained by Defendants confirm Plaintiff and Class
2 Members did not receive meal periods on shifts exceeding five or six hours per day, or second duty-
3 free meal periods on workdays exceeding ten hours per day. Additionally, Plaintiff and Class
4 Members—the extent Defendants claim the first meal period was properly waived in a manner
5 required by the Labor Code—were required to waive second meal periods on days when the first meal
6 period was not provided.

7 22. Defendants did not utilize valid meal period waivers for Plaintiff or Class Members.

8 23. Defendants did not pay meal period premiums.

9 24. When meal periods were taken (though not recorded), they were typically taken late,
10 for less than 30 minutes, and/or well after the fifth or tenth hour of work (for second meal periods).

11 25. The time records provided and maintained by Defendants confirm Plaintiff did not
12 receive meal periods on shifts exceeding five or six hours per day, or second duty-free meal periods
13 on workdays exceeding ten hours per day. “[T]ime records showing noncompliant meal periods raise
14 a rebuttable presumption of meal period violations, including at the summary judgment stage.”
15 *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58. Additionally, Defendants failed to utilize valid
16 meal period waivers for the aggrieved employees.

17 26. Based on the same practices that resulted in continuous workdays with limited
18 opportunity for compliant, timely meal periods, Defendants equally failed in their obligation to provide
19 rest periods to employees. This was due to a lack of company policy authorizing rest periods.

20 27. Rest breaks took a back seat to work demands and company mandates. As a result,
21 Plaintiff and the aggrieved employees did not receive uninterrupted and duty-free rest periods for
22 every four hours of work (or major fraction thereof). On information and belief, Plaintiff alleges
23 Defendants maintained a policy of not paying rest period premiums and not providing a mechanism
24 for employees to request rest period premiums for rest periods not authorized.

25 28. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
26 accurately itemized the requirements set forth in Labor Code §§ 226(a). Failing to include all premium
27 wages for meal and rest periods due resulted in Defendants failure to accurately state all gross wages
28

1 earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at those respective rates.

3 29. These wage statement violations created significant confusion among Plaintiff and
4 other aggrieved employees with respect to what amounts were owed and paid, at what rates, the
5 number of hours worked, and how those amounts were or should be calculated. The wage statements
6 reflect a false statement of earnings and concealed the underlying problems and underpayments of
7 employee wages.

8 30. As a result of the violations above, including failing to pay meal and rest period
9 premiums when due, Defendants failed to timely pay all wages earned by Plaintiff and Class Members
10 each pay period or upon separation of employment in violation of Labor Code 204 and 204b. *See*
11 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93. Defendants did not pay waiting
12 time penalties for the late payments to Class Members.

13 31. Defendants' failure to pay such premium payments each pay period or upon separation
14 of employment, rendered the payments untimely and subject to civil penalties for the violations
15 committed against the aggrieved employees under Labor Code §§ 201 through 203.

16 32. Defendants additionally violated Labor Code section 432.6 by requiring Plaintiff and
17 other Class Members agree to illegal non-competition agreements. Non-competition agreements are
18 illegal under California Law.

19 33. For these same reasons, Defendants violated Labor Code section 1174, which requires
20 employers maintain "payroll records showing the hours worked daily by and the wages paid to, and
21 the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed
22 at the respective plants or establishments."

23 34. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
24 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
25 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
26 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
27 under California Law.
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1 **SECOND CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7**

4 41. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 42. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
7 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
8 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
9 regular rate of compensation.

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

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

19 **THIRD CAUSE OF ACTION**

20 **UNTIMELY PAYMENT OF WAGES**

21 **Violation of Labor Code §§ 204 *et seq.***

22 45. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
24 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
25 period, and which further provide a private right of action for an employer's failure to comply with
26 this obligation.

27 47. Defendants willfully failed in their affirmative obligation to timely pay all wages,
28 including paid sick leave and meal and rest premiums, earned by Plaintiff and Class Members twice

1 during each calendar month on days designated in advance by the employer as regular paydays (for
2 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
3 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
4 “Minimum Wages” sections of the applicable orders).

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

10 **FOURTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **Violation of Labor Code § 226**

13 49. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 50. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
15 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
16 pay period, and which further provide a private right of action for an employer’s failure to comply
17 with this obligation.

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

22 52. Defendants’ unlawful acts and omissions deprived Plaintiff and Class Members of
23 accurate itemized wage statements, causing confusion and concealing wage and premium
24 underpayments.

25 53. As a result, Plaintiff and Class Members are entitled to recover the statutory penalty of
26 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
27 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
28

1 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
2 Code section 226(e).

3 **FIFTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

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

6 54. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 55. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
8 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
9 employment, and which further provide a private right of action to recover statutory waiting time
10 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
11 wages.

12 56. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
13 wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
14 termination of employment or within 72 hours thereafter for employees who did not provide at least
15 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
16 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

17 57. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
18 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
19 by law.

20 **SIXTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

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

23 58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

27 60. Defendants' dependance on these unfair and/or unlawful business practices deprived
28 Plaintiff and continue to deprive other Class Members of compensation to which they are legally

entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

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

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

SEVENTH CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

64. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages).

65. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of

1 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
2 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
3 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
4 Code § 1194.2.

5 66. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
6 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
7 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
8 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
9 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

14 68. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
15 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
16 wages all overtime hours worked, and which further provide a private right of action for an employer’s
17 failure to pay all overtime compensation for overtime hours worked.

18 69. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
19 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess
20 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
21 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
22 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
23 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
24 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

25 70. Plaintiff and class members are entitled to recover the full amount of the unpaid
26 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
27 extent permitted by law.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

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

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

8 73. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
10 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 2802.

13 **TENTH CAUSE OF ACTION**

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

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

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

17 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

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

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

26 77. The State of California, via the Labor and Workforce Development Agency
27 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
28

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

9 79. Labor Code section 2699(f) provides: “For all provisions of this code except those for
10 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
11 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
12 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
13 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
14 each subsequent violation.”

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

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

20 82. On or about **October 26, 2022**, Plaintiff paid the requisite PAGA filing fee and
21 provided written notice (by online electronic filing with the LWDA and by certified mail to
22 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
23 the alleged violations.

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

27 84. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
28 written PAGA notice from the LWDA.

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

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

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

- 11 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
12 1197, 1198; IWC Wage Orders.
- 13 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
14 Orders.
- 15 c. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 16 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
17 1198; IWC Wage Orders.
- 18 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
19 1198; IWC Wage Orders.
- 20 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
21 §§ 204, 204b, 210.
- 22 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
23 Labor Code §§ 201, 202, 203, 256.
- 24 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 25 i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
26 Wage Orders.
- 27 j. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5 based on
28 Defendants' requirement for employees to sign a non-competition provision in

1 violation of California Business and Professions Code section 16600, which
2 renders non-competition agreements illegal, null and void.

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

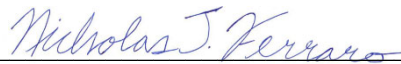
PRAYER

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;
- d. For division of Class Members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and Plaintiff's counsel 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;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

Dated: March 18, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorney for Plaintiff Robert Bennett

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
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October 26, 2022

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

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

Patriot Environmental Services, Inc.
508 East E Street, Unit A
Wilmington, CA 90744

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

Heritage-Crystal Clean, LLC
2175 Point Blvd., Suite 375
Elgin, IL 60123

Dear LWDA Officer and Company Representatives:

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

PATRIOT ENVIRONMENTAL SERVICES, INC.
HERITAGE-CRYSTAL CLEAN, LLC¹

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

¹ This PAGA notice concerns and affects the aggrieved employees who worked under Patriot Environmental Services, Inc.’s employment policies and practices. Heritage-Crystal Clean, LLC is on notice as a potentially liable agent and/or joint employer of Patriot.

of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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 Plaintiff may prosecute and/or resolve the underlying damages and penalties the Superior Court of California. Any settlements in connection with this notice must be approved by the Superior Court under Labor Code section 2699(k). Therefore, Defendants are notified that any attempt to resolve this case 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. *See also Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Field Technician from about June 2022 to August 2021. 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 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 worked long days without compliant lunch breaks. Defendants failed to maintain a record of meal periods for Plaintiff and other aggrieved employees, and instead simply paid Plaintiff and other aggrieved employees for full 8 or 12 hour days, as examples, without first or second lunch breaks and without premium payments.

Often times, Plaintiff and aggrieved employees did not receive an unpaid, 30-minute first or second meal period due to work demands and company practices. Meal periods that were taken were typically interrupted or taken well after the fifth or tenth hour of work (for second meals). When aggrieved employees did not receive lunch breaks, they were not paid a meal period premium in accordance with California law. The time records provided and maintained

by Patriot confirm Plaintiff did not receive meal periods on shifts exceeding five or six hours per day, or second duty-free meal periods on workdays exceeding ten hours per day. Defendants did not utilize valid meal period waivers for the aggrieved employees. Defendants did not pay meal period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Based on the same practices that resulted in continuous workdays with limited opportunity for compliant, timely meal periods, Defendants equally failed in their obligation to provide rest periods to employees. This was due to a lack of company policy authorizing rest periods. Rest breaks took a back seat to work demands and company mandates. As a result, Plaintiff and the aggrieved employees did not receive uninterrupted and duty-free rest periods for every four hours of work (or major fraction thereof). On information and belief, Plaintiff alleges Defendants maintained a policy of not paying rest period premiums and not providing a mechanism for employees to request rest period premiums for rest periods not authorized.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Specifically, because Defendants failed to pay all meal and rest period premiums owed, as alleged herein, Defendants failed to pay those premium payments each pay period or upon separation of employment, rendering the payments untimely and subject to civil penalties for the violations committed against the aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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. Specifically, because Defendants failed to pay all meal and rest period premiums owed, as alleged herein, Defendants failed to pay those premium payments each pay period or upon separation of employment, rendering the payments untimely and subject to civil penalties for the violations committed against the aggrieved employees.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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 meal and rest period premiums that were not paid, resulting in an inaccurate reflection and recording of "gross wages earned" and "net 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 meal and rest period premiums earned by and 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, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Unlawful Employment Condition
Violation of Labor Code § 432.5

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

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

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants’ standard issue offer letter contained a non-competition provision that violates California law. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

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(g).

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

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Robert Bennett

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