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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

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

PAUL ALBERT, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

EPSILON SYSTEMS SOLUTIONS, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00005473-CU-OE-CTL

Representative Action Complaint

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

1 Plaintiff PAUL ALBERT (“Plaintiff”), as the State of California’s designated proxy under the
2 Private Attorneys General Act brings this REPRESENTATIVE ACTION COMPLAINT against
3 Defendants EPSILON SYSTEMS SOLUTIONS, INC. and DOES 1 through 50, inclusive
4 (collectively “Defendants” or “Epsilon”), alleging as follows:

5 **INTRODUCTION**

6 1. Defendants underpaid aggrieved employees’ wages by failing to include all forms of
7 remuneration, including cash in lieu of benefits payments, in their hourly overtime, sick pay, and
8 premium rates, resulting in underpayments of wages.

9 2. Defendants are further liable for derivative claims for wage statement, untimely
10 payment, and other associated violations.

11 3. Plaintiff seeks to recover civil penalties and other recoverable amounts for these Labor
12 Code violations on behalf of the State of California and the aggrieved employees.

13 **JURISDICTION & VENUE**

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

16 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

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

22 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

PARTIES

A. Plaintiff Paul Albert

8. Plaintiff Albert is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about January 2021 to September 2022. Plaintiff worked as a Outside Machinist (Engineering Technician III).

9. 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.”])

B. Defendants

10. Defendant Epsilon Systems Solutions, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. 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.

12. 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 the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

13. 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.

14. 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.

GENERAL ALLEGATIONS

15. The aggrieved employees in this PAGA action worked for Defendants.

16. Defendants paid Plaintiff and the aggrieved employees additional compensation, including, but not limited to, cash in lieu of benefits payments, which were not included in the regular rate of pay for purposes of overtime, meal and rest period premiums, and paid sick leave.

17. Specifically, aggrieved employees earned SCA-Health cash in lieu of benefits, but these additional sums were not factored into the regular rate for purposes of premium pay, overtime, and sick pay.

18. Instead, Defendants paid aggrieved employees' overtime, paid sick pay, and meal and rest period premiums at their base hourly rate (or multiple thereof), resulting in an underpayment of wages.

19. Because of these violations, Defendants failed provide accurate itemized wage statements to the aggrieved employees that included the accurate total gross or net wages earned, as the employees earned sick leave wages, overtime compensation, and premiums, which were not paid at the lawful regular rate of pay.

20. Likewise, these sick pay, overtime, and premium wages were paid at inaccurate hourly wage rates (*i.e.*, the base rate or a multiple of the base rate for overtime instead of the regular rate) which violates the wage statement requirement to include the correct hourly rate in effect each pay period along with the corresponding and correct number of hours.

21. Additionally, Defendants paid a lump sum for the SCA earnings, without annotating the number of hours or hourly rate for that earnings category. As a result of the foregoing issues, Defendants have provided inaccurate and non-compliant wage statements to the aggrieved employees.

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

23. As a result of the foregoing violations, Defendants also failed to timely pay all wages as they were due to Plaintiff and the aggrieved employees while they were employed and also failed to timely pay all wages due to Plaintiff and the aggrieved employees at their separation of employment.

24. Through this action, Plaintiff seeks to enforce the rights of the State of California, through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants' Labor Code violations.

FIRST 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)

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

26. 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.

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

28. 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 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."])

29. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil

1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

14 33. On or about November 29, 2022, Plaintiff paid the requisite PAGA filing fee and
15 provided written notice (by online electronic filing with the LWDA and by certified mail to
16 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
17 the alleged violations.

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

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

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

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

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.*

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

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

39. 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(g).

PRAYER

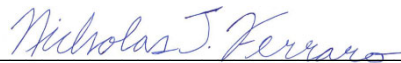
Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;

- 1 d. For disgorgement of all amounts wrongfully obtained;
2 e. For this action to be maintained as a representative action under the PAGA;
3 f. For Plaintiff and counsel of record to be provided with all enforcement capability as if
4 the action were brought by the State of California or the California Division of Labor
5 Enforcement;
6 g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
7 h. For restitution and injunctive relief;
8 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
9 permitted by law, including (without limitation) under Labor Code §§ 2699 and Code
10 of Civil Procedure section 1021.5; and
11 j. For such other relief the Court deems just and proper.

12
13 Dated: February 7, 2023

Ferraro Vega Employment Lawyers, Inc.

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Nicholas J. Ferraro

Attorneys for Plaintiff Paul Albert

EXHIBIT 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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November 29, 2022

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

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

Epsilon Systems Solutions, Inc.
9444 Balboa Avenue, Suite 100
San Diego, CA 92123

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

Dear LWDA Officer and Company Representatives:

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

EPSILON SYSTEMS SOLUTIONS, INC.

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

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

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 a settlement approved by the Superior Court of California under Labor Code section 2699(k). 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. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Outside Machinist (Engineering Technician III) from about January 2021 to September 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an

employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Like federal law, under the California Labor Code, the “regular rate” is not simply a straight time multiple of an employee’s base rate, but rather must include “all remuneration for employment paid to ... the employee,” except the eight items specifically enumerated in 29 U.S.C. § 207(e)(1)-(8). Remuneration like bonuses and incentives must be included in the hourly overtime rate. *See, e.g., Howell v. Advantage RN, LLC* (S.D. Cal. 2019) 401 F. Supp. 3d 1078, 1093 (“Such non-discretionary bonuses ... cannot be lawfully excluded from the regular rate”). Additionally, shift differentials and on-call pay (i.e. work paid at different rates) must also be factored in to the regular rate of pay used to calculate overtime for employees. *See, e.g., Bay Ridge Operating Co. v. Aaron* (1948) 334 U.S. 446, 469.

Most relevant here, cash payments in lieu of benefits must also be included in the regular rate of pay used to calculate overtime wages. *See, e.g., Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901 (affirming “cash-in-lieu of benefits payments are not properly excluded” from the regular rate of pay). Case law is clear that employers who pay cash in lieu of benefits must include such payments in the regular rate of pay. *Id.*; *see also Local 246 Util. Workers Union v. Southern California Edison Co.*, (9th Cir. 1996) 83 F. 3d 292, 296 (holding cash payments made directly to employees were not excepted from the regular rate under the Health Insurance Exception because such payments were not made to a third party).

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to include all forms of remuneration in the regular rate of pay when calculating the overtime rate for Plaintiff and other aggrieved employees, as illustrated on **Plaintiff’s wage statement for the pay period of 12/13/2021 to 12/26/2021 (Bates #065)**.

Epsilon Systems Solutions, Inc.						
Paul Albert						
Employee ID	111743	Fed Taxable Income	2,540.66	Check Date	December 30, 2021	
Location	CA03-A99	Fed Filing Status	S	Period Beginning	December 13, 2021	
Salary	\$2,085.60	State Filing Status	H-0	Period Ending	December 26, 2021	
Earnings	Rate	Hours	Amount	YTD	Deductions	
DOUBLET				47.40	No Deductions	
HOLIDAY		8.00	208.56	1,794.24		
LEAVE WI				0.00		
Lunch	4.50			0.00	Direct Deposits	
OVERTIM	3.00		117.32	2,804.90		
REGULAR	72.00		1,877.04	45,720.13		
SCA-HEAL	0.00		337.74	8,406.93	Total Direct Deposits	
SICK LEA				1,413.11		
Gross Earnings		87.50	2,540.66	60,186.71		

Plaintiff earned cash-in-lieu of benefits in the amount of \$337.74 the wage statement above, but this amount was not factored into his overtime rate. Plaintiff was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay (i.e., \$117.32 / 3.00 OT hours = \$39.1066). The \$39.10 OT rate paid is instead a simple multiple of the \$26.06 base hourly rate (e.g., \$1,877.04 / 72 hours). Defendants committed the same “regular rate of pay” violation against the other aggrieved employees as well, when the employees earned forms of pay like bonuses and commissions required to be included in the regular rate, but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.5**

Defendants violated Labor Code sections 246 through 248.5 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.”

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

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. To the extent other aggrieved employees obtained paid sick leave in any pay period they earned additional cash in lieu of benefits earnings, on information and belief, Defendants underpaid sick leave as a result of Defendants' policy and practice of not including all forms of remuneration in the regular rate of compensation. Defendants failed to include all forms of remuneration in the regular rate of pay when calculating the paid sick leave for Plaintiff and other aggrieved employees, as illustrated on **Plaintiff's wage statement for the pay period of 12/27/2022 to 01/09/2022 (Bates #067)**.

Paul Albert					
Employee ID	111743	Fed Taxable Income	2,423.34	Check Date	January 14, 2022
Location	CA03-A99	Fed Filing Status	S	Period Beginning	December 27, 2021
Salary	\$2,085.60	State Filing Status	H-0	Period Ending	January 9, 2022
Earnings	Rate	Hours	Amount	YTD	Deductions
HOLIDAY		8.00	208.56	208.56	
Lunch		4.00		0.00	No Deductions
REGULAR		64.00	1,668.48	1,668.48	
SCA-HEAL		0.00	337.74	337.74	
SICK LEA		8.00	208.56	208.56	
Gross Earnings		84.00	2,423.34	2,423.34	
					Direct Deposits
					Bank Of America, N.A.
					Total Direct Deposits

Instead of paying Plaintiff and other aggrieved employees at one of the lawful rates permitted in Labor Code section 246(l), Defendants simply paid it at the base hourly rate of \$26.07 x 8 hours = \$208.56 in paid sick leave, as illustrated on the above example. This occurred across the pay period during the PAGA Period. This method is not permitted by statute and excluded the remuneration paid as cash in lieu of benefits.

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 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.

On information and belief, and based on the allegations set forth in the above sections with respect to the cash in lieu of benefits regular rate under payments, Plaintiff alleges that to the extent any meal period premiums were paid, failed to pay Plaintiff and aggrieved employees a meal period premium at the “regular rate of compensation”.

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.

For the same reasons as set forth above in the meal period section, and on information and belief, Plaintiff alleges the aggrieved employees were underpaid rest period premiums. To the extend Plaintiff and aggrieved employees ever paid rest period premiums they were underpaid, as a result of Defendants' policy and practice of not including all forms of remuneration in the regular rate of compensation at which such rest period premiums must be paid.

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.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees' overtime, premium pay, and leave on account of the regular rate of pay underpayments. As a result, Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees in violation of Labor Code sections 204 and/or 204b.

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. Plaintiff is a former employee and like other former employees who have left the company, they were not paid all wages owed on account of the ongoing, systemic "regular rate" underpayments that occurred throughout employment and, on information and belief, continues to this day.

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 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.

Furthermore, Defendants paid the SCA-HEAL as a lump sum payment without including the hourly rate in effect or the total hours worked at the respective rate, as a further and independent violation of Labor Code section 226(a)(9). Unlike Defendants technical noncompliance with respect to its failure to include the hourly rate in effect on wage statements for OT, regular earnings, and paid sick leave, the violation with respect to the SCA cash in lieu of benefits line item on wage statements cannot be resolved by simple math or by virtue of looking at the four corners of the wage statement. Defendants list neither the hourly rate nor the hours worked at the rate for which the SCA-HEAL earnings were paid, thus resulting in a violation of the statute.

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.

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,

Nicholas J. Ferraro

Cc Plaintiff Paul Albert
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Defense Counsel
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