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Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TAMMY THOMAS, on behalf of other similarly
situated and aggrieved employees of Defendants
and the State of California under the Private
Attorneys General Act,

Plaintiffs,

vs.

OLD TOWN TROLLEY TOURS OF SAN
DIEGO; HISTORIC TOURS OF AMERICA,
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU039117C

*Judge: Evan P. Kirvin
Department: 69*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed: July 24, 2025

1 Plaintiff TAMMY THOMAS, on behalf of all other similarly-situated and aggrieved
2 employees of Defendants and the State of California under the Private Attorneys General Act
3 (“Plaintiff”) brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
4 COMPLAINT against Defendants OLD TOWN TROLLEY TOURS OF SAN DIEGO; HISTORIC
5 TOURS OF AMERICA, INC.; and DOES 1 through 50, inclusive (collectively “Defendants”),
6 alleging as follows:

7 **INTRODUCTION**

- 8 1. This is a Class action for wage and hour violations of the California Labor Code.
- 9 2. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
10 permitted to work in violation of the applicable IWC Wage Order.
- 11 3. Defendants failed to pay Plaintiff and other employees for all regular, overtime, and
12 sick leave hours due to their policy and practice of requiring off-the-clock work.
- 13 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the Class Members
14 to take compliant meal and rest periods to which they were entitled. Further, Defendants did not pay
15 Plaintiff and the Class Members meal or rest period premiums.
- 16 5. Defendants’ employment policies, practices, and payroll administration systems
17 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.
- 18 6. Defendants are further liable for derivative claims for wage statements, untimely
19 payment, and other associated violations.
- 20 7. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
21 attorney’s fees and costs.

22 **JURISDICTION & VENUE**

- 23 8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
24 California Constitution as the causes of action are premised upon violations of California law.
- 25 9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
26 the Superior Court.
- 27 10. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

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

6 **PARTIES**

7 **A. Plaintiff Tammy Thomas**

8 12. Plaintiff Thomas is an individual over the age of 18 who has been employed by
9 Defendants in the State of California as a non-exempt employee from approximately March 2022 to
10 the present. During his employment, Plaintiff worked in the position of Sales Representative.

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

18 **B. Defendants**

19 14. Defendant Old Town Trolley Tours of San Diego is a California corporation that
20 maintains operations and conducts business throughout the State of California, including in this
21 county.

22 15. Defendant Historic Tours of America, Inc. is a Florida corporation that maintains
23 operations and conducts business throughout the State of California, including in this county.

24 16. The true names and capacities, whether individual, corporate, or otherwise, of the
25 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
26 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
27 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
28

manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendants Old Town Trolley Tours of San Diego and Historic Tours of America, Inc. functioned as Plaintiff's joint employers, co-employers, and/or operated as part of an integrated employer enterprise. Each Defendant exercised significant control over the wages, hours, working conditions, and day-to-day supervision of Plaintiff and other similarly situated employees. Specifically, Plaintiff's Employment Agreement, payroll records, and performance evaluations identify Old Town Trolley Tours of San Diego as the direct employer; however, the Employee Handbook, the California Addendum to the Handbook, workplace policies, and training materials governing Plaintiff's working conditions are issued by and expressly identify Historic Tours of America, Inc. as the employer. These policies included procedures relating to timekeeping, overtime approval, discipline, workplace conduct, and safety, all of which were implemented and enforced at the local level by Old Town Trolley Tours of San Diego in coordination with Historic Tours of America, Inc.

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

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

CLASS ALLEGATIONS

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

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

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

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

- a. Numerosity: The Class is estimated to exceed 50 individuals, although the precise membership of the entire Class is unknown at this time. The Class is so numerous that joinder of all Class Members is impracticable. The identities of Class Members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other Class Members. They were subject to the same policies and practices of Defendants, which resulted in losses to the Class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the Class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate Class representative; will take all necessary steps to protect the Class Members' interests adequately and fairly; has no interest antagonistic to other Class Members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour Class, collective, and representative actions in California state and federal courts.
- d. Superiority: A Class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a Class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for

1 enforcement of labor laws and allow for vindication of employee rights by
2 unnamed Class Members.

3 23. Common questions of law and fact as to the Class Members predominate over questions
4 affecting only individual members. The common questions of law and fact exist as to whether the
5 employment policies and practices formulated by Defendants and applied to the Class Members
6 constitute violations of California law.

7 **GENERAL ALLEGATIONS**

8 24. Defendants failed to pay Plaintiff and the Class Members at the lawful minimum wage
9 rate for all hours worked, resulting in unpaid minimum wages.

10 25. Specifically, Defendants engaged in an unlawful policy and practice of requiring
11 Plaintiff and Class Members to complete work off-the-clock, without compensation. For example,
12 Plaintiff and other Class Members regularly had to work through their off-the-clock meal periods due
13 understaffing and being the only representative at the sales booth.

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

16 27. Defendants compelled Plaintiff and other Class Members to work off-the-clock during
17 unpaid meal periods. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours
18 in a week, this resulted in unpaid overtime and double time rate in the pay periods when employees
19 worked overtime hours.

20 28. Defendants failed to comply with California's paid sick leave laws with respect to the
21 aggrieved employees.

22 29. Defendants failed to provide Plaintiff and the Class Members with all sick leave
23 accrued.

24 30. To the extent that Defendants provided paid sick leave, they did not pay all sick leave
25 wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the Class
26 Members worked off-the-clock.

1 31. Additionally, each time Plaintiff and the Class Members worked off-the-clock that
2 resulted in unpaid overtime, the overtime hours were not accounted for when calculating an
3 employee's accrued paid sick leave.

4 32. Therefore, Plaintiff and other Class Members were not awarded the total accrued sick
5 leave time they had earned.

6 33. Defendants failed to provide compliant meal periods to Plaintiff and the Class
7 Members.

8 34. Plaintiff and the Class Members often experienced missed, short, late, and interrupted
9 meal periods in order to keep up with high demands of the job and as a result of understaffing.

10 35. For example, Plaintiff was expected to regularly work through her meal periods
11 because there was no other sales representatives available to take over the sales booth due to
12 Defendants' understaffing.

13 36. On information and belief, Defendants failed to pay meal period premiums for every
14 noncompliant meal period in violation of Labor Code section 226.7.

15 37. Defendants failed to provide all rest periods to which employees were entitled and
16 failed to pay rest period premiums to Plaintiff and other Class Members.

17 38. Due to the high demands of the job, Plaintiff and other Class Members were rarely
18 authorized or permitted to take all their rest periods. In particular, Plaintiff failed to experience a
19 compliant rest period for the first two and a half years of her employment.

20 39. Additionally, Defendants have a policy and practice of not paying rest period premiums
21 to employees who were unable to take rest periods.

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

27 41. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
28 employee wage statements each pay period the applicable hourly rates in effect and the number of

1 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
2 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
3 pay stub.

4 42. Defendants violated California Labor Code section 226(a)(2) by failing to accurately
5 itemize the “total hours worked” by Plaintiff and other putative Class Members on their wage
6 statements. Specifically, Defendants did not include off-the-clock hours that Plaintiff and other
7 employees were required or permitted to work, resulting in wage statements that materially
8 misrepresented the actual number of hours worked in each pay period.

9 43. As a result, the wage statements issued by Defendants were inaccurate and in violation
10 of Labor Code section 226(a), depriving Plaintiff and Class Members of their statutory right to receive
11 a complete and accurate accounting of hours worked and wages earned.

12 44. Defendants further, and in violation of Labor Code Section 98.6, unlawfully retaliated
13 against Plaintiff for making complaints regarding unlawful workplace practices, including being
14 recorded without her consent and differential treatment by management.

15 45. On or about February 27, 2025, Plaintiff complained to her supervisor after learning
16 that she had been recorded without her consent in the workplace. In response, Defendants issued
17 Plaintiff a disciplinary write-up—her second in two weeks—despite her previously unblemished
18 employment record over the course of three years. The first write-up had been issued in error over a
19 banking issue. Prior to these two incidents, Plaintiff had consistently received positive performance
20 reviews and had never been disciplined. In addition to issuing a written warning, Defendants instructed
21 Plaintiff not to discuss her faith, God, or religious beliefs with her colleagues, and further directed her
22 to refrain from engaging in any conversations that were not strictly work-related.

23 46. Following the February 27, 2025 complaint, Plaintiff submitted a written grievance to
24 upper management reiterating her concerns about unlawful recordings and differential treatment of
25 staff. Shortly thereafter, Defendants issued a memorandum to all sales staff acknowledging that
26 employees had, in fact, been recorded. Rather than addressing the violations or investigating Plaintiff's
27 concerns, Defendants continued to subject Plaintiff to hostility and retaliatory actions.

47. Plaintiff is informed and believes, and thereon alleges, that the disciplinary actions taken against her—including the issuance of baseless write-ups—were in direct retaliation for her repeated complaints regarding unlawful recording practices, disparate treatment, and hostile conduct by supervisors. These adverse employment actions placed her continued employment in jeopardy and constitute unlawful retaliation under Labor Code § 98.6.

48. Because of these 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.

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

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED

**Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197 and the Applicable Wage Order
(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All
Defendants)**

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

51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 200, 218, 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). In addition to minimum wages, Labor Code § 200 states that “‘wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

52. 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 53. 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,
10 218.6 and any other applicable statutes.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **Violation of Labor Code §§ 510, 1194, 1198, and the Applicable Wage Order**

14 **(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All**
15 **Defendants)**

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

17 55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
18 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
19 wages all overtime hours worked, and which further provide a private right of action for an employer’s
20 failure to pay all overtime compensation for overtime hours worked.

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

57. Plaintiff and Class Members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7, 512, 1198 and the Applicable Wage Order
(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All
Defendants

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

59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

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

61. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

62. Plaintiff and Class Members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7 and 516**

4 **(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All**
5 **Defendants)**

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

24 **(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All**
25 **Defendants)**

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

27 68. Defendants knowingly and intentionally failed in their affirmative obligation to pay
28 sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246

1 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.
2 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized
3 that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her
4 compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

5 69. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
6 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by Class
7 Members, govern how Defendants were required to calculate paid sick leave.

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

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

16 72. As a result, Defendants violated the Labor Code and are liable to Plaintiff and Class
17 Members for underpaid sick leave wages, in addition to interest, attorneys’ fees, and costs.

18 **SIXTH CAUSE OF ACTION**

19 **UNTIMELY PAYMENT OF WAGES**

20 **Violation of Labor Code §§ 204, 210, 218**

21 **Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All**
22 **Defendants)**

23 73. All outside paragraphs of this Complaint are incorporated into this section.

24 74. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
25 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
26 period, and which further provide a private right of action for an employer’s failure to comply with
27 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
28 under these sections, including Labor Code § 210(c)’s statutory late payment penalties.

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

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

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All Defendants)

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

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

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

80. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

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

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All Defendants)

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

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

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

85. Plaintiff and Class Members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **NINTH CAUSE OF ACTION**

2 **RETALIATION**

3 **Violation of Labor Code § 98.6**

4 **(Alleged by Plaintiff Individually Against All Defendants)**

5 **(Alleged by Plaintiff Individually)**

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

7 87. At all times herein mentioned, Labor Code § 98.6 was in full force and effect, and was
8 binding upon Defendants. Said section prohibits employers from discriminating or retaliating against
9 employees for making complaints regarding unlawful workplace practices, including being recorded
10 without consent and differential treatment by management.

11 88. Plaintiff is informed and believes that she was retaliated against because of her
12 complaints for being recorded without her consent.

13 89. To the extent that Defendant retaliated against Plaintiff for complaining to her
14 supervisor that she had been recorded without her consent in the workplace, said conduct constitutes
15 unlawful retaliation in violation of Labor Code §§ 98.6.

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

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE RECORDS**

22 **Violation of Labor Code §§ 226, 432, and 1198.5**

23 **(Alleged by Plaintiff Individually Against All Defendants)**

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

25 92. Plaintiff brings this cause of action exclusively in an individual capacity.

26 93. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to
27 the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”
28

1 94. Labor Code section 226(b) grants employees the right to inspect or receive “a copy of
2 records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750 for
3 an employer’s failure to comply with a request for records made under section 226.

4 95. Labor Code section 1198.5 requires employers to provide an employee’s “personnel
5 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750 for
6 an employer’s failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l)
7 allows an employee to seek injunctive relief to obtain an employer’s compliance with this section and
8 authorizes the recovery of attorneys’ fees and costs.

9 96. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor
10 Code section 1198, requires that employers maintain time records of when an employee begins and
11 ends each work period and when the employee takes meal periods, among other required employment
12 and payroll records. Section 7(C) states that “[a]n employee’s records shall be made available for
13 inspection by the employee upon reasonable request.”

14 97. Plaintiff requested from Defendants all records due under the IWC Wage Orders
15 (including the Records sections) and Labor Code sections 226, 432, and 1198.5. To date Defendant
16 has refused to provide time records in violation of California law.

17 98. Defendants’ unlawful acts and omissions deprived Plaintiff of the ability review the
18 documents they received during their employment and to inspect and reconcile their actual time
19 worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover
20 the penalties and injunctive relief, in addition to interest, attorneys’ fees, and costs to the extent
21 permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections
22 226 and 1198.5.

23 **ELEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

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

26 **(Alleged by Plaintiff Individually and on Behalf of the Putative Class Members Against All**
27 **Defendants)**

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

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

4 101. Defendants' dependence on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200 et seq.

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

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

18 104. Plaintiff and Class Members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and Class Members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 et seq. Plaintiff and Class Members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

24 **TWELFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

25 112. On or about June 17, 2025, Plaintiff paid the requisite PAGA filing fee and provided
26 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
27 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
28 violations.

1 113. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
2 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
3 forth herein (the "PAGA notice").

4 114. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

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

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

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

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
22 1198; IWC Wage Orders.
- 23 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
24 1198; IWC Wage Orders.
- 25 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
26 §§ 204, 204b, 210.
- 27 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
28 Labor Code §§ 201, 202, 203, 256.

- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Retaliation.*** Violation of Labor Code § 98.6.
- j. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a Class action;
- b. For appointment of Plaintiff as the Class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of Class Members into appropriate Classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For 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 § 1021.5.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;

- 1 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
6 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
7 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
8 o. For such other relief the Court deems just and proper.

9
10 Dated: August 28, 2025

Ferraro Vega Employment Lawyers, Inc.

11 

12 Nicholas J. Ferraro

13 *Attorneys for Plaintiff Tammy Thomas*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
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Lauren N. Vega
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ATTORNEYS AT LAW
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June 17, 2025

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

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

Old Town Trolley Tours of San Diego
201 Front Street, Suite 224
Key West, Florida 33040

Historic Tours of America
201 Front Street, Suite 204
Key West, Florida 33040

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

OLD TOWN TROLLEY TOURS OF SAN DIEGO; HISTORIC TOURS OF AMERICA

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

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

Reins International California, Inc. (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Sales Representative from about March 2022 to the Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and aggrieved employees to complete work off-the-clock, without compensation. For example, Plaintiff and other aggrieved employees regularly had to work through their off-the-clock meal periods due understaffing and being the only representative at the sales booth. As discussed in more detail in the Unpaid Meal Period Premium Wages section, Plaintiff and the aggrieved employees’ meal periods would either be worked through entirely or be interrupted and/or cut short by needing to make themselves available for potential customers.

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

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As described above, Defendants compelled Plaintiff and other aggrieved employees to work off-the-clock during unpaid meal periods. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime and double time rate in the pay periods when employees worked overtime hours.

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

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

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

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

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

paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the aggrieved employees worked off-the-clock. Additionally, each time Plaintiff and the aggrieved employees worked off-the-clock that resulted in unpaid overtime, the overtime hours were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

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

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

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

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

workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted meal periods in order to keep up with high demands of the job and as a result of understaffing. For example, Plaintiff was expected to regularly work through her meal periods because there was no other sales representatives available to take over the sales booth as a result of Defendants understaffing. However, on information and belief, Defendants failed to pay meal period premiums for every noncompliant meal period in violation of Labor Code section 226.7.

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

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

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

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

Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated above due to the high demands of the job, Plaintiff and other aggrieved employees were rarely, if at all, authorized or permitted to take all their rest periods. Plaintiff failed to experience a compliant rest period for the first two and a half years of her employment. Defendants have a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

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

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

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendants’ policy and practice of requiring off-the-clock work.

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

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

Retaliation **Violation of Labor Code § 98.6**

Defendants violated Labor Code section 98.6 by unlawfully retaliating against Plaintiff for making complaints regarding unlawful workplace practices, including being recorded without her consent and differential treatment by management.

Labor Code section 98.6 prohibits employers from discriminating, retaliating, or taking any adverse action against an employee for engaging in protected activity, including making oral or written complaints about unpaid wages or workplace conditions, filing complaints with the Labor Commissioner, or exercising rights afforded by the Labor Code.

On or about February 27, 2025, Plaintiff complained to her supervisor after learning that she had been recorded without her consent in the workplace. In response, Defendants issued Plaintiff a disciplinary write-up—her second in two weeks—despite her previously unblemished employment record over the course of three years. The first write-up had been issued in error over a banking issue. Prior to these two incidents, Plaintiff had consistently received positive performance reviews and had never been disciplined. In addition to issuing a written warning, Defendants instructed Plaintiff not to discuss her faith, God, or religious beliefs with her colleagues, and further directed her to refrain from engaging in any conversations that were not strictly work-related.

Following the February 27th complaint, Plaintiff submitted a written grievance to upper management reiterating her concerns about unlawful recordings and differential treatment of staff. Shortly thereafter, Defendants issued a memorandum to all sales staff acknowledging that employees had, in fact, been recorded. Rather than addressing the violations or investigating Plaintiff's concerns, Defendants continued to subject Plaintiff to hostility and retaliatory actions.

Plaintiff is informed and believes, and thereon alleges, that the disciplinary actions taken against her—including the issuance of baseless write-ups—were in direct retaliation for her repeated complaints regarding unlawful recording practices, disparate treatment, and hostile conduct by supervisors. These adverse employment actions placed her continued employment in jeopardy and constitute unlawful retaliation under Labor Code § 98.6.

As a result of Defendants' retaliatory conduct, Plaintiff seeks all available remedies under the law, including civil penalties recoverable on behalf of herself, the State of California, and other aggrieved employees, in the maximum amount permitted under the Labor Code.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. On March 26, 2025 Plaintiff requested her employment records under the California Labor Code and IWC Wage Orders. To date Defendant has refused to provide time records in violation of California law.

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,



Dorota A. James

Cc Plaintiff Tammy Thomas

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