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

GUILLERMO PARRA, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiff,

vs.

PIRCH, INC. and DOES 1 through 50, inclusive,
Defendants.

Case No. 37-2023-00009227-CU-WT-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff GUILLERMO PARRA, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”), brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants PIRCH, INC. and DOES 1 through
4 50, inclusive (collectively “Pirch” or “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a PAGA representative action against Pirch, Inc., a high-end appliance retailer.

7 2. Plaintiff alleges Pirch failed to pay all wages and premiums at the “regular rate of pay”
8 and that Pirch also engaged in a pattern and practice of time edits, which resulted in underpaid wages
9 and premiums to the aggrieved employees.

10 3. Through this lawsuit, Plaintiff seeks to remedy these practices and recover civil
11 penalties on behalf of the other aggrieved employees and the State of California.

12 **JURISDICTION & VENUE**

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

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

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

8. Plaintiff Parra is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2018 to September 2022. Plaintiff worked as a Installer Level 2.

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

13. 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

14. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

15. Pirch engaged in a pattern and practice of editing the time records of aggrieved employees like Plaintiff, which resulted in unpaid hours worked and unpaid minimum wage and overtime. The time edits are evident from the timesheets showing company edits. These edits were often made to add meal periods of at least 30 minutes in length, when those meal periods were in fact, late, short, missed, or interrupted. Illustrative examples appear on the time records for Plaintiff, including during the period of 01/03/2022 to 01/16/2022. This same practice resulted in underpaid overtime wages on those occasions where the edits resulted in non-payment of overtime at the statutory overtime rates.

16. Additionally, Pirch failed to correctly compensate employee overtime based on the “regular rate of compensation.” On those occasions where Plaintiff and other aggrieved employees earned bonuses, commissions, differentials, or other additional compensation, Pirch incorrectly paid their hourly overtime rate at a simple 1.5x (or 2.0x) multiple of their *base hourly rate*, instead of the “regular rate,” as required by California law. An illustrative example appears on Plaintiff’s wage statement for the period of 08/29/2022 to 09/11/2022, reflecting a “COVID Incentive” of \$240.00 that was not factored into the “regular rate,” as Plaintiff’s 1.29 overtime hours that pay period were paid at 1.5x his base hourly rate instead.

17. Based on this same practice of failing to include all remuneration in the regular rate, Pirch failed to correctly pay sick pay to Plaintiff and aggrieved employees, resulting in underpayments in those pay periods. Indeed, in pay periods where Plaintiff and aggrieved employees earned additional forms of pay, such as incentives, bonuses, and commissions, Pirch paid sick pay at their base rate, rather than one of the permissible hourly rates that includes all forms of compensation. An illustrative example appears on Plaintiff’s wage statement for the period of 05/23/2022 to 06/05/2022. This practice violates the paid sick leave laws, which set forth statutory methods of calculation for the sick pay rate similar to the “regular rate” method, codified as Labor Code § 246 through 248.7.

1 18. Furthermore, based on the non-compliance with regular rate calculations, to the extent
2 Pirch paid meal and rest period premiums to aggrieved employees in the same pay period in which
3 those employees earned bonuses, incentives, commissions, and other non-excludable forms of pay,
4 Plaintiff alleges Pirch failed to pay those premiums at the “regular rate of compensation.”

5 19. Based on the time editing and time shaving practices set forth herein, Pirch failed to
6 provide compliant meal periods. In lieu of such meal periods, Pirch failed to pay meal period
7 premiums to aggrieved employees. Also, Pirch failed to pay meal period premiums for late, short,
8 missed, or interrupted meal periods. Instead, Pirch edited meal break entries to make it look like the
9 meal periods were complaint. These edits reveal themselves on the employee time records with a red
10 “e” to signify when an edit was made.

11 20. Plaintiff alleges, on information and belief, Pirch maintained a policy and practice of
12 not paying rest period premiums.

13 21. The foregoing practices resulted in underpaid wages each pay period and upon
14 separation of employment.

15 22. The foregoing practices further resulted in inaccurate wage statements because the
16 wage statements incorrectly stated gross and net wages earned and failed to correctly state the lawful
17 and applicable hourly rate in effect and the corresponding number of hours worked at that rate. This
18 was due to the off-the-clock hours, time edits, regular rate violations, and failure to pay all premiums
19 owed.

20 **FIRST CAUSE OF ACTION**

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

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

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

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

25 24. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
26 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
27 codified as Labor Code section 2698 *et seq.*:
28

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

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

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

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

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

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

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

27 31. On or about **December 28, 2023**, Plaintiff paid the requisite PAGA filing fee and
28 provided written notice (by online electronic filing with the LWDA and by certified mail to

Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

36. 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 Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

37. 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;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the DLSE;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 2699, and Code of Civil Procedure section 1021.5; and
- i. For such other relief the Court deems just and proper.

Dated: March 6, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Guillermo Parra

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

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December 28, 2022

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

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

PIRCH, INC.
2714 Loker Ave West
Suite 200-301
Carlsbad, CA 92010

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

PIRCH, 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 Installer Level 2 from about November 2018 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 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 for all hours worked, resulting in unpaid minimum wages. Defendants engaged in a pattern of editing employees’ time records, also known as *timeshaving*, that resulted in an underpayment of regular and overtime wages to Plaintiff and aggrieved employees. These revisions were made without employees’ knowledge or consent and are evident from the Timesheets tracked manual edits.

Defendants altered Plaintiff’s time records to make it appear as if meal periods were compliant and at least 30 minutes in length. Also, Plaintiff and aggrieved employees were deprived of regular and overtime wages each time Defendants altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had a shorter or interrupted meal period or no meal period at all.

An illustrative example of unlawfully editing Plaintiff’s time records is found on Plaintiff’s timesheet for the period from **01/03/2022** to **01/16/2022**.

Wed 01/12/2022	07:00a	11:00a	07:00a	11:00a		4.00	4.00						
	e 11:30a	03:21p	11:30a	03:21p		3.85	3.85						
Day Total :	07:00a	03:21p	07:00a	03:21p		7.85	7.85				7.85		7.85
Thu 01/13/2022	07:00a	11:00a	07:00a	11:00a		4.00	4.00						
	e 11:30a	03:47p	11:30a	03:47p		4.28	4.28						
Day Total :	07:00a	03:47p	07:00a	03:47p		8.28	8.28				8.28	0.28	8.00
Fri 01/14/2022	07:00a	e 11:00a	07:00a	11:00a		4.00	4.00						
	e 11:30a	04:03p	11:30a	04:03p		4.55	4.55						
Day Total :	07:00a	04:03p	07:00a	04:03p		8.55	8.55				8.55	0.55	8.00

Extract from Plaintiff’s Timesheet Issued for the Period 01/03/2022-01/16/2022 Showing Defendants’ Unlawful Edits

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), 1197.1 (\$100/\$250), 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 Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

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

First, as stated in the “Unpaid Hours Worked” section above, Defendants engaged in a practice of timesharing which resulted in the underpayment of regular and overtime wages to Plaintiff and aggrieved employees. These revisions were unlawfully made without Plaintiff’s and aggrieved employees’ consent.

Second, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Plaintiff and aggrieved employees Covid Incentive Payments and other forms of remuneration that Defendants failed to include in the overtime rate in the pay periods when employees worked overtime hours. Defendants paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour they worked during the period in which Plaintiff and the aggrieved employees earned commissions, bonuses, or any additional remuneration, Defendants should have (but failed to) pay overtime “at a rate of no less than ***one and one-half the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from **08/29/2022** to **09/11/2022** with the pay date of **09/08/2022**.

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
COVID Incentive			\$240.00	\$8,360.00
FLTG Holiday	0.0000	\$0.0000	\$0.00	\$176.00
Holiday	8.0000	\$22.8800	\$183.04	\$887.04
Overtime	1.2900	\$34.3200	\$44.27	\$2,637.41
Regular Pay	51.0800	\$22.8800	\$1,168.71	\$28,898.88
Sick Pay	0.0000	\$0.0000	\$0.00	\$880.00
Vacation	12.9100	\$22.8800	\$295.38	\$3,322.58
Total Hours Worked 52.3700 Total Hours 73.2800				

**Extract from Plaintiff's Wage Statement from 09/08/2022
Showing Plaintiff was Overtime at the Unlawful Rate**

During this pay period, Plaintiff earned a "COVID Incentive" of \$240.00 that was not factored in Plaintiff's overtime rate, as the 1.29 overtime hours was instead paid at a rate of 1.5x Plaintiff's base rate of \$22.88, rather than 1.5x of his regular rate of pay, which should have factored in incentives like to COVID Incentive that appears on that paystub. Defendants committed the same "regular rate of pay" violation against Plaintiff and other aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code 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 248.7**

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 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.”

Additionally, under Labor Code section 200, wages include paid sick leave earnings. *Department of Industrial Relations v. UI Video Stores, Inc.*, 55 Cal.App.4th 1084, 1091 (1997); see also *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 (“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”).

Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, as illustrated on the below wage statement for Plaintiff, Defendants paid paid sick leave at the base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering the paid sick leave underpaid:

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from **05/23/2022** to **06/05/2022** with the pay date of **06/10/2022**.

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
COVID Incentive			\$320.00	\$4,040.00
FLTG Holiday	0.0000	\$0.0000	\$0.00	\$176.00
Holiday	8.0000	\$22.0000	\$176.00	\$528.00
Overtime	6.1300	\$33.0000	\$202.29	\$2,447.28
Regular Pay	62.3600	\$22.0000	\$1,371.92	\$17,203.78
Sick Pay	8.0000	\$22.0000	\$176.00	\$880.00
Vacation	0.0000	\$0.0000	\$0.00	\$1,780.00
Total Hours Worked 68.4900 Total Hours 84.4900				

**Extract from Plaintiff’s Wage Statement from 06/10/2022
Showing Plaintiff was Paid Paid Sick Leave at His Base Hourly Rate**

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants paid sick leave at employees’ straight time of pay and failed to factor in bonuses and other forms of remuneration. Specifically, Defendants did not pay paid sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek,”

as the regular rate should have included the Covid Incentive pay, other bonuses, and all other forms of remuneration. Defendants did not use the other approved methods in the statute.

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. 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 aggrieved employees.

First, Plaintiff and other aggrieved employees experienced missed, late, short, and interrupted meal periods in order to keep up with the high demand of the job. When Plaintiff and other

aggrieved employees experienced these missed, late, short, and interrupted meal periods, Defendants failed to pay meal period premiums as required by Labor Code section 226.7.

On many occasions, Defendants unlawfully avoided compensating Plaintiff and aggrieved employees their owed meal premium payments by engaging in a policy and practice of editing time records to make it appear as though employees took a compliant meal breaks.

An illustrative example of unlawfully editing Plaintiff's time records is found on Plaintiff's timesheet for the period from **01/03/2022** to **01/16/2022**.

Day Total :	07:00a	03:31p	07:00a	03:31p	8.00	8.00			8.00		8.00
Thu 03/31/2022	07:01a	e 11:00a	07:01a	11:00a	3.98	3.98					
	e 11:30a	05:49p	11:30a	05:49p	6.32	6.32					
Day Total :	07:01a	05:49p	07:01a	05:49p	10.30	10.30			10.30	2.30	8.00
Fri 04/01/2022	07:00a	11:05a	07:00a	11:05a	4.08	4.08					
	11:35a	05:02p	11:35a	05:02p	5.45	5.45					
Day Total :	07:00a	05:02p	07:00a	05:02p	9.53	9.53			9.53	1.53	8.00
Week Total:					8.00	46.42	46.42	8.00	38.42	6.42	32.00
Mon 04/04/2022	07:00a	11:32a	07:00a	11:32a	4.53	4.53					
	e 12:02p	01:51p	12:02p	01:51p	1.82	1.82					
Day Total :	07:00a	01:51p	07:00a	01:51p	6.35	6.35			6.35		6.35
Tue 04/05/2022	07:01a	11:00a	07:01a	11:00a	3.98	3.98					
	11:30a	06:03p	11:30a	06:03p	6.55	6.55					
Day Total :	07:01a	06:03p	07:01a	06:03p	10.53	10.53			10.53	2.53	8.00
Wed 04/06/2022	07:00a	11:05a	07:00a	11:05a	4.08	4.08					
	11:35a	04:11p	11:35a	04:11p	4.60	4.60					
Day Total :	07:00a	04:11p	07:00a	04:11p	8.68	8.68			8.68	0.68	8.00
Thu 04/07/2022	07:00a	11:00a	07:00a	11:00a	4.00	4.00					
	11:30a	03:32p	11:30a	03:32p	4.03	4.03					
Day Total :	07:00a	03:32p	07:00a	03:32p	8.03	8.03			8.03	0.03	8.00
Fri 04/08/2022	07:00a	11:30a	07:00a	11:30a	4.50	4.50					
	e 12:00p	04:03p	12:00p	04:03p	4.05	4.05					
Day Total :	07:00a	04:03p	07:00a	04:03p	8.55	8.55			8.55	0.55	8.00
Week Total:					43.44	43.44			43.44	3.70	30.25

Extract from Plaintiff's Timesheet Issued for the Period 03/28/2022 to 04/10/2022 Showing Defendants' Unlawful Edits

During this period alone, Defendants made several edits to Plaintiff's timesheet. The red "e" next to each of the highlighted time punches above indicate where an edit was made. The edits were routinely made to each of the time punches that did not reflect an exact 30-minute meal period, to make it appear as if a 30-minute meal period were taken. Rather than compensating Plaintiff for his inability to take a compliant meal break, Defendants actively edited Plaintiff's time records which resulted in underpayments across the board. These edits were made without Plaintiff's request, knowledge, or consent and were therefore unlawful.

Second, to the extent that Defendants paid meal period premiums, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium at the "regular rate of compensation" because the premiums paid did not factor in all forms of remuneration including commissions, bonuses or the recurring Covid Incentive payment, instead electing to pay aggrieved employees at their base hourly rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees 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.

On information and belief, Defendants has a policy and practice of not paying rest period premiums to employees who were unable to take their rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation to aggrieved employees, which would have factored in bonuses and other forms of compensation. As discussed throughout this correspondence, Defendants had a non-compliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiff alleges that rest period premiums were equally deficient with respect to payments made to the aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, 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. Indeed, Defendants failed to pay all premiums, paid sick leave earnings, overtime, regular, 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 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. Additionally, with respect to Plaintiff and certain other aggrieved employees during the statutory period as evidence will establish, Defendants held the final check due and did not pay the final check on the last day of employment (or within 72 hours thereof).

Defendants additionally withheld Plaintiff's final vacation pay by issuing him an invalid check which bounced when Plaintiff tried to recover the funds. Consequently, Plaintiff was not able to recover these funds until weeks later and may now recover waiting time penalties under Labor Code section 203.

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 were not paid all hours worked, overtime, paid sick leave, and meal and rest premiums at the lawful resulting in an inaccurate reflection and recording of "gross/net wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees and/or paid wages at deflated and inaccurate hourly rates for overtime, sick leave, and premiums. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendants policy and practice of editing time records, or time shaving.

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 Guillermo Parra
Raina Sharma, Esq., Counsel for Pirch
Raina.Sharma@jacksonlewis.com