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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/27/2023 at 08:00:00 AM
Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

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

NIKOLAS SCHRAGER, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

LACOSTE USA, INC. and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00007968-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

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

5 **INTRODUCTION**

6 1. Lacoste is a clothing and apparel company that employs non-exempt, hourly employees
7 like Plaintiff throughout the State of California.

8 2. Lacoste underpaid wages to Plaintiff and aggrieved employees by failing to include the
9 value of commissions, bonuses, and other non-excludable forms of remuneration in the statutory
10 regular rate owed for overtime, sick pay, and meal and rest period premiums.

11 3. These violations occurred in every pay period in which aggrieved employees earned
12 overtime, sick pay and/or meal or rest period premiums in the same pay period in which they also
13 earned bonuses, commissions, or other non-discretionary forms of remuneration.

14 4. These violations are evident from the face of the wage statements Lacoste maintained
15 for aggrieved employees.

16 5. As a result of these violations, Plaintiff seeks to recover civil penalties for each
17 violation, along with the associated penalties for non-compliant wage statements, failure to timely pay
18 wages each pay period and upon separation of employment, and related claims, in addition to
19 attorneys’ fees and costs.

20 **JURISDICTION & VENUE**

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

23 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
24 the Superior Court.

25 8. This Court has jurisdiction over Defendants because, upon information and belief,
26 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
27 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
28

over them by the California courts consistent with traditional notions of fair play and substantial justice.

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

PARTIES

A. Plaintiff Nikolas Schrager

10. Plaintiff Schrager is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee until October 2022. Plaintiff worked as a Sales Supervisor.

11. 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

12. Defendant Lacoste USA, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants 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.

15. 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

16. 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

17. Lacoste failed to include all forms of remuneration in the regular rate of pay used to calculate and pay overtime wages to Plaintiff and aggrieved employees, resulting in an underpayment of overtime wages. As illustrated in the attached PAGA notice for the pay period of 09/11/2022 to 09/24/2022, Lacoste paid Plaintiff a simple 1.5x multiple of his overtime rate, when Lacoste should have paid a higher overtime hourly rate that properly included the value of the commissions Plaintiff earned that pay period. This violation occurred as a matter of common practice applicable to all aggrieved employees during the statutory period.

18. For these same reasons, Lacoste failed to properly calculate the proper paid sick leave rate and the proper meal and rest period premium rate required to be paid to Plaintiff and other aggrieved employees. Plaintiff's wage statement for the pay period of 09/25/2022 to 10/08/2022 provides an illustrative example of the Labor Code § 226.7 premium being paid at the base hourly rate for Plaintiff, rather than his regular rate of compensation, inclusive of his commission earnings for that pay period.

19. As a result of these regular rate underpayments, Lacoste failed to pay all wages due each pay period, in violation of Labor Code § 204, 204b, and 210, and failed to pay all wages due to each aggrieved employee upon separation of employment, in violation of Labor Code §§ 201 through 203.

20. As a further result of these regular rate underpayments, in those applicable pay periods, Lacoste failed to accurately state gross and net wages *earned* on aggrieved employee wage statements, in violation of Labor Code § 226(a)(1) and (5), because the amounts paid were less than the amounts earned under California law. Furthermore, in violation of Labor Code § 226(a)(9), Lacoste

1 inaccurately stated the hourly rates for paid sick leave, overtime, and Labor Code § 226.7 premiums,
2 as a result of the regular rate underpayments, as the hourly rates paid (based on straight time earnings
3 or a 1.5x or 2.0x multiple of the base rate) was incorrect as a matter of law and incorrectly listed on
4 wage statements.

5 **FIRST CAUSE OF ACTION**

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

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

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

9 21. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

22 25. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
23 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
24 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
25 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
26 action brought by an aggrieved employee on behalf of himself or herself and other current or former
27 employees pursuant to the procedures specified in Section 2699.3.”
28

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

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

10 28. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
11 penalties under the PAGA.

12 29. On or about **December 21, 2023**, Plaintiff paid the requisite PAGA filing fee and
13 provided written notice (by online electronic filing with the LWDA and by certified mail to
14 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
15 the alleged violations.

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

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

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

24 33. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
25 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
26 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
27 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*
28

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

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

35. 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 this action to be maintained as a representative action under the PAGA;

- 1 e. 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 f. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 g. For restitution and injunctive relief;
6 h. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code §§ 2699, and Code
8 of Civil Procedure section 1021.5; and
9 i. For such other relief the Court deems just and proper.

10 Dated: February 27, 2023

Ferraro Vega Employment Lawyers, Inc.

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13 Nicholas J. Ferraro

14 *Attorneys for Plaintiff Nikolas Schrager*

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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December 21, 2022

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

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

LACOSTE USA, INC.
551 Madison Ave 15th Floor
New York, NY 10022

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

LACOSTE USA, 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 Sales Supervisor for a brief period from about September 2022 to October 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

Unpaid Overtime

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

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

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

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

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.

When Plaintiff and other aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Plaintiff and other aggrieved employees commissions and other forms of remuneration that Defendants failed to include in the overtime rate 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 or bonuses, Defendants should have (but failed to) pay overtime “at a rate of no less than **one and one-half times the regular rate of pay** for an employee” and “**twice** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from 09/11/2022 to 09/24/2022, with the pay date of 09/30/2022.



LACOSTE

LACOSTE USA, INC.
551 MADISON AVENUE
NEW YORK, NY 10022

Period Beginning: 09/11/2022
 Period Ending: 09/24/2022
 Pay Date: 09/30/2022

Filing Status: Single/Married filing separately
 Exemptions/Allowances:
 Federal: Standard Withholding Table

NIKOLAS SCHRAGER
Redacted

Social Security Number: Redacted

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	17.5000	39.27	687.23		Elig Wage	1,332.14	2,385.29
Overtime	26.2500	.08	2.10		Hours	72.03	
Commission			69.33	69.33			
TRAIN OT	26.2500	.18	4.73		Total Hrs Worked	72.03	
TRAINING	17.5000	32.50	568.75	1,268.75			
Gross Pay			\$1,332.14	2,385.29			

Important Notes
 COMPANY PHONE IS : (212) 896-6383

Extract from Plaintiff’s Wage Statement from 09/30/2022
 Showing Plaintiff was Paid Overtime at the Unlawful Rate

During this pay period, Plaintiff earned a commission of \$69.33 that was not factored in Plaintiff’s overtime rate, as the 0.08 overtime hours was instead paid at a rate of 1.5x Plaintiff’s

base rate of \$17.50, rather than 1.5x of his regular rate of pay. Defendants committed the same “regular rate of pay” violation against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy and in a manner susceptible to common proof. Additional forms of compensation, like commissions, were required to be included in the regular rate of pay for Plaintiff, but were not. This resulted in underpayments of wages of 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.” The COVID supplemental paid sick leave statutes provided in Labor Code sections 247 *et seq.* provide for similar heightened sick leave wage rates.

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.”

To the extent, aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful regular rate of pay throughout the

relevant period. The lawful regular rate of pay had to factor in commissions, bonuses, and all other forms of compensation. Based on Defendants' noncompliance with the regular rate of pay requirements applicable to overtime and meal/rest period premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applied to standard and supplemental paid sick leave with respect to the aggrieved employees, resulting in underpayments.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, commissions, bonuses, or other forms of non-excludable remuneration and also received paid sick leave.

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.

When Defendants did not provide compliant meal periods, 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 all forms of remuneration into the rate.

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from 09/25/2022 to 10/08/2022, with the pay date of 09/30/2022.



LACOSTE USA, INC.
551 MADISON AVENUE
NEW YORK, NY 10022

Period Beginning: 09/25/2022
Period Ending: 10/08/2022
Pay Date: 10/14/2022

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: **Redacted**

NIKOLAS SCHRAGER
Redacted

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	17.5000	70.22	1,228.85		Elig Wage	1,406.18	3,791.47
Overtime	26.2500	.22	5.78		Hours	76.54	
Ca Meal	17.5000	1.00	17.50		Total Hrs Worked	75.54	
Commission			64.80	134.13	Important Notes		
Inventory	17.5000	4.60	80.50	80.50	COMPANY PHONE IS : (212) 896-6383		
TRAINING	17.5000	.50	8.75	1,277.50			
Gross Pay			\$1,406.18	3,791.47			

Extract from Plaintiff’s Wage Statement from 10/14/2022
Showing Plaintiff was Paid Overtime at 1.5x his Base Hourly Rate

Indeed, Defendants maintained a policy and practice of not paying meal period premiums at the regular rate of compensation in accordance with California law.

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

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 had 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—predicated upon the foregoing regular rate underpayments of overtime, sick leave and premium wages—Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees at the lawful hourly rates. Specifically, Defendants applied the incorrect hourly rate for overtime, meal/rest period premiums, and sick leave pay, resulting in inaccurate hourly rates on employee wage statements in those respective periods. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Nikolas Schrager, Plaintiff

Michelle Carignan
Payroll & HR Administrator, Lacoste USA
mcarignan@lacoste.com