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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/24/2023 at 04:06:15 PM
Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

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

ROBERTO HERNANDEZ, on behalf of
aggrieved employees and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

ALL ONE GOD FAITH, INC. d/b/a
DR. BRONNER'S MAGIC SOAPS
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00008069-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

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

1 Plaintiff ROBERTO HERNANDEZ, 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 ALL ONE GOD FAITH, INC. and
4 DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. Plaintiff worked for Dr. Bronner’s in San Diego County.

7 2. Dr. Bronner’s committed a series of wage and hour violations against Plaintiff and the
8 aggrieved employees, including failure to pay overtime, premiums, and sick pay at the lawful hourly
9 rate of pay (inclusive of all forms of remuneration) and unlawful time rounding.

10 3. Plaintiff, in his capacity as a private attorney general, seeks to remedy these practices
11 and collect civil penalties for the violations under the Private Attorneys General Act.

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 Roberto Hernandez

8. Plaintiff Hernandez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2019 through December 2022. Plaintiff worked as a Product & Packaging Associate.

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 All One God Faith, Inc. is a California corporation that does business as Dr. Bronner’s Magic Soaps, and 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

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

5 **GENERAL ALLEGATIONS**

6 15. Defendants paid Plaintiff and other aggrieved employees at their base hourly rate of
7 pay, failing to comply with the statutory mandates set forth in Labor Code section 246 *et seq.*, which
8 require payment of sick pay using one of the permissible statutory methods, which includes bonuses,
9 commissions, differentials, appreciation pay, incentives, cash payments for fringe benefits, and other
10 forms of non-exempted remuneration into the calculation. *See Wood v. Kaiser Foundation Hospitals*
11 (Cal. App. 4th Dist., Feb. 24, 2023) D079528 (holding PAGA claims are authorized for paid sick leave
12 violations).

13 16. Additionally, Defendants failed to correctly calculate and pay overtime and meal period
14 premiums at the “regular rate” of pay and compensation, respectively, due to its policy and practice of
15 not accurately including all forms of bonuses, commissions, differentials, appreciation pay, incentives,
16 cash payments for fringe benefits, and other forms of non-exempted remuneration. On information
17 and belief, and to the extent rest period premiums were paid, Plaintiff alleges they suffered the same
18 defect due to the payroll practices of Defendants with respect to regular rate calculations.

19 17. Furthermore, Defendants rounded time entries for Plaintiff and aggrieved employees,
20 which ultimately paid them based on inaccurate time entries and deprived them of pay for all hours
21 worked, including overtime pay for hours rounded down after 8 hours in a day or 40 in a workweek.

22 18. The claims pled in this action are a matter of common practice applicable to the
23 aggrieved employees, susceptible to common proof, and demonstrable based on the records alone,
24 including a comparison of time records to wage statements for the rounding claim.

25 19. Each of these claims results in liability for untimely payment of wages, both during
26 employment and upon separation of employment.

20. The wage statements issued by Defendants inaccurately stated gross and net wages earned due to the underpayments, failed to correctly list the hours actually worked and the corresponding hourly rate in effect, resulting in wage statement violations and penalties.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

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

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

26. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these

provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

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

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

29. On or about **December 20, 2022**, Plaintiff paid the requisite PAGA filing fee and 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.

30. 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”).

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

32. 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.

33. 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.*

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 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.

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 disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;

- 1 f. 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 g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 h. For restitution and injunctive relief;
6 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
8 1194, 2699, and Code of Civil Procedure section 1021.5; and
9 j. For such other relief the Court deems just and proper.

10 Dated: February 24, 2023

Ferraro Vega Employment Lawyers, Inc.

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13 Nicholas J. Ferraro

14 *Attorneys for Plaintiff Roberto Hernandez*

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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December 20, 2022

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

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

ALL ONE GOD FAITH, INC.
d/b/a Dr. Bronner's Magic Soap
1335 Park Center Drive
Vista, CA 92081

- 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 **ROBERTO HERNANDEZ** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

ALL ONE GOD FAITH, INC.
D/B/A DR. BRONNER'S MAGIC SOAP

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 Product & Packaging Associate from about June 2019 to December 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 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(i): (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.” Furthermore, under Labor Code sections 248.1, 248.6, and 248.7 among all other state and local paid sick leave statutes and ordinances, Defendants were required to calculate and pay paid sick leave at the regular rate of pay.

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

Defendants failed to 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:

ALL ONE GOD FAITH: DBA - DR. BRONNER'S MAGIC SOAP				Period Beginning:	06/26/2022
1335 PARK CENTER DRIVE				Period Ending:	07/02/2022
VISTA, CA 92081				Pay Date:	07/08/2022
COMPANY PH #: 760-743-2211					

Taxable Marital Status:	Single
Exemptions/Allowances:	
Federal:	0
CA:	0

Social Security Number:		Redacted	
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Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	26.4300	19.50	515.39	23,114.43	Sick Available	0.00	
Overtime	39.6450	.07	2.78	1,326.13	Supp Paid Sick	27.50	
Apprec OT	3.7500	.07	0.26	123.90	Totl Hrs Worked	19.57	
Appreciation Py	2.5000	32.00	80.00	2,320.40	Pto Balance		4.68
Supp Paid Sick	26.4300	12.50	330.38	330.38	Important Notes		
Unpaid Timeoff	26.4300	8.00			YOUR COMPANY'S PHONE NUMBER IS 760-743-2211		
Holiday				832.88			
Pto Time Taken				1,162.72			
Gross Pay			\$928.81	30,296.97			

Extract from Plaintiff's Wage Statement from 07/06/2022
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 bonuses, differentials, appreciation pay, and other remuneration. Defendants did not use the other approved methods in the statute.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Plaintiff and the aggrieved employees in those periods where they earned additional payments, 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 correct “regular rate of compensation” because the premiums did not properly factor all forms of remuneration into the regular rate of compensation. This specifically includes the annual bonus paid to Plaintiff and other aggrieved employees each year based on performance goals and company performance, as well as appreciation pay. Defendants failed to include in the regular rate the base Appreciation Pay \$2.50 premium earned and attributed to *overtime hours*. Instead, Defendants disregarded the \$2.50 Appreciation Pay premium earned for overtime hours and did attempt to account for the regular rate *on the overtime hours only* by increasing the Appreciation Pay by 1.5x. However, in doing so, Defendants remained obligated to properly account for the regular rate of pay for meal and rest period premiums, but by excluding the base appreciation earnings for overtime, calculated a depreciated regular rate of pay at \$28.93.

ALL ONE GOD FAITH: DBA - DR. BRONNER'S MAGIC SOAP		Period Beginning:	06/05/2022
1335 PARK CENTER DRIVE		Period Ending:	06/11/2022
VISTA, CA 92081		Pay Date:	06/17/2022
COMPANY PH #: 760-743-2211			

Taxable Marital Status:	Single	ROBERTO HERNANDEZ Redacted
Exemptions/Allowances:		
Federal:	0	
CA:	0	

Social Security Number:	Redacted
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Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	26.4300	31.97	844.97	20,914.92	Sick Available	0.00	
Overtime	39.6450	2.04	80.88	1,312.25	Supp Paid Sick	40.00	
Apprec OT	3.7500	2.04	7.65	122.59			
Appreciation Py	2.5000	31.97	79.93	2,081.10	Total Hrs Worked	34.01	
Meal Penalty	28.9300	1.00	28.93				
Pto Time Tkn	26.4300	6.08	160.69	1,162.72	Pto Balance		1.47
Holiday				832.88			
Gross Pay			\$1,203.05	27,512.59	Important Notes		

YOUR COMPANY'S PHONE NUMBER IS 760-743-2211

Extract from Plaintiff's Wage Statement from 06/05/2022 - 06/11/2022
Showing Plaintiff Was Paid Meal Penalty at Incorrect Rate

During this pay period, Plaintiff earned Appreciation Pay totaling \$79.93 and \$7.65. For the \$7.65 Appreciation Pay earnings, \$5.10 is attributed to the base earnings and the remainder, or \$2.55 is attributed to the overtime true up). When Defendants paid the meal penalty at \$28.93, it did so by using a multiple that improperly excluded the \$7.65 appreciation pay for the overtime hours (including the \$5.10 that may have been earned at \$2.50 per hour), resulting in a depreciated regular rate. Failing to pay overtime at the regular rate when employees earned additional compensation resulted in underpayment of wages and premiums.

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

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

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

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

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 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 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’ overtime violations are twofold.

Firstly, 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 the aggrieved employees bonuses, appreciation pay, shift differentials, and other forms of remuneration that Defendants failed to fully and properly include in the “regular rate of pay” when employees earned overtime. This specifically includes the annual bonus paid to Plaintiff and other aggrieved employees each year based on performance goals and company performance, as well as appreciation pay. Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at the rate 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.

ALL ONE GOD FAITH: DBA - DR. BRONNER'S MAGIC SOAP
 1335 PARK CENTER DRIVE
 VISTA, CA 92081
 COMPANY PH #: 760-743-2211

Period Beginning: 12/05/2021
 Period Ending: 12/11/2021
 Pay Date: 12/17/2021

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0
 CA: 0

ROBERTO HERNANDEZ

Redacted

Social Security Number: **Redacted**

Earnings	rate	hours	this period	year to date
Regular	24.8200	40.00	992.80	38,498.95
Overtime	37.2300	.35	13.03	1,543.59
Apprec OT	3.7500	.35	1.31	94.40
Appreciation Py	2.5000	40.00	100.00	3,745.08
Fringe Ben			150.00	150.00
Bonus				4,701.25
Holiday				2,380.56
Pto Time Taken				1,761.34
Retroactive				6.48
Shift Diff OT				6.51
Supp Paid Sick				1,218.66
Vax Incentive				1,000.00
Gross Pay			\$1,257.14	57,540.74

Your federal taxable wages this period are
 \$1,257.14

Other Benefits and Information	this period	total to date
Sick Available	0.00	
Totl Hrs Worked	40.35	
Pto Balance		10.06

Important Notes

YOUR COMPANY'S PHONE NUMBER IS 760-743-2211

**Extract from Plaintiff's Wage Statement from 12/19/2021
 Showing Plaintiff Was Paid Overtime at His Base Hourly Rate**

During this pay period, Plaintiff earned a Fringe Benefit of \$150.00 and Appreciation Pay of \$100.00 that were not factored into Plaintiff's overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate, rather than 1.5x the regular rate of pay. To the extent other aggrieved employees earned fringe benefits, bonuses, or other forms of remuneration each must be factored into the regular rate of pay during the statutory period, Defendants violated the Labor Code accordingly.

Additionally, within the statutory period, Defendants paid appreciation pay for each hour worked. For the overtime hours, Defendants elected to pay the appreciation pay at a 1.5x multiple of the \$2.50 payment. However, in doing so, Defendants did not include the base \$2.50 appreciation pay rate for those overtime hours in the regular rate of pay for the other overtime hours, resulting in an undercalculation of the regular rate of pay. In other words, Defendants excluded the Appreciation OT pay from total earnings when doing the regular rate of pay calculation, such that the overtime rate was depreciated and underpaid in those pay periods, as illustrated on the following wage statement:

ALL ONE GOD FAITH: DBA - DR. BRONNER'S MAGIC SOAP Period Beginning: 06/05/2022
 1335 PARK CENTER DRIVE Period Ending: 06/11/2022
 VISTA, CA, 92081 Pay Date: 06/17/2022
 COMPANY PH #: 760-743-2211

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0
 CA: 0

ROBERTO HERNANDEZ

Redacted

Social Security Number: **Redacted**

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	26.4300	31.97	844.97	20,914.92	Sick Available	0.00	
Overtime	39.6450	2.04	80.88	1,312.25	Supp Paid Sick	40.00	
Apprec OT	3.7500	2.04	7.65	122.59	Totl Hrs Worked	34.01	
Appreciation Py	2.5000	31.97	79.93	2,081.10	Pto Balance		1.47
Meal Penalty	28.9300	1.00	28.93				
Pto Time Tkn	26.4300	6.08	160.69	1,162.72			
Holiday				832.88			
Gross Pay			\$1,203.05	27,512.59	Important Notes		

YOUR COMPANY'S PHONE NUMBER IS 760-743-2211

Extract from Plaintiff's Wage Statement from 06/05/2022 - 06/11/2022
Showing Plaintiff Was Paid OT at Incorrect Rate

During this pay period, Plaintiff earned Appreciation Pay totaling \$79.93 and \$7.65. When doing the regular rate of pay calculation, Defendants excluded the \$7.65 amount from total earnings. By doing so, Defendants simply paid overtime at a rate of \$39.645 + \$1.25 for the overtime hours, which is not 1.5x the regular rate of pay. Failing to pay overtime at the regular rate when employees earned additional compensation resulted in underpayment of wages and premiums. This violation occurred throughout the pay periods for all aggrieved employees earning Appreciation Pay:

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Earnings Statement



ALL ONE GOD FAITH: DBA - DR. BRONNER'S MAGIC SOAP Period Beginning: 03/20/2022
 1335 PARK CENTER DRIVE Period Ending: 03/26/2022
 VISTA, CA, 92081 Pay Date: 04/01/2022
 COMPANY PH #: 760-743-2211

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0
 CA: 0

ROBERTO HERNANDEZ

Redacted

Social Security Number: **Redacted**

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	26.4300	39.98	1,056.67	10,346.62	Sick Available	0.00	
Overtime	39.6450	.41	16.25	1,008.56	Supp Paid Sick	40.00	
Appreciation Py	2.5000	39.98	99.95	1,081.44	Totl Hrs Worked	40.39	
Apprec OT	3.7500	.41	1.54		Pto Balance		13.15
Holiday				93.86			
Pto Time Tkn				410.00			
Gross Pay			\$1,174.41	14,407.68	Important Notes		

YOUR COMPANY'S PHONE NUMBER IS 760-743-2211

Extract from Plaintiff's Wage Statement from 04/01/2022
Showing Appreciation Pay Not Being Properly Factored Into Regular Rate

Defendants paid other forms of non-excludable remuneration like incentives, differentials, and bonuses to aggrieved employees that were not included in the regular rate of pay.

Secondly, for the reasons set forth in the section entitled “Unpaid Hours Worked/Minimum Wage” below regarding minimum wage and time rounding, and to the extent it occurred during the statutory period, Defendants underpaid overtime to the aggrieved employees such as Plaintiff based on the time rounding practice. As an example, as discussed above, the total hours worked for January 27, 2021 should show 8.06 total hours worked, including 0.06 overtime hours paid at the lawful overtime hourly rate, but due to the time rounding policy and practice of Defendants, Plaintiff (and other aggrieved employees) were underpaid. This policy and practice occurred throughout the pay period for the aggrieved employees and subjects Defendants to civil penalties for the underpayments.

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

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages due to Defendants' payment of wages using rounded hours worked, leaving actual and demonstrable hours worked uncompensated, as evident from the wage statements comparing rounded time with actual time. Defendants have a policy and practice of rounding the total hours worked, resulting in an underpayment of wages for all hours worked. *See Camp v. Home Depot* (Oct. 24, 2022) 2022 WL 13874360 (finding where employer tracks exact times worked, employer cannot rely on time rounding policy to avoid liability).

ALL ONE GOD FAITH DBA - DR. BRONNER'S MAGIC SOAP		Period Beginning:	01/27/2021
1335 PARK CENTER DRIVE		Period Ending:	02/02/2021
VISTA, CA 92081		Pay Date:	02/05/2021
COMPANY PH #: 760-743-2211			

Taxable Marital Status:	Single	ROBERTO HERNANDEZ
Exemptions/Allowances:		Redacted
Federal:	0	
CA:	0	

Social Security Number:	Redacted
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Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	24.8200	28.25	701.17	3,873.81	Sick Available	64.00	
Overtime	37.2300	.50	18.62	428.16	Toll Hrs Worked	28.75	
Appreciation Py			71.88	419.39	Pto Balance		7.26
SICK	24.8200	16.00	397.12	394.96	Important Notes		
Holiday				103.85	YOUR COMPANY'S PHONE NUMBER IS 760-743-2211		
Pto Time Taken				6.48			
Retroactive				6.51	BASIS OF PAY: HOURLY		
Shift Diff OT				5,853.23			
Gross Pay			\$1,188.79				

Deductions	Statutory		
Federal Income Tax		-163.06	803.63
Social Security Tax		-73.70	362.90
Medicare Tax		-17.24	84.87
CA State Income Tax		-52.21	261.21
CA SUI/SDI Tax		-14.27	70.24
Other			

Time Card Detail						
DATE	IN	OUT	IN	OUT	TOTAL	
WED 01/27	4:56AM	9:16AM	9:47AM	1:30PM	8.00	
THU 01/28	5:00AM	9:18AM	9:47AM	1:38PM	8.25	
FRI 01/29	4:59AM	9:15AM	9:45AM	1:39PM	8.25	
SAT 01/30	5:00AM	9:20AM			4.25	
MON 02/01	SICK				8.00	
TUE 02/02	SICK				8.00	

**Extract from Plaintiff's Wage Statement with Pay Date of 02/05/2021
Showing Defendants' Time Rounding and Failure to Pay All Hours Worked**

During this pay period, Plaintiff's records show he clocked in a few minutes before 5:00 AM, for his 8-hour shift, yet his hour total still shows a perfectly rounded 8 hours worked. The total hours worked for January 27, 2021, should show 8.06 total hours worked. Additionally, on January 30, 2021, Plaintiff's records show he worked from 5:00 AM to 9:20 AM, with a total of 4.25 hours. The correct total hours worked should be 4.33 hours, and this again show Defendants' practice of rounding Plaintiff's time records. By rounding Plaintiff's time records, Plaintiff was deprived of payment of "not less than the applicable minimum wage for all hours worked in the payroll period".

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.

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

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

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

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

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ regular, overtime, sick and premium pay, including at the lawful regular rate of compensation.

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The hourly rates on the wage statements are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay”, meal and rest period premiums, and paid sick leave hours, as those were paid at the improper base rate and reflected as such on wage statement of the aggrieved employees. Indeed, the overtime hourly rate on the paystubs is stated as the 1.5x multiple of the base rate, even in pay periods where Plaintiff and other aggrieved employees earned remuneration like appreciation pay that increased the regular rate of pay, resulting in an inaccurate statement of the overtime rate on the wage statements in those pay 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,



Nicholas J. Ferraro

Cc Roberto Hernandez

Nicky Rafalik
Human Resource Specialist
nicky@drbronner.com