

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Caitlin Raymond

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

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

CAITLIN RAYMOND, , individually and on
behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

ALPHATEC SPINE, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2023-00012914-CU-OE-CTL

Hon. Joel R. Wohlfeil
Dept. 73

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff CAITLIN RAYMOND, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants ALPHATEC
4 SPINE, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a wage and hour class action seeking unpaid wages, premiums, and penalties
7 for Defendants violations of the California Labor Code. Defendants underpaid class members’ wages
8 by failing to include all forms of remuneration, including bonuses, in the “regular rate” due for
9 overtime, sick pay, and premium rates, resulting in underpayment of wages..

10 2. Additionally, Defendants failed to provide timely, uninterrupted, 30-minute meal
11 periods and 10-minute rest periods, resulting in a subsequent failure to pay wages and premiums.

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

14 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Caitlin Raymond

8. Plaintiff Raymond is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2019 to October 2022. Plaintiff worked as a Data Entry Specialist.

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 Alphatec Spine, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

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

CLASS ALLEGATIONS

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

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification. The class period is from March 29, 2019 to preliminary approval or April 1, 2024, whichever occurs first.

b.

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

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

c. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

d. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

e. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys

1 who have substantial experience prosecuting, defending, resolving, and
2 litigating wage and hour class, collective, and representative actions in
3 California state and federal courts.

4 f. Superiority: A class action is superior to other means for adjudicating this
5 dispute. Individual joinder is impractical. Class treatment will allow for
6 common issues to be resolved in a single forum, simultaneously, and without
7 duplication of effort and expense.

8 g. Public Policy Considerations: Certification of this lawsuit as a class action
9 advances the State of California's strong public interest in ensuring its
10 approximately millions of employed residents are properly paid the wages they
11 earned for the hours they worked. Class actions provide a mechanism for
12 enforcement of labor laws and allow for vindication of employee rights by
13 unnamed class members.

14 18. Common questions of law and fact as to the class members predominate over questions
15 affecting only individual members. The common questions of law and fact exist as to whether the
16 employment policies and practices formulated by Defendants and applied to the class members
17 constitute violations of California law.

18 **GENERAL ALLEGATIONS**

19 19. Alphatec paid class members like Plaintiff additional forms of remuneration, such as
20 annual bonuses, incentives, differentials, and commissions, and other non-excludable forms of pay,
21 including the "Corporate Bonus."

22 20. According to compensation plans and offer letters applicable to these additional forms
23 of remuneration, the earnings were non-discretionary in nature, based on objective metrics and goals,
24 and not subject to a statutory exclusion from the regular rate calculation.

25 21. Based on the same practice, Plaintiff alleges on information and belief that Defendants
26 equally failed to pay meal and/or rest period premiums at the lawful "regular rate of compensation,"
27 as required by California law.

1 22. Plaintiff alleges that she and other class members experienced late, short and missed
2 meal periods, which appear on time records Defendants are required to maintain. In those pay periods,
3 Plaintiff alleges Defendants failed to pay a meal period premium payment. The time records will
4 reveal the extent of the unpaid premium wages.

5 23. For these reasons, Defendants failed to pay all wages owed each regularly scheduled
6 payday. Plaintiff alleges, on information and belief, Defendants maintain a policy and practice of
7 failing to pay all wages owed upon separation of employment, due to the ongoing underpayments
8 alleged above.

9 24. Under Labor Code § 510, overtime must be calculated and paid at the “regular rate of
10 pay.”

11 25. Under Labor Code § 226.7, premiums must be calculated and paid at the “regular rate
12 of compensation.”

13 26. Under Labor Code § 246 through 248.7, sick pay must be paid according to one of the
14 specific statutory methods, which requires a calculation over and above the base hourly rate, inclusive
15 of all forms of non-excludable remuneration.

16 27. Alphatec violated Labor Code §§ 226.7, 510, 516, and 246 through 248.7 by failing to
17 include the annual bonuses, incentives, differentials, and commissions, and other non-excludable
18 forms of pay, including the “Corporate Bonus” in the hourly rates applicable to overtime, Labor Code
19 § 226.7 premiums, and sick pay.

20 28. As a result of this practice, wage statements issued to class members under Labor Code
21 § 226(a) incorrectly stated the gross and net wages earned and the accurate hourly rate in effect for
22 those earnings categories, in violation of subsections (a)(1), (5), and (9).

23 29. Furthermore, Alphatec violated Labor Code §§ 201 through 203 and 204 *et seq.*, due
24 to the regular rate underpayments, by failing to pay all wages owed to the respective class members
25 each pay day or upon separation of employment.

1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

4 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

5 30. All outside paragraphs of this Complaint are incorporated into this section.

6 31. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
8 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
9 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
10 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
11 liquidated damages).

12 32. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
13 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
14 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
15 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
16 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
17 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
18 Code § 1194.2.

19 33. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
20 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
21 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
22 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
23 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

26 **Violation of Labor Code §§ 510 and 1194**

27 34. All outside paragraphs of this Complaint are incorporated into this section.

1 35. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
3 wages all overtime hours worked, and which further provide a private right of action for an employer's
4 failure to pay all overtime compensation for overtime hours worked.

5 36. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
6 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
7 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
8 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
9 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
10 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
11 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

12 37. Plaintiff and class members are entitled to recover the full amount of the unpaid
13 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
14 extent permitted by law.

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **Violation of Labor Code §§ 226.7 and 512**

18 38. All outside paragraphs of this Complaint are incorporated into this section.

19 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
21 meal period premiums in lieu thereof), and which further provide a private right of action for an
22 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
23 regular rate of compensation.

24 40. Defendants willfully failed in their affirmative obligation to consistently provide
25 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
26 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
27 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
28

violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

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

42. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

46. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation

for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

48. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

49. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated 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 of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

50. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members.

1 51. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
2 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
3 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code
4 sections 246, 248.1, 248.2, and 248 *et seq.*

5 52. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
6 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
7 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
8 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
9 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
10 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
11 to September 30, 2022, and may be extended thereafter.

12 53. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
13 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
14 (2) state minimum wage, (3) local minimum wage.

15 54. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
16 paid sick leave according to the highest of the following four methods:

17 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
18 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
19 the employee actually works overtime in that workweek.

20 (II) Calculated by dividing the covered employee's total wages, not including
21 overtime premium pay, by the employee's total hours worked in the full pay periods
22 of the prior 90 days of employment.

23 (III) The state minimum wage.

24 (IV) The local minimum wage to which the covered employee is entitled.

25 55. Labor Code section 248.6 requires employers to pay supplemental sick leave using
26 either method (I) or (II), as identified above.

1 56. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
2 Leave in the manner described above because Defendants failed to include in their sick leave
3 calculation the additional remuneration received by class members.

4 57. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
5 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

6 **SIXTH CAUSE OF ACTION**

7 **UNTIMELY PAYMENT OF WAGES**

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

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

10 59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
12 period, and which further provide a private right of action for an employer's failure to comply with
13 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
14 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **Violation of Labor Code § 226**

4 62. All outside paragraphs of this Complaint are incorporated into this section.

5 63. This cause of action is brought by a wage statement subclass pursuant to Labor Code
6 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
7 pay period, and which further provide a private right of action for an employer's failure to comply
8 with this obligation.

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

13 65. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
14 accurate itemized wage statements, causing confusion and concealing wage and premium
15 underpayments.

16 66. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
17 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
18 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
19 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
20 Code section 226(e).

21 **EIGHTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

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

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

25 68. This cause of action is brought by a waiting time subclass pursuant to Labor Code
26 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
27 employment, and which further provide a private right of action to recover statutory waiting time
28

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

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

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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

75. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year

1 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
2 violations do not provide a private right of action.

3 76. Plaintiff and class members are entitled to injunctive relief against Defendants,
4 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
5 an ownership interest and to prevent future damage and the public interest under Business and
6 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
7 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
8 § 1021.5.

9 **TENTH CAUSE OF ACTION**

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

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

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

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

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

- 17 a. All current and former non-exempt employees who [1] worked for Defendants
18 in California at any time from one year prior to the postmark date of the initial
19 PAGA notice through date of trial who [2] earned annual bonuses, incentives,
20 differentials, and commissions, and other non-excludable forms of pay,
21 including the “Corporate Bonus.”

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

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

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

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

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

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

18 85. On or about **January 18, 2023**, Plaintiff paid the requisite PAGA filing fee and
19 provided written notice (by online electronic filing with the LWDA and by certified mail to
20 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
21 the alleged violations.

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

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

27 88. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
28 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.*

89. Plaintiff seeks to recover all recoverable civil penalties based exclusively upon the following violations set forth in the PAGA notice:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- 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.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226.

90. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint 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 certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- 1 d. For division of class members into appropriate classes and/or subclasses according to
2 proof;
- 3 e. For recovery of all statutory penalties and liquidated damages;
- 4 f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- 5 g. For restitution and injunctive relief;
- 6 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by
7 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194.
- 8 i. For recovery of damages in amount according to proof;
- 9 j. For all recoverable pre- and post-judgment interest;
- 10 k. For this action to be maintained as a representative action under the PAGA;
- 11 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
12 the action were brought by the State of California or the California Division of Labor
13 Enforcement;
- 14 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 15 n. For restitution and injunctive relief;
- 16 o. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
17 permitted by law, including (without limitation) under Labor Code § 2699 and Code of
18 Civil Procedure section 1021.5; and
- 19 p. For such other relief the Court deems just and proper.

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21 Dated: March 17, 2024

Ferraro Vega Employment Lawyers, Inc.

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Nicholas J. Ferraro

Attorneys for Plaintiff Caitlin Raymond