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August 25, 2025

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

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

Simaya Inc.
1051 Garnet Ave
San Diego, California 92109

American High, Inc.
1051 Garnet Ave
San Diego, California 92109

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

SIMAYA INC.; AMERICAN HIGH, 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.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Line Cook from about December 2024, to March 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and aggrieved employees to complete work off-the-clock, without compensation. Plaintiff and the aggrieved employees were made to finish closing tasks while off the clock. For example, Plaintiff was required to check that all gas ignition equipment and electric heating equipment were off after clocking out for the evening. Moreover, on multiple occasions, Defendants required Plaintiff to refrain from clocking in upon arriving at his scheduled shift. Due to this unlawful practice, all hours worked were not directly compensated, resulting in the underpayment of wages to Plaintiff and 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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. First, as described above, Defendants compelled Plaintiff and other aggrieved employees to work off-the-clock after clocking out. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Second, Defendants failed to pay overtime at the "regular rate of pay." Specifically, Defendants paid Plaintiff and aggrieved employees non-discretionary bonuses that Defendants failed to include in the overtime rates in the pay periods when employees worked overtime hours. 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 a rate no less than **one and one-half times the regular rate of pay** for an employee" as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. Furthermore, Defendants unlawfully paid double time to Plaintiff and the aggrieved employees at 2x their straight hourly rate. For each double 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 double-time "at the rate of no less than **twice the regular rate of pay of an employee**." as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example is shown below:

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Simaya Inc
1051 Garnet Ave
San Diego, CA 92109

Earnings Statement

Period Starting: 02/17/2025
Period Ending: 03/02/2025
Pay Date: 03/07/2025

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-4949

Tax Override:
Federal: 0.00 Addnl
State: 35.80 Flat
Local:

Joshua Silva
[redacted]

Earnings	rate	hours/units	this period	year to date
Regular	20.0000	69.02	1380.40	5609.40
Overtime	30.0000	8.00	240.00	584.40
Bonus			0.00	485.56
Gross Pay			$1,620.40	$6,679.36

Statutory Deductions	this period	year to date
Federal Income	-116.04	429.64
Social Security	-100.47	384.02
Medicare	-23.50	89.81
California State Income	-35.80	131.25
California State DI	-19.45	74.33
Net Pay	$1,325.14	

Other Benefits and Information	this period	year to date
Total Hours Worked	77.02	299.95

Simaya Inc
1051 Garnet Ave
San Diego, CA 92109-2834

Important Notes
Basis of pay: Hourly

Extract of Plaintiff's wage statement for pay period 2/17/2025 to 3/02/2025 showing pay for overtime at a rate of $30.00 for 8.00 hours

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Simaya Inc
1051 Garnet Ave
San Diego, CA 92109

Earnings Statement

Period Starting: 02/17/2025
Period Ending: 03/02/2025
Pay Date: 03/07/2025

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-4949

Tax Override:
Federal: 0.00 Addnl
State: 0.00 Flat
Local:

Joshua Silva
[redacted]

Earnings	rate	hours/units	this period	year to date
Regular			0.00	5609.40
Overtime			0.00	584.40
Bonus		0.00	485.56	485.56
Gross Pay			$485.56	$6,679.36

Statutory Deductions	this period	year to date
Federal Income	0.00	429.64
Social Security	-30.10	414.12
Medicare	-7.04	96.85
California State Income	0.00	131.25
California State DI	-5.82	80.15
Net Pay	$442.60	

Simaya Inc
1051 Garnet Ave
San Diego, CA 92109-2834

Important Notes
Basis of pay: Hourly

Extract from Plaintiff's wage statement for pay period 2/17/2025 to 3/02/2025 showing a "Bonus" payment for $485.56

Here, Plaintiff worked approximately 8 hours of overtime and was paid a non-discretionary bonus of $485.56. However, Defendants paid Plaintiff at a deficient rate of 1.5x times his base rate of $20.00. Defendants failed to pay Plaintiff's overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

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

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

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

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

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

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

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

Further, Plaintiff alleges, on information and belief, that Defendants failed to correctly include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay calculation for 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, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Reporting Time Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 5 (Reporting Time Pay) of the applicable IWC Wage Orders concerning reporting time wages with respect to the aggrieved employees.

Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5 further requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to the aggrieved employees. Plaintiff was scheduled and required to come in to work but upon his arrival to work, was told to clock out and instead go home. This happened on multiple occasions, including March 28, 2025. Defendants failed to pay any reporting time wages on these occasions. On information and belief, Defendants had a similar policy of failing to pay reporting time wages to other aggrieved employees under similar circumstances. An illustrative example of this violation is shown below:

Cook	2.93	0.00	$0.00	$0.00	Sun	3/16/25 3:29 PM	3/16/25 6:25 PM
Cook	6.21	0.00	$0.00	$0.00	Thu	3/20/25 3:58 PM	3/20/25 10:10 PM
Cook	6.44	0.00	$0.00	$0.00	Fri	3/21/25 3:28 PM	3/21/25 9:55 PM
Cook	7.31	0.00	$0.00	$0.00	Sat	3/22/25 3:31 PM	3/22/25 10:50 PM
Cook	6.37	0.00	$0.00	$0.00	Sun	3/23/25 3:57 PM	3/23/25 10:19 PM
Cook	6.03	0.00	$0.00	$0.00	Mon	3/24/25 10:00 AM	3/24/25 4:01 PM
Cook	5.67	0.00	$0.00	$0.00	Tue	3/25/25 10:30 AM	3/25/25 4:10 PM
Cook	0.15	0.00	$0.00	$0.00	Fri	3/28/25 2:59 PM	3/28/25 3:08 PM
Cook	6.36	0.00	$0.00	$0.00	Sun	3/30/25 3:00 PM	3/30/25 9:21 PM
Cook	4.18	0.00	$0.00	$0.00	Mon	3/31/25 4:02 PM	3/31/25 8:12 PM

Extract of Plaintiff's time record for the period of 03/16/2025 to 03/31/2025 showing a shift on 03/28/2025 for only .15 hours.

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Simaya Inc
1051 Garnet Ave
San Diego, CA 92109

Earnings Statement

ADP

Period Starting: 03/17/2025
Period Ending: 03/30/2025
Pay Date: 04/01/2025

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-4949

Tax Override:
Federal: 0.00 Addnl
State: 12.21 Flat
Local:

Joshua Silva
[redacted]

Earnings	rate	hours/units	this period	year to date
Regular	20.0000	48.74	974.80	7863.00
Overtime			0.00	584.40
Bonus			0.00	485.56
Gross Pay			$974.80	$8,932.96

Statutory Deductions	this period	year to date
Federal Income	-39.79	544.48
Social Security	-60.43	553.84
Medicare	-14.14	129.53
California State Income	-12.21	164.23
California State DI	-11.70	107.20
Net Pay	$836.53	

Other Benefits and Information	this period	year to date
Total Hours Worked	48.74	412.63

Simaya Inc
1051 Garnet Ave
San Diego, CA 92109-2834

Important Notes
Basis of pay: Hourly

Extract of Plaintiff's Wage statement for the period of 03/17/2025 to 03/30/2025 showing no payment of reporting time pay.

Here, Plaintiff reported to work on 3/28/2025 but was told to clock out and go home after only .15 hours. However, Defendants failed to pay Plaintiff reporting time pay as required under Labor Code section 1198.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to provide legally compliant meal periods to Plaintiff and the aggrieved employees. Due to the high demands of their positions and ongoing understaffing, Plaintiff and the aggrieved employees frequently experienced missed, late, shortened, or interrupted meal periods. For example, Plaintiff was only allowed to take breaks when there was a lull between services. However, there was not always enough downtime for Plaintiff to take a timely, uninterrupted meal period. As a result, his meal periods were often short, late, and interrupted. Meal periods were well below the required 30 minutes because of needing to catch up with service or because there was a rush and assistance was needed. Plaintiff was instructed not to clock out for breaks and especially on days when he was scheduled for overtime or a morning shift during the week, he was the only kitchen staff on duty and was told to take a "standing break." During these breaks, Plaintiff would be allowed to sit, but if there was some sort of necessity, he had to get up and do it. Meal periods were therefore regularly conducted "on duty" however, Defendants failed to provide a valid on duty meal period agreement. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7 for all violations. An illustrative example of this violation is shown below:

Cook	7.10	0.00	$0.00	$0.00	Wed	3/5/25 2:39 PM	3/5/25 9:45 PM
Cook	5.54	0.00	$0.00	$0.00	Thu	3/6/25 2:42 PM	3/6/25 8:14 PM
Cook	7.74	0.00	$0.00	$0.00	Fri	3/7/25 3:30 PM	3/7/25 11:14 PM
Cook	7.44	0.00	$0.00	$0.00	Sat	3/8/25 3:30 PM	3/8/25 10:56 PM
Cook	6.74	0.00	$0.00	$0.00	Sun	3/9/25 3:30 PM	3/9/25 10:14 PM
Cook	6.90	0.00	$0.00	$0.00	Wed	3/12/25 2:39 PM	3/12/25 9:33 PM
Cook	7.19	0.00	$0.00	$0.00	Thu	3/13/25 2:33 PM	3/13/25 9:45 PM
Cook	6.60	0.00	$0.00	$0.00	Fri	3/14/25 3:26 PM	3/14/25 10:02 PM

Extract of Plaintiff's timecard for the period of 03/05/2025 to 03/14/2025 showing no meal periods recorded on shifts longer than five hours.

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Simaya Inc
1051 Garnet Ave
San Diego, CA 92109

Earnings Statement

Period Starting: 03/03/2025
Period Ending: 03/16/2025
Pay Date: 03/21/2025

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-4949

Tax Override:
Federal: 0.00 Addnl
State:
Local:

Joshua Silva
[redacted]

Earnings	rate	hours/units	this period	year to date
Regular	20.0000	63.94	1278.80	6888.20
Overtime			0.00	584.40
Bonus			0.00	485.56
Gross Pay			$1,278.80	$7,958.16

Statutory Deductions	this period	year to date
Federal Income	-75.05	504.69
Social Security	-79.29	493.41
Social Security	0.01	
Medicare	-18.54	115.39
Medicare	0.01	
California State Income	-20.77	152.02
California State DI	-15.35	95.50
Net Pay	$1,069.82	

Other Benefits and Information	this period	year to date
Total Hours Worked	63.94	363.89

Simaya Inc
1051 Garnet Ave
San Diego, CA 92109-2834

Important Notes
Basis of pay: Hourly

Extract of Plaintiff's wage statement for the pay period from 03/03/2025 to 03/16/2025

Here, every shift that Plaintiff worked for the period from 03/05/2025 to 03/14/2025 was longer than five hours, but showed no record of compliant meal periods. However, Plaintiff's corresponding wage statement shows no meal period premium was paid when Defendant failed to provide a compliant meal period. As a result, Defendants are liable for both unpaid wages and meal period premiums for all on-duty or otherwise noncompliant meal periods taken by Plaintiff and the aggrieved employees. When compliant meal periods were not provided, Defendants failed to pay the meal period premium in violation of California Labor Code section 226.7.

To the extent Defendants ever paid a meal period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the "regular rate of compensation" to Plaintiff and the aggrieved employees, which should have factored in bonuses and other forms of non-excludable remuneration.

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

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

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

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

Defendants maintained a policy and practice of failing to pay rest period premiums to employees who were unable to take compliant rest periods. Plaintiff and the aggrieved employees frequently experienced missed, late, shortened, or interrupted rest periods, for the same reasons described in the "Unpaid Meal Period Premium Wages" section—namely, excessive workload demands, rushes, and understaffing. Even when Plaintiff was able to take brief pauses between tasks, these rest periods were not duty-free and therefore did not comply with California law. Plaintiff was regularly expected to remain available to step back in and assist in cooking dishes. Consequently, Plaintiff and the aggrieved employees were not consistently authorized or permitted to take their full, uninterrupted rest periods. On numerous occasions, Plaintiff worked an entire eight-hour shift without receiving a single compliant meal or rest period.

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 "regular rate of compensation" to Plaintiff and the aggrieved employees, which should have factored in bonuses and other forms of non-excludable remuneration.

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

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

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

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

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

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

<u>Untimely Payment of Wages Upon Separation of Employment</u>
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.

<u>Labor Code section 201</u> requires that if an employer fires an employee, the wages must be paid immediately. <u>Labor Code section 202</u> requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. <u>Labor Code section 202</u> states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. <u>Labor Code section 203</u> 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.

Defendants terminated Plaintiff on March 31, 2025, and told him to come back the following day, April 1, 2025, to pick up his last check. Plaintiff did not receive the final payment of wages until two days later, April 3, 2025. However, Defendants subsequently revoked the check they had given Plaintiff, stating that he had been overpaid. Plaintiff did not receive a final paycheck for the hours he worked until May 8, 2025.

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

<u>Non-Compliant Wage Statements</u>
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).

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

hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

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

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

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

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE –

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

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

- CONCLUSION -

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

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

Sincerely,

Xavier L. Woodford

Xavier L. Woodford

Cc Plaintiff Joshua Silva

Geoffrey Harris – Manager (geoffrey.societypb@gmail.com)

jg