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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

04/24/2023 at 10:47:39 AM

Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

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

ELOY HERRERA, on behalf of aggrieved
employees and the State of California under
the Private Attorneys General Act

Plaintiff,

vs.

CALPINE OPERATING SERVICES
COMPANY, INC.; CALPINE
CORPORATION; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00016891-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

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

1 Plaintiff ELOY HERRERA, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants CALPINE OPERATING
4 SERVICES COMPANY, INC.; CALPINE CORPORATION; and DOES 1 through 50, inclusive
5 (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a representative action brought under the Private Attorneys General Act of 2004
8 for Defendants’ violations of the California Labor Code.

9 2. Defendants underpaid the aggrieved employees’ wages by failing to include all forms
10 of remuneration, including nondiscretionary bonuses, a cost-of-living taxable stipend, and shift
11 differentials, in their hourly overtime, sick pay, and premium rates, resulting in underpayments of
12 wages.

13 3. Defendants also failed to maintain compliant meal and rest period policies and
14 practices, resulting in a failure to pay wages and premiums.

15 4. Defendants are further liable for derivative penalties for wage statement, untimely
16 payment, and waiting time violations.

17 5. Defendants’ employment policies and practices and payroll administration systems
18 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
19 employees

20 **JURISDICTION & VENUE**

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

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

25 8. This Court has jurisdiction over Defendants because, upon information and belief,
26 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
27 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
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over them by the California courts consistent with traditional notions of fair play and substantial justice.

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

PARTIES

A. Plaintiff Eloy Herrera

10. Plaintiff Herrera is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2005 to December 2022. Plaintiff worked as an Operation Technician II.

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

B. Defendants

12. Through the respective statutory periods, each of the defendants was a legal employer of Plaintiff and aggrieved employees.

13. Defendant Calpine Operating Services Company, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. Defendant Calpine Corporation is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

15. 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.

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

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

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

13 **GENERAL ALLEGATIONS**

14 19. Plaintiff and aggrieved employees worked for Defendants and were compensated on
15 an hourly basis as nonexempt employees.

16 20. In addition to earning hourly compensation, Defendants paid Plaintiff and aggrieved
17 employees other forms of non-discretionary remuneration. When Defendants paid overtime or double
18 time to Plaintiff and aggrieved employees, Defendants failed to include employees' additional
19 remuneration in the regular rate of pay used to calculate and pay overtime, sick pay, and Labor Code
20 § 226.7 premiums.

21 21. Plaintiff and aggrieved employees received an annual non-discretionary performance
22 bonus based on several metrics, such as productivity, self-evaluation, training, and other qualifications,
23 as well as the employee's pay and hours worked the previous year.

24 22. Plaintiff and the aggrieved employees were also paid a monthly cost-of-living stipend
25 separate from their base pay.

26 23. Defendants also awarded Plaintiff and aggrieved employees a nondiscretionary bonus
27 for their continued employment with Defendants through the height of the COVID-19 pandemic.
28

Defendants notified employees of this bonus and the terms for obtaining it several months in advance of its payment.

24. Finally, Plaintiff and aggrieved employees were eligible to earn shift differentials for working certain shifts, such as overnight shifts. Plaintiff specifically earned an additional \$1.00 to his base hourly rate for hours worked during these overnight shifts.

25. In pay periods when employees earned these additional forms of compensation, Defendants paid employees did not correctly include all remuneration in their hourly rate used to calculate and pay their overtime, sick leave, and premium pay.

26. Additionally, Defendants failed to consistently provide compliant first and second meal periods to Plaintiff and aggrieved employees, in violation of Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Wage Orders. Plaintiff and the aggrieved employees often experienced late, short, missed, and interrupted meal periods due to staffing issues, employees' responsibilities, and the steady flow of work. Furthermore, on weekends only two employees were scheduled per shift, posing issues with coverage due to the amount of work required of employees in operating the power plant.

27. When Defendants paid meal or rest period premiums, Defendants failed to pay all the premiums owed at the "regular rate of compensation" because they did not factor in bonuses, stipends, shift differentials, and other forms of remuneration, instead electing to pay aggrieved employees at the base hourly rate, in violation of Labor Code section 226.7. An illustrative example of this practice appears on Plaintiff's 08/15/2022 to 08/28/2022 wage statement, where Plaintiff earned a "Straight Prem" at his base hourly rate, which did not include additional earnings such as his shift differential ("Night Reg") or the stipend ("West Stipend").

28. Moreover, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code §§ 226.7, 516, and § 12 of the applicable IWC Wage Order. When Defendants did not provide fully compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium at the lawful "regular rate of compensation" in violation of Labor Code section 226.7.

29. In pay periods where Defendants provided Plaintiff and other employees with non-excludable remuneration in addition to their respective base hourly rate for hours worked, Defendants

1 failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation
2 of Labor Code § 246. Defendants paid sick leave as “paid time off” at employees’ straight time hourly
3 rate instead of at their regular rate of pay.

4 30. One example of Defendants’ sick leave violations occurs during the pay period of
5 September 12 to September 25, 2022. In this pay period, Plaintiff earned a \$1 shift differential for
6 35.25 hours of work (\$35.25 total) and used 46 hours of paid time off. Defendants paid Plaintiff’s
7 paid time off at his base hourly rate of \$46.69 rather than at his regular rate of pay (or other permissible
8 statutory method provided in Labor Code § 246 *et seq.*)

9 31. Because of these violations, Defendants failed provide accurate itemized wage
10 statements to aggrieved employees that included the accurate gross or net wages earned, as the
11 employees earned sick leave wages, overtime pay, and premiums, which were not paid at the lawful
12 rate in light of the regular rate violations. Likewise, sick pay, overtime, and premium wages were paid
13 at inaccurate hourly wage rates (*i.e.*, the base rate or a multiple of the base rate for overtime instead of
14 the regular rate) which violates the wage statement requirement to include the correct hourly rate in
15 effect each pay period along with the correct number of hours. Therefore, Defendants have provided
16 inaccurate and non-compliant wage statements to aggrieved employees.

17 32. These violations create derivative liability for failure to pay all wages owed each
18 payday or upon separation of employment.

19 33. As a result of the foregoing violations, Defendants also failed to timely pay all wages
20 as they were due to Plaintiff and aggrieved employees while they were employed and also failed to
21 timely pay all wages due to Plaintiff and aggrieved employees at their separation of employment.

22 34. Furthermore, Defendants failed to provide all time records upon Plaintiff’s request
23 under the above-mentioned Labor Code provisions, including Plaintiff’s timekeeping records.

24 35. Through this action, Plaintiff seeks to enforce the rights of the State of California,
25 through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants’ Labor Code
26 violations.

1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

8 44. On or about **February 15, 2023**, Plaintiff paid the requisite PAGA filing fee and
9 provided written notice (by online electronic filing with the LWDA and by certified mail to
10 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
11 the alleged violations.

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

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

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

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

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

- 27 a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
28 Orders.

- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.

50. 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 penalties;
- d. For this action to be maintained as a representative action under the PAGA;
- e. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- f. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 g. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 2699, and Code
3 of Civil Procedure section 1021.5; and
4 h. For such other relief the Court deems just and proper.

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6 Dated: April 24, 2023

Ferraro Vega Employment Lawyers, Inc.

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8 Nicholas J. Ferraro

9 Attorneys for Plaintiff Eloy Herrera
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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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February 15, 2023

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

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

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX 77002

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

**Calpine Operating Services
Company, Inc.**
717 Texas Ave., Ste. 1000
Houston, Texas 77002

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **ELOY HERRERA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

**Calpine Corporation; and
Calpine Operating Services Company, Inc.**

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Operation Technician II from about November 2005 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 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 at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, Plaintiff and the aggrieved employees received an annual non-discretionary performance bonus based on several metrics, such as productivity, self-evaluation, training, and other qualifications, as well as the employee’s pay and hours worked the previous year.

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
CIP			\$13,118.35	\$13,118.35
Coef DT X1.0	0.0000	\$0.0000	\$0.00	\$46.58
Coef OT X.5	0.0000	\$0.0000	\$0.00	\$3,330.84
Double Time	0.0000	\$0.0000	\$0.00	\$46.12
Group Term Life	0.0000	\$0.0000	\$0.00	\$60.25
Hol Wkld OT NU	0.0000	\$0.0000	\$0.00	\$1,563.00
Holiday NU	0.0000	\$0.0000	\$0.00	\$2,128.33
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	0.0000	\$0.0000	\$0.00	\$176.67
Overtime	0.0000	\$0.0000	\$0.00	\$5,032.66
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hly	0.0000	\$0.0000	\$0.00	\$10,641.73
Straight Prem	0.0000	\$0.0000	\$0.00	\$177.36
West Stipend	0.0000	\$0.0000	\$0.00	\$1,125.00

Extract of Plaintiff’s Payroll Records from 03/08/22

This performance bonus is indicated above on Plaintiff’s March 2022 payroll records as “CIP,” and was not included in the calculation of Plaintiff’s regular rate of pay for the week in which the performance bonus was earned, as shown by Plaintiff’s payroll records for the period of February 28 through March 13, 2022 below.

Redacted

Redacted

Redacted

Job Operator Technician II
Pay Rate \$46.6911
Pay Frequency Biweekly

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,118.35
Coef DT X1.0	0.2500	\$47.2160	\$11.80	\$58.38
Coef OT X.5	20.3300	\$23.6080	\$479.95	\$3,810.79
Double Time	0.2500	\$46.6911	\$11.67	\$57.79
Group Term Life			\$12.05	\$72.30
Hol Wkld OT NU	0.0000	\$0.0000	\$0.00	\$1,563.00
Holiday NU	0.0000	\$0.0000	\$0.00	\$2,128.33
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	36.0000	\$1.0000	\$36.00	\$212.67
Overtime	20.3300	\$46.6911	\$949.23	\$5,981.89
PTO	11.5000	\$46.6911	\$536.95	\$536.95
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hly	48.0000	\$46.6911	\$2,241.17	\$12,882.90
Straight Prem	1.0000	\$46.6911	\$46.69	\$224.05
West Stipend	0.0000	\$0.0000	\$0.00	\$1,125.00

Extract of Plaintiff's Payroll Records from the Period of 02/28/22 to 03/13/22

Second, Plaintiff and the aggrieved employees were awarded a nondiscretionary bonus for their continued employment with Defendants through the height of the COVID-19 pandemic. Defendants notified employees of this bonus and the terms for obtaining it several months in advance of its payment.

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,118.35
Coef DT X1.0	0.0000	\$0.0000	\$0.00	\$786.36
Coef OT X.5	0.0000	\$0.0000	\$0.00	\$11,792.52
Double Time	0.0000	\$0.0000	\$0.00	\$785.24
Group Term Life	0.0000	\$0.0000	\$0.00	\$216.90
Hol Wkld OT NU	0.0000	\$0.0000	\$0.00	\$1,563.00
Holiday NU	0.0000	\$0.0000	\$0.00	\$3,248.92
Hourly Bonus			\$2,200.00	\$2,200.00
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	0.0000	\$0.0000	\$0.00	\$461.17
No Adv Warning	0.0000	\$0.0000	\$0.00	\$1,085.57
No Adv Wmg DT	0.0000	\$0.0000	\$0.00	\$11.67
Overtime	0.0000	\$0.0000	\$0.00	\$20,782.96
PTO	0.0000	\$0.0000	\$0.00	\$8,918.01
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hly	0.0000	\$0.0000	\$0.00	\$41,667.95
Straight Prem	0.0000	\$0.0000	\$0.00	\$1,764.86
West Stipend	0.0000	\$0.0000	\$0.00	\$3,375.00

Extract of Plaintiff's Payroll Records from 09/09/22

Plaintiff's payroll records from the period of August 29 through September 11, 2022 likewise shows that this nondiscretionary bonus was not factored into his regular rate of pay for purposes of premiums or overtime wages.

Redacted

Redacted
Job Operator Technician II
Pay Rate \$46.6911
Pay Frequency Biweekly

Redacted

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,118.35
Coef DT X1.0	0.0000	\$0.0000	\$0.00	\$798.36
Coef OT X.5	15.2500	\$23.3456	\$356.02	
Coef OT X.5	27.8700	\$23.3456	\$650.64	
Coef OT X.5	11.7500	\$23.3456	\$274.31	\$13,073.49
Double Time	0.0000	\$0.0000	\$0.00	\$785.24
Group Term Life			\$12.05	\$228.95
Hol Wkld OT NU	11.7500	\$46.6911	\$548.62	\$2,111.62
Holiday NU	8.0000	\$46.6911	\$373.53	\$3,622.45
Hourly Bonus	0.0000	\$0.0000	\$0.00	\$2,200.00
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	0.0000	\$0.0000	\$0.00	\$461.17
No Adv Warning	27.8700	\$46.6911	\$1,301.28	\$2,386.85
No Adv Wkng DT	0.0000	\$0.0000	\$0.00	\$11.67
Overtime	15.2500	\$46.6911	\$712.04	\$21,495.00
PTO	0.0000	\$0.0000	\$0.00	\$8,918.01
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hry	32.0000	\$46.6911	\$1,494.12	\$43,162.07
Straight Prem	1.0000	\$46.6911	\$46.69	\$1,811.55
West Stipend	0.0000	\$0.0000	\$0.00	\$3,375.00

Extract of Plaintiff's Payroll Records from the Period of 08/29/22 to 09/11/22

Third, as Defendants operated a power plant that required 24/7 maintenance, Plaintiff and the aggrieved employees were eligible to earn a shift differential for working overnight shifts. Plaintiff specifically earned an additional \$1.00 to his base hourly rate for hours worked during these overnight shifts. Fourth, Plaintiff and the aggrieved employees were paid a monthly cost of living stipend.

Redacted

Redacted
Job Operator Technician II
Pay Rate \$46.6911
Pay Frequency Biweekly

Redacted

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,118.35
Coef DT X1.0	1.5000	\$47.2646	\$70.90	\$798.36
Coef OT X.5	25.5000	\$23.6323	\$602.62	\$11,792.52
Double Time	1.5000	\$46.6911	\$70.04	\$785.24
Group Term Life			\$12.05	\$216.90
Hol Wkld OT NU	0.0000	\$0.0000	\$0.00	\$1,563.00
Holiday NU	0.0000	\$0.0000	\$0.00	\$3,248.92
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	48.7500	\$1.0000	\$48.75	\$461.17
No Adv Warning	0.0000	\$0.0000	\$0.00	\$1,085.57
No Adv Wkng DT	0.0000	\$0.0000	\$0.00	\$11.67
Overtime	25.5000	\$46.6911	\$1,190.62	\$20,782.96
PTO	0.0000	\$0.0000	\$0.00	\$8,918.01
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hry	58.0000	\$46.6911	\$2,706.08	\$41,687.95
Straight Prem	1.0000	\$46.6911	\$46.69	\$1,764.86
West Stipend			\$375.00	\$3,375.00

Extract of Plaintiff's Payroll Records from the Period of 08/15/22 to 08/28/22

These forms of additional remuneration were not included in the regular rate of pay calculation for Plaintiff and the aggrieved employees' wages, in violation of California law. As Plaintiff's payroll records demonstrate, Plaintiff's overtime and double time hours were paid at a multiple of his base hourly rate, without accurately factoring in the additional remuneration Plaintiff earned, identified above. To the extent that Defendants paid increased overtime wages to

account for the regular rate of pay, those amounts did not include all of Plaintiff's additional remuneration and were underpaid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time." 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. Specifically, Defendants included sick leave in employees' paid time off, which Defendants paid at employees' straight time rate of pay. Plaintiff's payroll records demonstrate that Defendants failed to factor in bonuses, shift differentials, cost of living stipends, or other forms of remuneration into the paid sick leave rate. Defendants failed to pay paid sick leave

at the regular rate of pay (or other permissible statutory method) for the workweek when sick pay was paid to aggrieved employees.

Redacted

Redacted

Job Operator Technician II
 Pay Rate **\$46.6911**
 Pay Frequency Biweekly

Redacted

Earnings				
Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,116.35
Coef DT X1.0	0.0000	\$0.0000	\$0.00	\$786.36
Coef OT X.5	11.2500	\$23.8455	\$268.26	\$13,341.75
Double Time	0.0000	\$0.0000	\$0.00	\$785.24
Group Term Life			\$12.05	\$241.00
Hol Wild OT NU	0.0000	\$0.0000	\$0.00	\$2,111.62
Holiday NU	0.0000	\$0.0000	\$0.00	\$3,622.45
Hourly Bonus	0.0000	\$0.0000	\$0.00	\$2,200.00
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	35.2500	\$1.0000	\$35.25	\$496.42
No Adv Warning	0.0000	\$0.0000	\$0.00	\$2,386.85
No Adv Wimg DT	0.0000	\$0.0000	\$0.00	\$11.67
Overtime	11.2500	\$46.6911	\$525.27	\$22,020.27
PTO	46.0000	\$46.6911	\$2,147.79	\$11,065.80
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hrs	24.0000	\$46.6911	\$1,120.59	\$44,282.66
Straight Prem	0.0000	\$0.0000	\$0.00	\$1,811.55
West Stipend	0.0000	\$0.0000	\$0.00	\$3,375.00

Extract of Plaintiff's Payroll Records from the Period of 09/12/22 to 09/25/22

Plaintiff's payroll record above shows that Plaintiff received a shift differential, which was not factored into Plaintiff's sick leave pay according to the proper regular rate of pay calculation, as the "PTO" column indicates that Plaintiff was paid at his base hourly rate.

The failure to calculate and pay sick leave at the lawful regular rate of pay was applies to Plaintiff and the aggrieved employees as a matter of common policy and practice in those pay periods where they earned shift differentials, bonuses, or other forms of non-excludable remunerations and also received statutory 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.

Defendants routinely failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced late, short, missed, and interrupted meal periods due to staffing issues, employees’ responsibilities, and the steady flow of work. Furthermore, on weekends only two employees were scheduled per shift, posing issues with coverage due to the amount of work required of employees in operating the power plant.

To the extent that Defendants paid meal period premiums when Defendants did not provide Plaintiff and the aggrieved employees compliant meal periods (or when meal periods were effectively “on-duty”), Defendants failed to pay all the premiums owed at the “regular rate of compensation because they did not factor in bonuses, commissions, and other forms of remuneration, instead electing to pay aggrieved employees at the base hourly rate, in violation of Labor Code section 226.7. An illustrative example of the regular rate of pay violation is found on Plaintiff’s payroll record below:

Redacted

Redacted

Job Operator Technician II
Pay Rate \$46.6911
Pay Frequency Biweekly

Redacted

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
CIP	0.0000	\$0.0000	\$0.00	\$13,118.35
Coef DT X1.0	1.5000	\$47.2646	\$70.90	\$798.36
Coef DT X.5	25.5000	\$23.6323	\$602.62	\$11,792.52
Double Time	1.5000	\$46.6911	\$70.04	\$785.24
Group Term Life			\$12.05	\$216.90
Hol Wkld DT NU	0.0000	\$0.0000	\$0.00	\$1,563.00
Holiday NU	0.0000	\$0.0000	\$0.00	\$3,248.92
LTC Payout	0.0000	\$0.0000	\$0.00	\$4,753.26
Night Reg	48.7500	\$1.0000	\$48.75	\$461.17
No Adv Warning	0.0000	\$0.0000	\$0.00	\$1,085.57
No Adv Wmg DT	0.0000	\$0.0000	\$0.00	\$11.67
Overtime	25.5000	\$46.6911	\$1,190.62	\$20,762.96
PTO	0.0000	\$0.0000	\$0.00	\$8,918.01
PTO Buy	0.0000	\$0.0000	\$0.00	\$1,019.84
Regular Hry	58.0000	\$46.6911	\$2,708.08	\$41,667.95
Straight Prem	1.0000	\$46.6911	\$46.69	\$1,764.86
West Stipend			\$375.00	\$3,375.00

Extract of Plaintiff's Payroll Records from the Period of 08/15/22 to 08/28/22

In this pay period, Plaintiff earned both a cost-of-living stipend and a shift differential, however neither were calculated into the regular rate of pay. Indeed, Plaintiff's payroll records explicitly state that he was paid a "straight" premium at his base hourly rate, not his regular rate of pay.

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.

For the same reasons as set forth above in the meal period section, and on information and belief, Plaintiffs allege the aggrieved employees were underpaid rest period premiums (to the extent any were paid) due to Defendants' policy and practice of not including all forms of remuneration in the regular rate of compensation at which such rest period premiums must be paid.

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

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

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

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

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

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. Specifically, because Defendants failed to include all forms of remuneration in the "regular rate" of pay/compensation for purposes of overtime and premium compensation, aggrieved employees like Plaintiffs who quit or were terminated from their employment were not paid all wages due upon separation.

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.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages, sick leave, and premiums—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, sick leave, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendant also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Plaintiff and the aggrieved employee’s wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay” with respect to overtime, premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and reflected as such on the wage statements of the aggrieved employees.

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.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all time records upon Plaintiff’s request under the above-mentioned Labor Code provisions.

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), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation

reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Plaintiff Eloy Herrera

Luis Lorenzana
LLorenzana@Littler.com