

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

Attorneys for Plaintiff Jessica Hayward

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/14/2023 at 02:02:00 PM
Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

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

JESSICA HAYWARD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AZTEC SHOPS, LTD. and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00007756-CU-OE-CTL

*Assigned to the Hon. Carolyn M. Caietti
Department C-70*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed: Jan. 23, 2023

1 Plaintiff JESSICA HAYWARD, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act, (“Plaintiff”) brings this First Amended
3 Class and Representative Action Complaint against Defendants AZTEC SHOPS, LTD. and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a class and representative action filed for wage and hour violations of the
7 California Labor Code against Aztec Shops, which provides catering services and operates retail and
8 other stores at Snapdragon Stadium and other facilities.

9 2. Defendants employed Plaintiff and class members in multiple shops and service
10 positions in San Diego County. Defendants failed to include all forms of remuneration in the
11 regular rate of compensation (such as automatic service charges) for Labor Code § 226.7 premiums,
12 require Plaintiff and class members to go through security checks without compensation before
13 clocking in for their shift, and edited time records, resulting in unpaid wages and premiums
14 accordingly. Defendants are therefore liable for underlying wages and premiums and associated
15 penalties.

16 **JURISDICTION & VENUE**

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

19 4. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
20 the Superior Court.

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

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

PARTIES

A. Plaintiff Jessica Hayward

7. Plaintiff Hayward is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2022 to Present. Plaintiff worked as a Catering Associate and Bartender.

8. 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

9. Defendant Aztec Shops, Ltd. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

10. 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.

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

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

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

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

CLASS ALLEGATIONS

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

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members is ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and

litigating wage and hour class, collective, and representative actions in California state and federal courts.

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

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

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

GENERAL ALLEGATIONS

18. Defendants failed to provide fully compliant first and second meal periods to Plaintiff and the class members.

19. Plaintiff's records show facial meal period violations, as Plaintiff and class members experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job. On other occasions, apparent from the time records, Defendants edited the time records to avoid triggering the meal period premium payment.

20. Additionally, when Plaintiff and class members experienced any non-compliant meal periods, Defendants failed to pay meal period premiums at the regular rate of compensation in violation of Labor Code section 226.7.

21. Defendants paid Plaintiff and class members automatic service charges and other forms of remuneration that Defendants failed to include in the "regular rate of compensation" in pay periods

1 where employees earned a meal period premium. *See Ferra v. Loews Hollywood Hotel, LLC* (2021)
2 11 Cal. 5th 858, 862.

3 22. Plaintiff's wage statement with the pay date 11/25/2022 provides an illustrative
4 example of the regular rate underpayment.

5 23. Defendants additionally had a policy and practice of not paying rest period premiums
6 when they were due as a result of the ongoing work demands, failure to schedule rest periods, and
7 failing to allow them at the stadium.

8 24. To the extent Defendants ever paid rest period premiums, Defendants violated Labor
9 Code section 226.7 because such premiums were not paid at the "regular rate of compensation", which
10 would have factored in bonuses, automatic service charges, and other forms of compensation to class
11 members.

12 25. Defendants failed to pay Plaintiff and class members for all hours worked based on
13 uncompensated security checks at the stadium.

14 26. First, Plaintiff and other class members worked inside Snapdragon Stadium, and were
15 required to undergo stadium security checks before their shift started. They are required to wait in
16 line to go through the security check before their shift.

17 27. Plaintiff and class members were not permitted to clock-in until they reached their post
18 at the start of their shift and therefore, were unlawfully not compensated for time spent waiting in line
19 and undergoing the security check as required by Defendants. The security clocks should be at the
20 front of the security check line to ensure compensation for that employer-imposed mandate.

21 28. "[T]ime spent on the employer's premises waiting for, and undergoing, required"
22 security checks "[are] compensable as 'hours worked' within the meaning of Wage Order 7, Cal. Code
23 Regs., tit. 8, § 11070. According to the 'hours worked' control clause, such employee must be paid.
24 *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038, 258.

25 29. Second, due to their unlawful policy and practice of editing employees' time records
26 to include a meal period where they were unauthorized or otherwise unable to take a compliant meal
27 break, Defendants deprived Plaintiff and class members of regular and overtime wages.

1 30. To the extent Defendants unlawfully added meal periods on Plaintiff and class
2 members' time records when they were unauthorized or otherwise were unable to take a compliant
3 meal break and class members worked more than 8 hours or 40 hours in a week, this practice resulted
4 in unpaid overtime wages.

5 31. Defendants' failure to pay Plaintiff and class members for the required time it took to
6 undergo security checks resulted in unpaid minimum and overtime wages.

7 32. Based on Defendants' noncompliance with regular rate of pay requirements applicable,
8 Plaintiff alleges on information and belief that the regular rate miscalculation equally applied to paid
9 sick leave with respect to the class, resulting in underpayments of paid sick leave wages.

10 33. Defendants' failure to pay all wages due upon separation of employment, rendered the
11 payments untimely and subject to civil penalties for the violations committed against the class
12 members under Labor Code §§ 201 through 203.

13 34. Defendants failed to provide accurate itemized wage statements to Plaintiff and the
14 class members each pay period as a result of the policies and practices set forth in this notice.

15 35. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
16 the correct "gross wages earned" or "net wages earned" on those statements because the amounts listed
17 failed to include and account for the unpaid meal and rest period premiums Plaintiff and class members
18 earned but were not paid. The amounts stated are instead depreciated and underpaid, resulting in an
19 inaccurate reflection to the pay stub.

20 36. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
21 employee statements each pay period the applicable hourly rates and the number of hours worked at
22 that rate, as Defendants failed to pay all wages and premiums owed to employees each pay period (i.e.,
23 meal and rest period premiums, minimum wage and overtime, sick pay), including at the lawful hourly
24 rate.

25 37. Additionally, Defendants violated Labor Code section 226(a)(2) by failing to
26 accurately include uncompensated time Plaintiff and other class members worked due to Defendants
27 policy and practice of requiring employees to work off-the-clock during uncompensated meal periods,
28 and the required time undergoing security checks each day.

38. These wage statement violations created significant confusion among Plaintiff and other class members 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 of underpayments of employee wages.

39. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Order by maintaining practices, policies, and customs that are inconsistent with their obligations under California Law.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

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

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

1 49. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
3 meal period premiums in lieu thereof), and which further provide a private right of action for an
4 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
5 regular rate of compensation.

6 50. Defendants willfully failed in their affirmative obligation to consistently provide
7 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
8 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
9 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
10 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
11 sections of the applicable orders).

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

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

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **Violation of Labor Code §§ 226.7**

23 53. All outside paragraphs of this Complaint are incorporated into this section.

24 54. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
25 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
26 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
27 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
28 regular rate of compensation.

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

56. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

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

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

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the

employee's total hours worked in the full pay periods of the prior 90 days of employment.

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

60. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

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

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

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

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

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

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

(III) The state minimum wage.

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

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

66. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by the Paid Sick Leave Class.

67. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

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

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

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

6 **SEVENTH CAUSE OF ACTION**

7 **WAGE STATEMENT VIOLATIONS**

8 **Violation of Labor Code § 226**

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

10 73. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
11 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
12 pay period, and which further provide a private right of action for an employer's failure to comply
13 with this obligation.

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

18 75. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
19 accurate itemized wage statements, causing confusion and concealing wage and premium
20 underpayments.

21 76. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
22 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
23 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
24 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
25 Code section 226(e).

1 **EIGHTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

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

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

5 78. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
6 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
7 employment, and which further provide a private right of action to recover statutory waiting time
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
9 wages.

10 79. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
11 wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
12 termination of employment or within 72 hours thereafter for employees who did not provide at least
13 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
14 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

15 80. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
16 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
17 by law.

18 **NINTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

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

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

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

25 83. Defendants' dependance on these unfair and/or unlawful business practices deprived
26 Plaintiff and continue to deprive other class members of compensation to which they are legally
27 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
28 Defendants over competitors who have been and/or are currently employing workers in compliance

1 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
2 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

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

7 85. Plaintiff does not have an adequate remedy at law for past or future violations, to the
8 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
9 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
10 violations do not provide a private right of action.

11 86. Plaintiff and class members are entitled to injunctive relief against Defendants,
12 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
13 an ownership interest and to prevent future damage and the public interest under Business and
14 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
15 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
16 § 1021.5.

17 **TENTH CAUSE OF ACTION**

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

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

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

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

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

- 25 a. All current and former non-exempt employees who worked for Defendants in
26 California at any time from one year prior to the postmark date of the initial
27 PAGA notice through date of trial.
28

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

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

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

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

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

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

95. On or about **February 6, 2023**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

1 96. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
2 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
3 forth herein (the "PAGA notice").

4 97. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

6 98. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
7 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
8 providing a description of any actions taken to cure the alleged violations.

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

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

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
22 1198; IWC Wage Orders.
- 23 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
24 1198; IWC Wage Orders.
- 25 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
26 §§ 204, 204b, 210.
- 27 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
28 Labor Code §§ 201, 202, 203, 256.

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

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

101. 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).

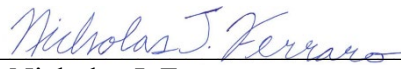
PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. 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;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

1
2 Dated: April 14, 2023

Ferraro Vega Employment Lawyers, Inc.

3
4 

Nicholas J. Ferraro

Attorneys for Plaintiff Jessica Hayward

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

February 6, 2023

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

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

Aztec Shops, Ltd.
5500 Campanile Dr.
San Diego, CA 92182

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

AZTEC SHOPS, LTD.

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 Catering Associate and Bartender from about August 2022 to the present. 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 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 compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff and, on information and belief, the aggrieved employees’ time records establish meal period liability on their face as they show they often experienced missed, short, and late meal periods.

Specifically, Plaintiff routinely only worked alongside only one other bartender and the occasional support of a bar back. Plaintiff worked in the Founder’s Lounge, an exclusive club reserved for the top stadium donors and other high-profile guests. The Founder’s Lounge has the capacity to hold up to 200 people and it was Plaintiff’s and certain other aggrieved employees’ responsibility to provide swift service. Plaintiff, and on information and belief, other aggrieved employees were unauthorized from taking compliant first and second meal periods in this and in similar positions. This occurred throughout the aggrieved employees, regardless of position.

An illustrative example of Plaintiff’s missed second meal period is shown below:

Sat 10/15			 8:51 AM	12:10 PM			
Sun 10/16			 2:51 PM	4:17 PM		4:47 PM	 1:00 AM
Mon 10/17			 8:30 AM	9:30 AM		10:00 AM	 2:45 PM

Extract from Plaintiff’s Time Records Showing Missed Second Meal Period

Plaintiff’s time records reveal Plaintiff experienced a missed second meal period. Because Plaintiff worked over 10 hours on 10/16/2022, Plaintiff was entitled, but was not authorized a second meal period in violation of California law.

When Defendants did not provide compliant first and second meal periods, Defendants failed to pay Plaintiff and other aggrieved employees meal period premiums at the “regular rate of compensation” for two reasons.

First, Defendants had the policy and practice of editing Plaintiff’s and, on information and belief, other aggrieved employees’ time records by manually inputting meal breaks. By retroactively editing time records to add in these meal periods, Defendants effectively removed the meal period premiums which were owed any time Plaintiff and aggrieved employees were unauthorized from taking a compliant meal period. Plaintiff and, on information and belief, other aggrieved employees did not request or consent of these edits. An illustrative example of Defendants’ unlawful edits to Plaintiff’s time records is shown below:

Wed 8/31			8:52 AM	12:00 PM		12:30 PM	5:51 PM
Thu 9/01			8:57 AM	3:00 PM			
Fri 9/02			12:19 PM	3:00 PM		3:30 PM	9:30 PM
Sat 9/03			5:56 AM	7:30 AM		8:00 AM	6:50 PM
Sun 9/04							

Extract of Plaintiff’s Time Records Showing Defendants’ Unlawful Edits

Plaintiff’s time records above reveal Defendants’ unlawfully edited Plaintiff’s time records by manually adding a meal break where Plaintiff actually experienced a missed or otherwise noncompliant meal period. These edits are indicated by the blue markings in the right corner of the time stamp. For every noncompliant meal period, Plaintiff and the aggrieved employees experienced, they were owed a meal period premium paid at their regular rate of pay. These changes are the result of a common policy and practice, susceptible to common proof, for all of Defendant’s non-exempt workforce.

Second, to the extent Defendants paid meal period premiums, Defendants failed to pay them at the regular rate of pay because the premiums paid did not factor in bonuses, commissions, and other forms of remuneration like service charges and tips, instead electing to pay aggrieved employees at the base hourly rate, in violation of California law. Plaintiff’s 11/07/2022 to 11/20/2022 reveals an illustrative example of Defendant’s non-complaint policy and practice of underpaying meal period premiums:

#1261092 - Jessica A. Hayward					Voucher #(277947)		Pay Date: 11/25/2022	
Aztec Shops /40000/SHOPSMSVLY/40442/Asso							Pay Period: 11/07/2022-11/20/2022	
Earnings					Company Paid Benefits - Continued			
	Rate	Hours	YTD	Current	YTD		Current	YTD
Char					144.52	SUTA:CA		
DB	91.66	0.50		45.83	75.49	Total	45.09	684.84
MB	15.00	4.00	4.00	60.00	60.00			
OT	68.75	1.70		116.88	1,195.70	Accruals		
REG	15.00	8.00		120.00	3,420.00			
Serv				246.65	4,056.42		Bal.	Available
Gross Pay				589.36	8,952.13	Sick	Hrs: 8.45	0.00
Hours Worked		10.20						
Hours Paid		14.20	4.00					

Extract of Plaintiff’s Wage Statement from the Period 11/07/2022 to 11/20/2022

As seen above, Plaintiff was paid an MB at \$15.00 per hour, instead of her regular rate, which should be inclusive of all earnings, including the “Serv” compensation she earned. This results in an underpayment of meal period premium wages pursuant to Labor Code § 226.7’s obligation to pay premiums at the “regular rate of compensation,” rather than the base hourly rate. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862.

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.

Due to the reasons explained in the “Unpaid Meal Period” section above, including the constant flow of people during and pressures of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods. Defendants required Plaintiff and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the “regular rate of compensation” to Plaintiff and aggrieved employees, which would have factored in bonuses, commissions, and other compensation.

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

Unpaid 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.”

To the extent, aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful rate of pay throughout the relevant period. The lawful rate of pay had to factor in commissions, bonuses, and all other forms of compensation including service charges and tips. Based on Defendants’ noncompliance with the regular rate of pay requirement applicable to meal and rest period premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applies to standard and supplemental paid sick leave with respect to the aggrieved employees, resulting in underpayments.

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

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

Unpaid 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.

First, Plaintiff and other aggrieved employees were required to enter the stadium and go through stadium security checks, but the time clocks were not included at the front of the line, rendering the time spent waiting in the security check non-compensable and off-the-clock. The California Supreme Court has held “time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience was compensable as ‘hours

worked' within the meaning of wage order No. 7-2001" reasoning that "[a]ccording to the 'hours worked' control clause in the wage order, such employee[s] must be paid. *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038. Plaintiff and, on information and belief, other aggrieved employees were not properly compensated for the time it took them to undergo security checks, resulting in unpaid minimum wage and overtime for the associated hours worked.

Second, as discussed throughout this correspondence, Defendants had an unlawful policy and practice of making edits and adding meal periods to Plaintiff and other aggrieved employees' time records where they were unauthorized from taking a compliant 30-minute meal break. Plaintiff and aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue working.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / "Penalties" section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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.

As described in the sections above and throughout this correspondence, Defendants improperly added meal periods on Plaintiff and aggrieved employees' time records when they

were unauthorized or otherwise unable to take a compliant meal break. When Plaintiff and aggrieved employees worked more than 8 hours, this practice resulted in unpaid overtime wages. Additionally, Defendants failed to pay for hours worked in security lines, resulting in underpayments of minimum wage and overtime.

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.

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

As discussed throughout this letter, Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

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

an inaccurate reflection on the pay stub. Additionally, Defendant underpaid the “regular rate of pay/compensation” for employees, resulting in an inaccurate hourly rate for those earnings.

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 uncompensated time Plaintiff and other aggrieved employees worked due to Defendants policy and practice of requiring employees to work off-the-clock during uncompensated meal periods and in security lines.

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

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Jessica Hayward

Angela Banaag
Human Resource Manager
abanaag@sdsu.edu