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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**11/17/2025**  
Clerk of the Court  
BY: MARK UDAN  
Deputy Clerk

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

TIMOTHY RIVERA, on behalf of others  
similarly situated and the State of California  
under the Private Attorneys General Act,

Plaintiffs,

vs.

FERRARI EXPRESS, INC. and DOES 1 through  
50, inclusive,

Defendants.

Case No. CGC-25-629910

*Judge: Hon. Rochelle East  
Department: 610*

**CLASS ACTION**

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT**

1. Failure to Pay All Wages Owed
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. Failure to Reimburse Business Expenses
10. Unfair Competition
11. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: October 7, 2025

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

5 **INTRODUCTION**

6 1. This is a class action filed for wage and hour violations of the California Labor Code.

7 2. Defendants failed to compensate Plaintiff and class members for all hours suffered or  
8 permitted to work in violation of the applicable IWC Wage Order.

9 3. Defendants’ underpayment of wages was facilitated by their company-wide practices  
10 of time editing and requiring off-the-clock work.

11 4. Defendants also underpaid overtime, paid sick leave, and premiums by failing to  
12 properly calculate the regular rate of pay.

13 5. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members  
14 to take compliant meal and rest periods to which they were entitled. Yet, Defendants did not pay all  
15 meal and rest period premiums.

16 6. Defendants failed to reimburse Plaintiff and class members for necessary expenses  
17 incurred in furtherance of the class members’ job duties.

18 7. Defendants’ employment policies, practices, and payroll administration systems  
19 enabled and facilitated these violations on a company-wide basis with respect to the class members.

20 8. Defendants are further liable for derivative claims for wage statements, untimely  
21 payment, and other associated violations.

22 9. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,  
23 attorney’s fees and costs.

24 **JURISDICTION & VENUE**

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

27 11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of  
28 the Superior Court.

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

13. 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 conducted business and committed some of the alleged violations in this County.

**PARTIES**

### A. Plaintiff Timothy Rivera

14. Plaintiff Rivera is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2020 to June 2025. Plaintiff worked as a Armed Security.

15. 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.”])). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd., LLC* (2025) 109 Cal.App.5th 69, the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

## B. Defendants

16. Defendant Ferrari Express, Inc. is a New York corporation that maintains operations and conducts business throughout the State of California, including in this county.

17.

18. 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.

19. 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.

20. 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.

21. 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**

22. 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 prior to the filing of this action through date of class certification.

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

24. 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 are 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.

25. 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 violations of California law.

**GENERAL ALLEGATIONS**

26. Plaintiff and the Class Members worked for Defendants as non-exempt employees, compensated on an hourly basis.

27. Defendants failed to pay Plaintiff and the Class Members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

28. Defendants engaged in an unlawful policy and practice of requiring Plaintiff and the Class Members to complete work while off-the-clock and making unauthorized edits to time records.

29. Specifically, Plaintiff and the Class Members worked through their meal periods as a result of an unlawful on-duty meal period, addressed in further detail in the meal period section below.

30. Additionally, Plaintiff and the Class Members sometimes arrived at their shift early or stayed later to prepare themselves before their shift (or the shift the next day), including printing paperwork necessary for deliveries, responding to emails, getting the vans ready; however, despite clocking in early or late to complete these tasks, Defendants routinely edited Plaintiff and the Class Members time records. Plaintiff and the Class Members were entitled to minimum wages for all hours worked.

31. Defendants failed to pay Plaintiff and the Class Members overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

32. First, to the extent Defendants' policy and practice of requiring off-the-clock work including their unpaid meal period(s) and engaging in unauthorized time editing resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this unlawful practice resulted in unpaid overtime wages.

33. Second, Defendants failed to pay overtime at the "regular rate of pay" inclusive of all additional, non-excludable remuneration including non-discretionary bonuses. As a result, underpaying overtime.

34. An illustrative example of Defendants' failure to pay overtime at the regular rate of pay is found on Plaintiff's wage statements with a pay date of April 18, 2025. Here, during the pay period from April 7, 2025 to April 13, 2025, Plaintiff earned a \$250.00 non-discretionary bonus and worked 16.27 hours of overtime. However, Plaintiff's overtime rate was paid at a straight 1.5x Plaintiff's base

1 rate of \$30.2820, rather than 1.5x Plaintiff's regular rate of pay inclusive of the additional  
2 remuneration earned during this pay period.

3 35. Instead, Defendants unlawfully paid overtime to Plaintiff and the Class Members at  
4 1.5x their straight hourly rate.

5 36. For each overtime hour worked during the period in which Plaintiff and the Class  
6 Members earned the additional forms of remuneration, Defendants should have (but failed to) pay  
7 overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and  
8 "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code  
9 section 510(a) and the IWC Wage Orders.

10 37. Defendants failed to comply with California's paid sick leave laws with respect to the  
11 Class Members.

12 38. To the extent the Class Members earned sick pay in the same period they earned other  
13 non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations  
14 addressed above. Specifically, Defendants did not pay the Class Members sick leave "in the same  
15 manner as the regular rate of pay for the worked week in which the employee uses paid sick leave,  
16 whether or not the employee actually worked overtime in that workweek," as the regular rate should  
17 have included bonuses and all other forms of additional non-excludable remuneration.

18 39. The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor  
19 Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to Class  
20 Members in those periods where they earned non-discretionary bonuses or other forms of non-  
21 excludable remuneration and also received paid sick leave.

22 40. Defendants failed to provide compliant meal periods to Plaintiff and the Class  
23 Members.

24 41. First, Plaintiff and the Class Members experienced missed, late, short, and interrupted  
25 first and second meal periods due to the high demands of the job.

26 42. However, Defendants maintained an unlawful policy and practice requiring Plaintiff  
27 and the Class Members to clock out to make it appear as if they took compliant meal period, in reality  
28

1 Plaintiff and the Class Members missed or otherwise experienced noncompliant meal periods. Further,  
2 Defendants failed to pay all owed meal period premiums.

3 43. Specifically, Plaintiff and the Class Members regularly worked over 10 hours without  
4 a meal period or corresponding meal period premium for such violations.

5 44. Second, as discussed above, Plaintiff and the Class Members earned non-discretionary  
6 bonuses and other forms of non-excludable remuneration. However, as a matter of common policy  
7 and practice, Defendants failed to factor in these additional forms of remuneration into the meal period  
8 premium rate.

9 45. An illustrative example of Defendants' failure to pay the meal period premium at the  
10 RROP is found on Plaintiff's pay statements with a pay date of April 18, 2025. Here, during the pay  
11 period from April 7, 2025 to April 13, 2025 Plaintiff earned a non-discretionary bonus in the amount  
12 of \$250.00 and three meal period premiums. However, these premiums were paid at Plaintiff's base  
13 hourly rate of \$30.282, rather than his regular rate of compensation, inclusive of this additional non-  
14 excludable remuneration. Defendants committed the same regular rate of compensation violations  
15 against Plaintiff and the Class Members as a matter of common payroll administration and company  
16 policy in a manner susceptible to common proof.

17 46. Further, Defendant maintained an unlawful on-duty meal period agreement.

18 47. Section 11(A) of the IWC Wage Orders and the California Supreme Court requires (1)  
19 "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the  
20 employer and employee have agreed, in writing, to the on-duty meal period" in order for such an  
21 agreement to be enforceable. *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276  
22 (emphasis added).

23 48. Defendants cannot show that the nature of the work was such that they cannot schedule  
24 the Class Members in such a way in which they would be able to provide relief to one another.

25 49. Additionally, the purported agreement was not entered into by both the employee and  
26 the employee in writing, because the employer did not sign the agreement. Instead, the agreement  
27 reveals a lone undated signature by Plaintiff and unentered in by Defendants. Additionally, missing  
28

1 from the agreement is any language as to when the purported on-duty meal break should be taken and  
2 for long. Therefore, the on-duty agreement is unlawful and unenforceable.

3 50. As a result of this unlawful agreement, each time Plaintiff and the Class Members  
4 worked through their unpaid meal periods they were owed meal period premiums. Defendants failed  
5 to provide all owed meal period premiums each time they remained on duty during a meal period.

6 51. Defendants failed to provide all rest periods to which Plaintiff and the Class Members  
7 were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff  
8 and the Class Members experienced non-compliant meal periods, like the pressure to keep up with the  
9 high demands of the job, including time restrictions and deliveries, they also experienced non-  
10 compliant rest periods. Plaintiff and the Class Members were similarly owed rest period premiums  
11 every time they remained on duty during their rest periods.

12 52. Defendants required Plaintiff and the Class Members to incur costs for work-related  
13 purposes without full reimbursement.

14 53. In direct consequence of their job duties, Plaintiff and the Class Members unavoidably  
15 and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

16 54. Specifically, Plaintiff and the Class Members used their personal cell phones to  
17 complete work duties including scheduling deliveries, communicating with clients, using GPS to route  
18 their deliveries, and other related tasks.

19 55. Additionally, Plaintiff and the Class Members incurred lunch costs when they were  
20 scheduled to go on day-trips to make deliveries. Plaintiff recalls being told by Defendant he would be  
21 reimbursed for these meals, but despite requesting it they failed to do so.

22 56. As a matter of policy and practice, Defendants failed to pay all owed rest period  
23 premiums at the regular rate. To the extent Defendants ever paid rest period premiums, Defendants  
24 violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of  
25 compensation which would have factored in all non-excludable remuneration and other forms of  
26 compensation.

27 57. These violations create derivative liability for failure to timely pay all wages owed each  
28 payday or upon separation of employment.

58. Defendants failed to provide accurate itemized wage statements to the class members 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.

59. 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.

60. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other class members worked off-the-clock and during their meal periods.

61. Plaintiff and other class members 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 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 and underpayments of employee wages.

62. Because of these policies and practices set forth above, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

### FIRST CAUSE OF ACTION

## FAILURE TO PAY ALL WAGES OWED

### **Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197**

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

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

64. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 200, 218, 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). In addition to minimum wages, Labor Code § 200 states that “‘wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

65. 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.

66. 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 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, 218.6 and any other applicable statutes.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

68. 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.

69. 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).

70. Plaintiff and class members are entitled to recover 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**

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

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

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

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

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

#### **FOURTH CAUSE OF ACTION**

## REST PERIOD VIOLATIONS

## Violation of Labor Code §§ 226.7 and 516

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

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

78. 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).

79. 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.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

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

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

11 82. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,  
12 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class  
13 members, govern how Defendants were required to calculate paid sick leave.

14 83. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one  
15 of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their  
16 sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the  
17 regular rate of pay and/or calculated based on total wages earned).

18 84. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick  
19 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19  
20 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in  
21 violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

22 85. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class  
23 members for underpaid sick leave wages, in addition to interest, attorneys’ fees, and costs.

24 **SIXTH CAUSE OF ACTION**

25 **UNTIMELY PAYMENT OF WAGES**

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

27 86. All outside paragraphs of this Complaint are incorporated into this section.  
28

1           87.     This cause of action is brought pursuant to the IWC Wage Orders and Labor Code  
2 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay  
3 period, and which further provide a private right of action for an employer's failure to comply with  
4 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due  
5 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

17                           **SEVENTH CAUSE OF ACTION**

18                           **WAGE STATEMENT VIOLATIONS**

19                           **Violation of Labor Code § 226**

20           90.     All outside paragraphs of this Complaint are incorporated into this section.

21           91.     This cause of action is brought by a wage statement subclass pursuant to Labor Code  
22 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each  
23 pay period, and which further provide a private right of action for an employer's failure to comply  
24 with this obligation.

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

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

### EIGHTH CAUSE OF ACTION

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

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

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

## FAILURE TO REIMBURSE BUSINESS EXPENSES

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

100. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

101. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

### TENTH CAUSE OF ACTION

## UNFAIR COMPETITION

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

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

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

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

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

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

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

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

### 9 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

26 112. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,,  
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor  
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil  
2 action brought by an aggrieved employee on behalf of the employee and other current or former  
3 employees against whom a violation of the same provision was committed pursuant to the procedures  
4 specified in Section 2699.3. “

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

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

10 115. On or about **September 11, 2025**, Plaintiff paid the requisite PAGA filing fee and  
11 provided written notice (by online electronic filing with the LWDA and by certified mail to  
12 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support  
13 the alleged violations.

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

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

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

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

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- k. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

121. 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(k).

### **PRAYER**

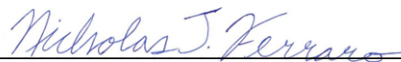
Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- 1 d. For division of class members into appropriate classes and/or subclasses according to  
2 proof;
- 3 e. For recovery of all statutory penalties and liquidated damages;
- 4 f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- 5 g. For restitution and injunctive relief;
- 6 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by  
7 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and  
8 Code of Civil Procedure § 1021.5.
- 9 i. For recovery of damages in amount according to proof;
- 10 j. For all recoverable pre- and post-judgment interest;
- 11 k. For this action to be maintained as a representative action under the PAGA;
- 12 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if  
13 the action were brought by the State of California or the California Division of Labor  
14 Enforcement;
- 15 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 16 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent  
17 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,  
18 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 19 o. For such other relief the Court deems just and proper.

20  
21 Dated: November 17, 2025

***Ferraro Vega Employment Lawyers, Inc.***

22 

23 Nicholas J. Ferraro

24 *Attorneys for Plaintiff Timothy Rivera*

**EXHIBIT 1**

**Notice of Labor Code Violations**

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# FERRARO VEGA

---

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro  
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Lauren N. Vega  
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619-693-7727  
619-350-6855 fax  
[ferrarovega.com](http://ferrarovega.com)

September 11, 2025

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

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

**Ferrari Express, Inc.**  
215 Mill Street  
Lawrence, NY 11559

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

### **FERRARI EXPRESS, INC.**

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to

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

## **- BACKGROUND -**

Defendants employed Plaintiff during the PAGA Period in the position of Armed Security from about August 2020 to June 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

## **- PAGA CLAIMS -**

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

Defendants engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock and making unauthorized edits to time records. Specifically, Plaintiff and the aggrieved employees worked through their meal periods as a result of an unlawful on-duty meal period, addressed in further detail in the meal period section below. Additionally, Plaintiff and the aggrieved employees sometimes arrived at their shift early or stayed later to prepare themselves before their shift (or the shift the next day), including printing paperwork necessary for deliveries, responding to emails, getting the vans ready, however, despite clocking in early or late to complete these tasks, Defendants routinely edited Plaintiff and the aggrieved employees time records. Plaintiff and the aggrieved employees were entitled to minimum wages for all hours worked.

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

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a

workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, to the extent Defendants’ policy and practice of requiring off-the-clock work including their unpaid meal period(s) and engaging in unauthorized time editing resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this unlawful practice resulted in unpaid overtime wages.

Second, Defendants failed to pay overtime at the “regular rate of pay” inclusive of all additional, non-excludable remuneration including non-discretionary bonuses. As a result, underpaying overtime. An illustrative example of this violation is shown below:

| FERRARI EXPRESS INC.<br>215 MILL ST<br>LAWRENCE, NY 11559-1257                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Period Beginning: 04/07/2025<br>Period Ending: 04/13/2025<br>Pay Date: 04/17/2025                                                                                                                                                                                                                                    |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------|---------------|----------------|---------|-------|--------------|----------|----------------|-----------------|--------|------------|---------|------|-------|-----------|--|--|--------|---------|--|--|--------|----------|--|--|--------|------|--|--|----------|----------|--|--|--------|------------------|--|-------------------|-----------|----------------------------------------------------------|
| Filing Status: Single/Married filing separately<br>Exemptions/Allowances:<br>Federal: Tax blocked |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>TIMOTHY M RIVERA</b><br>                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Social Security Number: XXX-XX-5016                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| <b>Earnings</b>                                                                                   | <table border="0"> <tr> <th>rate</th> <th>hours</th> <th>this period</th> <th>year to date</th> </tr> <tr> <td>Regular</td> <td>30.2820</td> <td>40.00</td> <td>1,211.28</td> </tr> <tr> <td>Overtime</td> <td><b>45.4230</b></td> <td>16.27</td> <td>739.03</td> </tr> <tr> <td>Paid Lunch</td> <td>30.2820</td> <td>3.00</td> <td>90.85</td> </tr> <tr> <td>Float Hol</td> <td></td> <td></td> <td>484.52</td> </tr> <tr> <td>Holiday</td> <td></td> <td></td> <td>477.46</td> </tr> <tr> <td>Personal</td> <td></td> <td></td> <td>484.51</td> </tr> <tr> <td>Sick</td> <td></td> <td></td> <td>1,211.29</td> </tr> <tr> <td>Vacation</td> <td></td> <td></td> <td>484.51</td> </tr> <tr> <td><b>Gross Pay</b></td> <td></td> <td><b>\$2,041.16</b></td> <td>30,331.70</td> </tr> </table> | rate                                                                                                                                                                                                                                                                                                                 | hours                                 | this period | year to date  | Regular        | 30.2820 | 40.00 | 1,211.28     | Overtime | <b>45.4230</b> | 16.27           | 739.03 | Paid Lunch | 30.2820 | 3.00 | 90.85 | Float Hol |  |  | 484.52 | Holiday |  |  | 477.46 | Personal |  |  | 484.51 | Sick |  |  | 1,211.29 | Vacation |  |  | 484.51 | <b>Gross Pay</b> |  | <b>\$2,041.16</b> | 30,331.70 | Your federal taxable wages this period are<br>\$1,781.58 |
| rate                                                                                              | hours                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | this period                                                                                                                                                                                                                                                                                                          | year to date                          |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Regular                                                                                           | 30.2820                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 40.00                                                                                                                                                                                                                                                                                                                | 1,211.28                              |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Overtime                                                                                          | <b>45.4230</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 16.27                                                                                                                                                                                                                                                                                                                | 739.03                                |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Paid Lunch                                                                                        | 30.2820                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 3.00                                                                                                                                                                                                                                                                                                                 | 90.85                                 |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Float Hol                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      | 484.52                                |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Holiday                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      | 477.46                                |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Personal                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      | 484.51                                |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Sick                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      | 1,211.29                              |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Vacation                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      | 484.51                                |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| <b>Gross Pay</b>                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>\$2,041.16</b>                                                                                                                                                                                                                                                                                                    | 30,331.70                             |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
|                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <table border="0"> <tr> <th><b>Other Benefits and Information</b></th> <th>this period</th> <th>total to date</th> </tr> <tr> <td>Sick Available</td> <td>16.00</td> <td></td> </tr> <tr> <td>Vacation Day</td> <td>72.66</td> <td></td> </tr> <tr> <td>Totl Hrs Worked</td> <td>56.27</td> <td></td> </tr> </table> | <b>Other Benefits and Information</b> | this period | total to date | Sick Available | 16.00   |       | Vacation Day | 72.66    |                | Totl Hrs Worked | 56.27  |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| <b>Other Benefits and Information</b>                                                             | this period                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | total to date                                                                                                                                                                                                                                                                                                        |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Sick Available                                                                                    | 16.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Vacation Day                                                                                      | 72.66                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| Totl Hrs Worked                                                                                   | 56.27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |
| <b>Important Notes</b>                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                      |                                       |             |               |                |         |       |              |          |                |                 |        |            |         |      |       |           |  |  |        |         |  |  |        |          |  |  |        |      |  |  |          |          |  |  |        |                  |  |                   |           |                                                          |

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

|                                                                                                   |                           |                                                                                                               |                                                                                     |
|---------------------------------------------------------------------------------------------------|---------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| CO: FILE DEPT: CLOCK: VCHR. NO. 020                                                               | <b>Earnings Statement</b> |                                                                                                               |  |
| W4F 000280 000630 0000167014 1                                                                    |                           |                                                                                                               |                                                                                     |
| FERRARI EXPRESS INC.<br>215 MILL ST<br>LAWRENCE, NY 11559-1257                                    |                           | Period Beginning: 04/07/2025<br>Period Ending: 04/13/2025<br>Pay Date: 04/18/2025                             |                                                                                     |
| Filing Status: Single/Married filing separately<br>Exemptions/Allowances:<br>Federal: Tax blocked |                           | <b>TIMOTHY M RIVERA</b><br> |                                                                                     |
| Social Security Number: XXX-XX-5016                                                               |                           |                                                                                                               |                                                                                     |
| <b>Earnings</b>                                                                                   | rate                      | hours                                                                                                         | this period                                                                         |
| Bonus                                                                                             |                           |                                                                                                               | 250.00                                                                              |
| Regular                                                                                           |                           |                                                                                                               | 18,156.33                                                                           |
| Overtime                                                                                          |                           |                                                                                                               | 7,642.76                                                                            |
| Float Hol                                                                                         |                           |                                                                                                               | 484.52                                                                              |
| Holiday                                                                                           |                           |                                                                                                               | 477.46                                                                              |
| Paid Lunch                                                                                        |                           |                                                                                                               | 1,390.32                                                                            |
| Personal                                                                                          |                           |                                                                                                               | 484.51                                                                              |
| Sick                                                                                              |                           |                                                                                                               | 1,211.29                                                                            |
| Vacation                                                                                          |                           |                                                                                                               | 484.51                                                                              |
| <b>Gross Pay</b>                                                                                  |                           |                                                                                                               | <b>\$250.00</b>                                                                     |
|                                                                                                   |                           |                                                                                                               | 30,581.70                                                                           |
| <b>Important Notes</b>                                                                            |                           |                                                                                                               |                                                                                     |
| COMPANY PH#(516) 239-8141                                                                         |                           |                                                                                                               |                                                                                     |
| BASIS OF PAY: HOURLY                                                                              |                           |                                                                                                               |                                                                                     |
| <b>Additional Tax Withholding Information</b>                                                     |                           |                                                                                                               |                                                                                     |
| Taxable Marital Status:                                                                           |                           |                                                                                                               |                                                                                     |
| CA: Single                                                                                        |                           |                                                                                                               |                                                                                     |
| Exemptions/Allowances:                                                                            |                           |                                                                                                               |                                                                                     |
| CA: 0                                                                                             |                           |                                                                                                               |                                                                                     |

**Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025**

Here, during the pay period from April 7, 2025 to April 13, 2025, Plaintiff earned a \$250.00 non-discretionary bonus and worked 16.27 hours of overtime. However, Plaintiff's overtime rate was paid at a straight 1.5x Plaintiff's base rate of \$30.2820, rather than 1.5x Plaintiff's regular rate of pay inclusive of the additional remuneration earned during this pay period.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

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

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

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

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

in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. To the extent the aggrieved employees earned sick pay in the same period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate should have included bonuses and all other forms of additional non-excludable remuneration.

The failure to calculate and pay 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 non-discretionary 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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012)

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

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees.

First, Plaintiff and the aggrieved employees experienced missed, late, short, and interrupted first and second meal periods due to the high demands of the job. However, Defendants maintained an unlawful policy and practice requiring Plaintiff and the aggrieved employees to clock out to make it appear as if they took compliant meal period, in reality Plaintiff and the aggrieved employees missed or otherwise experienced noncompliant meal periods. Further, Defendants failed to pay all owed meal period premiums. Specifically, Plaintiff and the aggrieved employees regularly worked over 10 hours without a meal period or corresponding meal period premium for such violations.

Second, as discussed above, Plaintiff and the aggrieved employees earned non-discretionary bonuses and other forms of non-excludable remuneration. However, as a matter of common policy and practice, Defendants failed to factor in these additional forms of remuneration into the meal period premium rate.

An illustrative example of this violation is shown below.

FERRARI EXPRESS INC.  
215 MILL ST  
LAWRENCE, NY 11559-1257

Period Beginning: 04/07/2025  
Period Ending: 04/13/2025  
Pay Date: 04/17/2025

Filing Status: Single/Married filing separately  
Exemptions/Allowances:  
Federal: Tax blocked

TIMOTHY M RIVERA

Social Security Number: XXX-XX-5016

| Earnings   | rate    | hours | this period | year to date |                                     |
|------------|---------|-------|-------------|--------------|-------------------------------------|
| Regular    | 30.2820 | 40.00 | 1,211.28    | 18,156.33    | Your federal taxable wages this per |
| Overtime   | 45.4230 | 16.27 | 739.03      | 7,642.76     | \$1,781.58                          |
| Paid Lunch | 30.2820 | 3.00  | 90.85       | 1,390.32     |                                     |
| Float Hol  |         |       |             | 484.52       |                                     |
| Holiday    |         |       |             | 477.46       |                                     |
| Personal   |         |       |             | 484.51       |                                     |
| Sick       |         |       |             | 1,211.29     |                                     |
| Vacation   |         |       |             | 484.51       |                                     |
| Gross Pay  |         |       | \$2,041.16  | 30,331.70    |                                     |

**Other Benefits and Information**

| this period           |
|-----------------------|
| Sick Available 16.00  |
| Vacation Day 72.66    |
| Totl Hrs Worked 56.27 |

**Important Notes**

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

CO. FILE DEPT. CLOCK VCHR. NO. 020  
W4F 000280 000630 0000167014 1

FERRARI EXPRESS INC.  
215 MILL ST  
LAWRENCE, NY 11559-1257

Earnings Statement



Period Beginning: 04/07/2025  
Period Ending: 04/13/2025  
Pay Date: 04/18/2025

Filing Status: Single/Married filing separately  
Exemptions/Allowances:  
Federal: Tax blocked

TIMOTHY M RIVERA

Social Security Number: XXX-XX-5016

| Earnings   | rate | hours | this period | year to date | Important Notes           |
|------------|------|-------|-------------|--------------|---------------------------|
| Bonus      |      |       | 250.00      | 250.00       | COMPANY PH#(516) 239-6141 |
| Regular    |      |       |             | 18,156.33    |                           |
| Overtime   |      |       |             | 7,642.76     |                           |
| Float Hol  |      |       |             | 484.52       |                           |
| Holiday    |      |       |             | 477.46       |                           |
| Paid Lunch |      |       |             | 1,390.32     |                           |
| Personal   |      |       |             | 484.51       |                           |
| Sick       |      |       |             | 1,211.29     |                           |
| Vacation   |      |       |             | 484.51       |                           |
| Gross Pay  |      |       | \$250.00    | 30,581.70    |                           |

BASIS OF PAY: HOURLY

**Additional Tax Withholding Information**

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

Extract from Plaintiff's Wage Statement from the Pay Period 4/7/2025 to 4/13/2025

Here, during the pay period from April 7, 2025 to April 13, 2025 Plaintiff earned a non-discretionary bonus in the amount of \$250.00 and three meal period premiums. However, these premiums were paid at Plaintiff's base hourly rate of \$30.282, rather than his regular rate of compensation, inclusive of this additional non-excludable remuneration. Defendants committed the same regular rate of compensation violations against Plaintiff and the aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

Further, Defendant maintained an unlawful on-duty meal period agreement. Section 11(A) of the IWC Wage Orders and the the California Supreme Court requires (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" in order for such an agreement to be enforceable. *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). Here, Defendants cannot show that the nature of the work was such that

they cannot schedule the aggrieved employees in such a way in which they would be able to provide relief to one another. Additionally, the purported agreement was not entered into by *both* the employee and the employer in writing, because the employer did not sign the agreement. Instead, the agreement reveals a lone undated signature by Plaintiff and unentered in by Defendant. Additionally missing from the agreement is any language as to when the purported on-duty meal break should be taken and for long. Therefore, the on-duty agreement is unlawful and unenforceable.

Employee signature  
RIVERA, TIMOTHY M

Date

Print employee's name

**Extract from Plaintiff's On-Duty Meal Period Agreement**

As a result of this unlawful agreement, each time Plaintiff and the aggrieved employees worked through their unpaid meal periods they were owed meal period premiums. Defendants failed to provide all owed meal period premiums each time they remained on duty during a meal period.

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

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

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

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

Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled and further failed to pay all owed rest period premiums. For the same reasons Plaintiff and the aggrieved employees experienced non-compliant meal periods, like the pressure to keep up with the high demands of the job, including time restrictions and deliveries, they also experienced non-compliant rest periods. Plaintiff and the aggrieved employees were similarly owed rest period premiums every time they remained on duty during their rest periods.

As a matter of policy and practice, Defendants failed to pay all owed rest period premiums at the regular rate. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation which would have factored in all non-excludable remuneration and other forms of compensation.

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

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

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

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

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

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

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

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

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

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

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

**Unreimbursed Employee Expenses**  
**Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." See, e.g., *Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at \*4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and

this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Specifically, Plaintiff and the aggrieved employees used their personal cell phones to complete work duties including scheduling deliveries, communicating with clients, using GPS to route their deliveries, and other related tasks.

Additionally, Plaintiff and the aggrieved employees incurred lunch costs when they were scheduled to go on day-trips to make deliveries. Plaintiff recalls being told by Defendant he would be reimbursed for these meals, but despite requesting it they failed to do so.

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

### **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.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time for off-the-clock work and unauthorized edits to time records.

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

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

### **Unlawful Employment Condition** **Violation of Labor Code § 432.5**

Defendant violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Non-solicitation agreements are illegal under California law. Business and Professions Code 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Defendants required that Plaintiff and the aggrieved employees sign non-solicitation agreements restricting their ability to receive business from Defendants' customers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-solicitation agreements prohibited by California law. Specifically, as part of Plaintiff's onboarding paperwork, he was required to sign a non-solicitation agreement.

## **6.2 Nonsolicitation/Nondistribution Policy**

To avoid disruption of business operations or disturbance of employees, visitors, and others, Ferrari Express Inc has implemented a Nonsolicitation/Nondistribution Policy. For purposes of this policy, "solicitation" includes, but is not limited to, selling items or services, requesting contributions, and soliciting or seeking to obtain membership in or support for any organization. Solicitation performed through verbal, written, or electronic means is covered by the Nonsolicitation/Nondistribution Policy.

You are prohibited from soliciting other employees during your assigned working time. For this purpose, working time means time during which either you or the employees who are the object of the solicitation are expected to be actively engaged with assigned work. You may conduct solicitations during your lunch period, coffee breaks, or other authorized nonworking time, so long as you do so when the other employees are also on nonworking time.

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

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

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

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

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

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

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

## **- LITIGATION HOLD NOTICE -**

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other

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

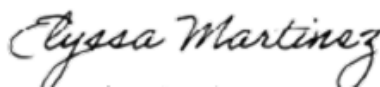
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

### **- CONCLUSION -**

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

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

Sincerely,

A handwritten signature in cursive script that reads "Elyssa Martinez".

Elyssa Martinez

Cc Plaintiff Timothy Rivera

Hadja Bangoura - Hadja.Bangoura@ferrarigroup.net  
Defendant's HR Representatives