

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

Attorneys for Plaintiff Jacob Becerra

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

JACOB BECERRA, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiff,

vs.

MICHAEL KORS STORES (CALIFORNIA),
LLC and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00021768-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff JACOB BECERRA, on behalf of aggrieved employees and the State of California
2 under the Private Attorneys General Act (“Plaintiff”), brings this REPRESENTATIVE ACTION
3 COMPLAINT against Defendants MICHAEL KORS STORES (CALIFORNIA), LLC and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action brought under the Private Attorneys General Act of 2004.

7 2. Defendants failed to include all required forms of remuneration, including bonuses,
8 commissions, fringe benefits payments and other non-excludable forms of pay, in the “regular rate”
9 of pay/compensation used to lawfully calculate and pay overtime, sick pay, and meal and rest period
10 premiums to employees under California law on time and upon separation of employment.
11 Additionally, Defendants issued inaccurate wage statements in violation of Labor Code § 226 that
12 listed the incorrect legal name of the employing entity, among exhibiting other derivative violations.
13 Furthermore, Defendants maintain a policy and practice of failing to provide employee records in
14 response to statutory records requests.

15 3. As a result of these practices, Defendants underpaid overtime wages, sick wages, and
16 Labor Code § 226.7 premiums to Plaintiff and the aggrieved employees and are liable for the
17 corresponding civil penalties.

18 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Jacob Becerra

8. Plaintiff Becerra is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2022 to November 2022. Plaintiff worked as a Stylist.

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

B. Michael Kors

10. Defendant Michael Kors Stores (California), LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

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

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

13. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and

are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

GENERAL ALLEGATIONS

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

16. In addition to earning hourly compensation, Defendants paid Plaintiff and aggrieved employees other forms of non-discretionary remuneration. When Defendants paid overtime or double time to Plaintiff and aggrieved employees, Defendants failed to include employees' additional remuneration in the regular rate of pay used to calculate and pay overtime, sick pay, and Labor Code § 226.7 premiums. Specifically, Defendants paid Plaintiff and aggrieved employees nondiscretionary bonuses based on their sales performance, as well as fringe benefits payments.

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

18. Defendants unlawfully paid aggrieved employees' overtime hours at 1.5 (or 2.0, as applicable) times the employees' respective base hourly rates in pay periods where employees earned both overtime and a nonexcludable remuneration, resulting in an underpayment of wages in those affected pay periods.

19. Additionally, Defendants failed to pay all meal or rest period premiums owed at the "regular rate of compensation" because they did not factor in performance bonuses, fringe benefits payments, and other forms of remuneration, instead electing to pay aggrieved employees at the base hourly rate, in violation of Labor Code § 226.7. An illustrative example of this practice appears on Plaintiff's August 7 to August 20, 2022 wage statement, where Plaintiff earned a "Meal Penalty" at

1 his base hourly rate, which did not include additional earnings such as his performance bonus (“Bonus
2 Sales”).

3 20. In pay periods where Defendants provided Plaintiff and other employees with non-
4 excludable remuneration in addition to their respective base hourly rate for hours worked, Defendants
5 failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation
6 of California’s statutory paid sick leave mandates. Defendants instead paid sick leave at employees’
7 straight time hourly rate instead of at their regular rate of pay.

8 21. One example of Defendants’ sick leave violations occurs during the pay period of
9 August 7 to August 20, 2022. In this pay period, Plaintiff earned a nondiscretionary performance
10 bonus and used 5.5 hours of sick pay. Defendants paid Plaintiff’s sick pay at his base hourly rate of
11 \$16.00 rather than at his regular rate of pay (or other permissible statutory method provided in Labor
12 Code § 246 *et seq.*)

13 22. Defendants committed similar regular rate violations with respect to COVID-19 sick
14 pay. Defendants failed to pay COVID-19 Supplemental Paid Sick Leave with one of the permissible
15 methods outlined by Labor Code § 248.3 *et seq.*

16 23. Plaintiff’s wage statement from the period of July 10, 2023 to July 23, 2022 show
17 Defendants failed to pay COVID sick pay at the “regular rate” (or other lawful method) because the
18 rate paid failed to factor in bonuses and other remuneration (such as the sales bonus or the fringe
19 benefits payment) into the regular rate.

20 24. Because of these violations, Defendants failed provide accurate itemized wage
21 statements to aggrieved employees that included the accurate gross or net wages earned, as the
22 employees earned sick leave wages, overtime pay, and premiums, which were not paid at the lawful
23 rate in light of the regular rate violations. Likewise, sick pay, overtime, and premium wages were paid
24 at inaccurate hourly wage rates (*i.e.*, the base rate or a multiple of the base rate for overtime instead of
25 the regular rate) which violates the wage statement requirement to include the correct hourly rate in
26 effect each pay period along with the correct number of hours. As a further violation of Labor Code
27 § 226, Defendants issued wage statements to Plaintiff and other aggrieved employees that listed the
28 incorrect legal entity as the employer on the paystub. Although Defendants claim they corrected this

1 practice in a letter to the LWDA, Plaintiff has not been provided a corrected wage statement by
2 Defendants and has in fact been deprived the right to obtain his wage statements through the ordinary
3 statutory course.

4 25. Therefore, Defendants have provided inaccurate and non-compliant wage statements
5 to aggrieved employees.

6 26. These violations create derivative liability for failure to pay all wages owed each
7 payday or upon separation of employment.

8 27. As a result of the foregoing violations, Defendants also failed to timely pay all wages
9 as they were due to Plaintiff and aggrieved employees while they were employed and also failed to
10 timely pay all wages due to Plaintiff and aggrieved employees at their separation of employment.

11 28. Furthermore, Defendants failed to provide all employment records upon Plaintiff's
12 request under California Labor Code and IWC Wage Orders, including Plaintiff's personnel file and
13 payroll records, despite multiple and repeated requests. No records have been provided within the
14 statutory 21- and 30- day deadlines, in violation of California law.

15 29. Through this action, Plaintiff seeks to enforce the rights of the State of California,
16 through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants' Labor Code
17 violations.

18 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

38. On or about March 17, 2023, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

41. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations, with the exception of a "Notice of Cure" dated April 19, 2023 that concerns Plaintiff's Labor Code section 226(a)(8) claim, which Plaintiff received. However, Plaintiff disputes that the cure notice exculpates Defendants from liability for the associated civil penalties.

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

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

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

44. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

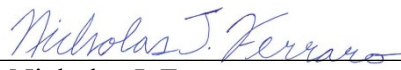
PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of all civil and statutory penalties and liquidated damages;
- b. For this action to be maintained as a representative action under the PAGA;
- c. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- d. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- e. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- f. For such other relief the Court deems just and proper.

Dated: May 22, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Jacob Becerra

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

March 17, 2023

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

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

Michael Kors Stores (California), LLC
1 Meadowlands Plaza, 12th Floor
East Rutherford, NJ 07073

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

MICHAEL KORS STORES (CALIFORNIA), LLC

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

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

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices

affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). 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 Stylist from about March 2022 to November 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid Overtime

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants paid Plaintiff and the aggrieved employees a non-discretionary performance bonus, among other forms of non-discretionary and non-excludable remuneration. Defendants improperly excluded these additional forms of pay from Plaintiff and the aggrieved employees’ regular rate of pay.

Additionally, Plaintiff and the aggrieved employees were paid fringe benefits payments that were not included in the regular rate of pay calculation. To the extent the fringe benefit is not subject to a statutory exemption from the regular rate of pay calculation, it must be included in the regular rate of pay calculation. *Donahue v. AMN Services, LLC* (2021) 241 Cal. App. 5th 1068.

An illustrative example of a regular rate of pay violation is found on Plaintiff’s wage statement below:

Earnings	rate	hours	this period
Regular	16.0000	45.11	721.76
Overtime	24.0000	5.58	133.92
Bonus Sales			117.66
Taxable Fringe			27.85
Ca Spsl 22			
Guarnteed Pay			
Meal Penalty			
Ot Differential			
Pt Sick			
Gross Pay			\$1,001.19

Excerpt of Plaintiff’s Wage Statement from the Period of 09/04/22 to 09/17/22

Because Plaintiff earned a nondiscretionary sales bonus as well as fringe benefit payments during the same period that Plaintiff earned overtime wages, Defendant should have (but failed to) factor that bonus into the regular rate of pay for all overtime and double time hours. Defendants instead unlawfully paid Plaintiff at 1.5 times Plaintiff’s base hourly rate, resulting in an underpayment of wages in those affected pay periods. On information and belief, Defendants committed the same “regular rate of pay” violation against Plaintiff and other aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558

(\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

Defendants failed to pay sick leave in accordance with one of the permissible methods in Labor Code §246 (l)(1)-(3). Specifically, Defendants paid sick leave at employees’ straight time rate of pay and failed to factor in bonuses and other forms of remuneration into the paid sick leave rate. Defendants failed to pay paid sick leave at the regular rate of pay for the workweek when sick pay was used.

An illustrative example of the regular rate of pay violation is found on Plaintiff's wage statement below:

Earnings	rate	hours	this period
Regular	16.0000	44.04	704.64
Bonus Sales			44.44
Guaranteed Pay	16.0000	.13	2.08
Meal Penalty	16.0000	1.00	16.00
Pt Sick	16.0000	5.50	88.00
Overtime			
Ca Spsl 22			
Ot Differential			
Taxable Fringe			
Gross Pay			\$855.16

Excerpt of Plaintiff's Wage Statement from the Period of 08/07/22 to 08/20/22

Defendants committed similar regular rate violation with respect to COVID-19 sick pay. Defendants failed to pay COVID-19 Supplemental Paid Sick Leave with one of the permissible methods outlined by Labor Code §248.2 *et seq.*

Plaintiff's records show Defendants failed to pay Covid sick pay at the "regular rate" (or other lawful method) because the rate paid failed to factor in bonuses and other remuneration (such as the sales bonus or the fringe benefits payment) into the regular rate.

Earnings	rate	hours	this period
Regular	16.0000	27.42	438.72
Ca Spsl 22	16.0000	13.00	208.00
Meal Penalty	16.0000	1.00	16.00
Ot Differential			3.07
Taxable Fringe			120.62
Overtime			
Guaranteed Pay			
Gross Pay			\$786.41

Excerpt of Plaintiff's Wage Statement from the Period of 07/10/22 to 07/23/22

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

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

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

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

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

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and the other aggrieved employees all owed meal period premiums. To the extent that Defendants pay any meal period premiums, they were not paid at the "regular rate of compensation" because the premiums did not factor in additional forms of nondiscretionary remuneration in violation of California law. Plaintiff's payroll records demonstrate this regular rate of pay violation:

Earnings	rate	hours	this period
Regular	16.0000	44.04	704.64
Bonus Sales			44.44
Guaranteed Pay	16.0000	.13	2.08
Meal Penalty	16.0000	1.00	16.00
Pt Sick	16.0000	5.50	88.00

Excerpt of Plaintiff's Wage Statement from the Period of 08/07/22 to 08/20/22

In this pay period, Plaintiff earned a sales bonus of \$44.44 as well as a meal period premium. However, the meal period premium was paid at Plaintiff's straight hourly rate, and did not factor in other nondiscretionary remuneration, such as the sales bonus, in the regular rate of pay calculation. Plaintiff is informed, believes, and alleges that Defendants committed this same Labor Code violation against all aggrieved employees, resulting in the same or similar under-compensation for time worked for other employees.

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

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

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

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

To the extent that Defendants paid any rest period premiums, they were not paid at the "regular rate of compensation" because the premiums did not factor in additional forms of nondiscretionary remuneration in violation of California law.

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

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

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

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section

204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

As explained above, Defendants underpaid Plaintiff and the aggrieved employees’ overtime, double time, sick pay, and meal and rest period premium pay, including at the lawful rate of compensation. Defendants are separately liable for not paying the full amount owed to Plaintiff and the aggrieved employees each pay period in violation of Labor Code §§ 204 and/or 204(b).

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

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

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

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

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums were paid at depreciated rates, 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.

Furthermore, Defendants violated Labor Code section 226(a)(8) by not listing the correct name of the entity that was the employer of Plaintiff and the aggrieved employees. The wage statements identify “Michael Kors Stores (California), Inc.” as the legal entity that employed Plaintiff and the aggrieved employees, as shown in Plaintiff’s wages statement below.

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	131
JJL	838823	001046		0000460107	1

MICHAEL KORS STORES (CALIFORNIA), INC.
1 MEADOWLANDS PLAZA, 12TH FLOOR
EAST RUTHERFORD, NJ 07073
COMPANY PH# 201-812-2593

Earnings Statement

Period Beginning: 10/30/2022
Period Ending: 11/12/2022
Pay Date: 11/18/2022

Excerpt of Plaintiff’s Wage Statement from the Period of 10/30/22 to 11/12/22

However, this entity was terminated in April 2022 and replaced with “Michael Kors Stores (California), LLC.” This change was not reflected in Plaintiff’s paystubs, resulting in a violation of Labor Code section 226(a)(8).

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

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

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

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

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

Defendants failed to provide all records upon Plaintiff’s request. On January 23, 2023, Plaintiff sent a statutory records request to Defendants, which Defendants received and had their outside law firm respond to. However, Defendants did not provide the records as of the date of this letter pursuant to the abovementioned statutes, and no records have been produced to date, in violation of California law. On information and belief, Defendants have not provided employment records to other aggrieved employees, based on the same policy and practice applied to Plaintiff.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro".

Nicholas J. Ferraro
Rayne A. Brown

Cc Plaintiff Jacob Becerra

Catherine S. Feldman
Michael Kors Legal Counsel
CFeldman@Seyfarth.com

Elizabeth Levy, Michael Kors Legal Counsel
ELevy@Seyfarth.com