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Superior Court of California,
County of San Diego

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

RAQUEL FELIX, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

INNOVATIVE EMERGENCY
MANAGEMENT, INC., a corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00012142-CU-OE-CTL

*Assigned to the Hon. Matthew C. Braner
Department C-60*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff RAQUEL FELIX, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 INNOVATIVE EMERGENCY MANAGEMENT, INC.; K LAP6 TECHNOLOGIES LLC; and
5 DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action brought under California Code of Civil
8 Procedure § 382 for Defendants’ violations of the California Labor Code and Business and Professions
9 Code.

10 2. Plaintiff also seeks civil penalties under the Private Attorneys General Act of 2004 for
11 Defendants’ violations of the California Labor Code.

12 3. Defendants underpaid the class members’ wages by failing to include all forms of
13 remuneration, including nondiscretionary referral bonuses, in their hourly overtime, sick pay, and
14 premium rates, resulting in underpayments of wages.

15 4. Defendants regularly required employees to work off-the-clock and did not permit the
16 class members to record their exact clock-in and clock-out times on a daily basis, failing to properly
17 compensate the class members for all hours worked.

18 5. Defendants also failed to maintain compliant meal and rest period policies and
19 practices, resulting in a failure to pay wages and premiums.

20 6. Defendants are further liable for derivative penalties for wage statements, untimely
21 payment, and waiting time violations.

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

24 **JURISDICTION & VENUE**

25 8. 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 9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
28 the Superior Court.

10. 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.

PARTIES

12. Plaintiff Felix is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2022 to March 2023. Plaintiff worked as a case manager and IEM coordinator.

B. Defendants

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

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. Specifically, some class members were employed as a short-term employees through KLAP6 TECHNOLOGIES, LLC, which acted as a staffing agency to Defendants.

17. 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.

18. 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

19. 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.

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members is ascertainable by inspection of Defendants' employment and payroll records.

- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

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

GENERAL ALLEGATIONS

23. Plaintiff and the Class Members in this action worked for Defendants as non-exempt employees and were compensated on an hourly basis.

1 24. Defendants failed to pay Plaintiff and the Class Members at the lawful minimum rate
2 for all hours worked, resulting in unpaid minimum wages. Plaintiff and the Class Members were
3 routinely required to perform work while off-the-clock. Defendants' agents instructed the Class
4 Members to not report any hours worked outside of the exact start and end times of their assigned
5 shifts and informed the Class Members that work outside of those hours would not be compensated.
6 Plaintiff worked several off-the-clock hours per week, including coordinating coverage for shifts,
7 answering phone calls and text messages from Defendants' managers and employees, and performing
8 other managerial tasks on her days off.

9 25. Defendants paid and the Class Members additional compensation, including, but not
10 limited to, nondiscretionary bonuses. For example, employees were eligible for and earned a
11 nondiscretionary referral bonus when they successfully referred an individual for employment with
12 Defendants. Receipt of this bonus was contingent upon objective outcomes and non-discretionary in
13 nature. This additional form of remuneration was not included in the regular rate of pay for purposes
14 of overtime, premiums, and sick pay.

15 26. Defendants failed to provide compliant first and second meal periods to Plaintiff and
16 the Class Members. Plaintiff and, on information and belief, the Class Members often experienced
17 missed, short, and late meal periods. On many occasions, employees were expected to work through
18 their unpaid meal breaks. Furthermore, Defendants maintained a strict policy and practice of only
19 providing one meal period to the Class Members, regardless of the length of their shift. Plaintiff
20 routinely worked 10+ and 12+ hour shifts but was not authorized to take a compliant second meal
21 break. Defendants did not maintain a valid on-duty meal period agreement.

22 27. Due to staffing issues, employees' job responsibilities, Defendants' own policies and
23 practices, and the steady flow of work, Plaintiff and the Class Members were not authorized or
24 permitted to take all their rest periods. Specifically, Defendants did not make rest periods available to
25 Plaintiff and the Class Members. Defendants often scheduled only one employee to be on-duty during
26 certain shifts, omitting the possibility of that employee being relieved of duty to receive a compliant
27 rest period.

28. When Defendants did not provide compliant meal or rest periods, Defendants failed to pay Plaintiff and the Class Members a meal period premium or rest period premium at the “regular rate of compensation,” in violation of California law.

29. Because of these violations, Defendants failed provide accurate itemized wage statements to the Class Members that included the accurate total hours and gross or net wages earned, as the employees earned sick leave wages, overtime, gratuities, premium, and minimum wages that were not paid or otherwise not paid at the lawful rate in light of the regular rate violations.

30. Likewise, these sick pay, overtime, and premium wages were paid at inaccurate hourly wage rates (*i.e.*, the base rate or a multiple of the base rate for overtime instead of the regular rate) which violates the wage statement requirement to include the correct hourly rate in effect each pay period along with the correct number of hours. As a result of the foregoing issues, and because of the compulsory off-the-clock work, Defendants failed to include the total hours worked and the hourly rate in effect along with the corresponding number of hours worked at each rate. Therefore, Defendants have provided inaccurate and non-compliant wage statements to the Class Members.

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

32. As a result of the foregoing violations, Defendants also failed to timely pay all wages as they were due to Plaintiff and the Class Members while they were employed and also failed to timely pay all wages due to Plaintiff and the Class Members at their separation of employment.

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

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

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

36. 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.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

39. 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.

40. 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

1 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
2 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
3 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
4 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
5 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

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

9 **THIRD CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **Violation of Labor Code §§ 226.7 and 512**

12 42. All outside paragraphs of this Complaint are incorporated into this section.

13 43. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
14 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
15 meal period premiums in lieu thereof), and which further provide a private right of action for an
16 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
17 regular rate of compensation.

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

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

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

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **Violation of Labor Code §§ 226.7**

7 47. All outside paragraphs of this Complaint are incorporated into this section.

8 48. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
10 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
11 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
12 regular rate of compensation.

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

25 51. All outside paragraphs of this Complaint are incorporated into this section.

26 52. Defendants knowingly and intentionally failed in their affirmative obligation to pay
27 sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246
28 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.

1 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized
2 that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her
3 compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

4 53. Labor Code section 246(1) governs how Defendants were required to calculate paid sick
5 leave:

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

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

11 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
12 employee’s total wages, not including overtime premium pay, by the
13 employee’s total hours worked in the full pay periods of the prior 90 days of
14 employment.

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

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

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

24 56. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
25 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
26 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
27 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
28 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to

provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

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

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

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

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

(III) The state minimum wage.

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

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

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

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

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

63. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay

1 period, and which further provide a private right of action for an employer's failure to comply with
2 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
3 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **WAGE STATEMENT VIOLATIONS**

17 **Violation of Labor Code § 226**

18 66. All outside paragraphs of this Complaint are incorporated into this section.

19 67. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
20 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
21 pay period, and which further provide a private right of action for an employer's failure to comply
22 with this obligation.

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

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

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

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

72. This cause of action is brought by the Waiting Time Class 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.

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

74. Plaintiff and the Waiting Time Class are entitled to recover to 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.

1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

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

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

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

22 80. Plaintiff and class members are entitled to injunctive relief against Defendants,
23 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
24 an ownership interest and to prevent future damage and the public interest under Business and
25 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
26 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
27 § 1021.5.

1 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

24 86. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.”

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

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

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

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

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

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

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

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

- 27 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
28 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. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- j. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;

- 1 g. For recovery of all civil and statutory penalties and liquidated damages;
2 h. For disgorgement of all amounts wrongfully obtained;
3 i. For this action to be maintained as a representative action under the PAGA;
4 j. For Plaintiff and counsel of record to be provided with all enforcement capability as if
5 the action were brought by the State of California or the California Division of Labor
6 Enforcement;
7 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
8 l. For restitution and injunctive relief;
9 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
10 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
11 1194, 2699, and Code of Civil Procedure section 1021.5; and
12 n. For such other relief the Court deems just and proper.

13
14 Dated: May 15, 2023

Ferraro Vega Employment Lawyers, Inc.

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16 Nicholas J. Ferraro

17 Attorneys for Plaintiff Raquel Felix
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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 -

Innovative Emergency Management, Inc.
Attn: Legal Department
2801 Slater Road, Suite 200
Morrisville, North Carolina 27560-8477

Klap6 Technologies LLC
4815 Boxwood Way
Dublin, CA 94568

- 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 **RAQUEL FELIX** (“Plaintiff”) and all other “aggrieved employees¹” of the following “Defendant(s)”:

INNOVATIVE EMERGENCY MANAGEMENT, INC.;
KLAP6 TECHNOLOGIES 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

¹ “Aggrieved employees” includes those employees who are co-employed by staffing companies or subsidiaries working with Defendant Innovative Emergency Management, Inc.

an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the positions of case manager and IEM coordinator from about September 2022 to March 2023. 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. Plaintiff and the aggrieved employees were routinely required to perform work while off-the-clock. Defendants’ agents instructed the aggrieved employees to not report any hours worked outside of the exact start and end times of their assigned shifts and informed the aggrieved employees that work outside of those hours would not be compensated.

Plaintiff and the aggrieved employees were not permitted to record their exact clock-in and clock-out times on a daily basis. Rather, Plaintiff and the aggrieved employees were required to report their hours for the entire week once per week and could only report the start and end times that Defendants scheduled them for. Plaintiff worked several off-the-clock hours per week, including coordinating coverage for shifts, answering phone calls and text messages from Defendants’ managers and employees, and performing other managerial tasks on her days off.

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff alleges that the aggrieved employees were underpaid overtime wages for the same reasons set forth above in the unpaid hours worked section. Defendants’ policy and practice of prohibiting employees from accurately recording their time entries and requiring off-the-clock work resulted in regular underpayment of employees’ hours worked.

Furthermore, when Plaintiff and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Plaintiff is informed, believes, and alleges that Defendants paid the aggrieved employees a \$1,000 non-discretionary referral bonus when they successfully referred an individual for employment with Defendants. Defendants improperly excluded this additional form of remuneration from the aggrieved employees’ regular rate of pay. The aggrieved employees’ receipt of this bonus was contingent upon the referring employee’s continued employment with Defendants. The Department of Labor has made clear that such referral bonuses are longevity bonuses that reward continued employment and must be included in the regular rate of pay calculation. WHD Opinion Letter FLSA (Mar. 26, 2020); *Featsent v. City of Youngstown*, (6th Cir. 1995) 70 F.3d 900, 905.

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.”

On information and belief, Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. To the extent employees earned paid sick leave in the same pay period in which they earned non-discretionary forms of remuneration, such as the referral bonuses, Plaintiff alleges the aggrieved employees were not paid at the correct statutory rate for such sick leave, in violation of California’s paid sick leave laws.

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

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

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

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

Defendants failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff and, on information and belief, the aggrieved employees' time records establish meal period liability on their face as they show they often experienced, missed and late meal periods.

Specifically, Plaintiff and the aggrieved employees routinely did not receive a first meal period until after the fifth hour of work. On many occasions, employees were expected to work through their unpaid meal breaks. Furthermore, Defendants maintained a strict policy and practice of only providing one meal period to the aggrieved employees, regardless of the length of their shift. Plaintiff routinely worked 10+ and 12+ hour shifts but was not authorized to take a compliant second meal break.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium at the regular rate of compensation 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.

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

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

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

Due to staffing issues, employees' job responsibilities, Defendants' own policies and practices, and the steady flow of work, Plaintiff and the aggrieved employees were not authorized or permitted to take all their rest periods. Specifically, Defendants did not make rest periods available to Plaintiff and the aggrieved employees. Defendants often scheduled only one employee to be on-duty during certain shifts, omitting the possibility of that employee being relieved of duty to receive a compliant rest period. As a result, Plaintiff and the aggrieved employees routinely experienced late and missed rest periods.

When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium at the "regular rate of compensation" because the premiums paid did not factor in bonuses, commissions, and other forms of remuneration, instead electing to pay aggrieved employees at the base hourly rate, in violation of 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 discussed above, Defendants underpaid Plaintiff and other aggrieved employees’ minimum, regular, overtime, double time, sick leave, and meal and rest period premium pay at the lawful rate of compensation. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each pay day in violation of Labor Code sections 204 and/or 204b.

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

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

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

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

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

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 §§ 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 §§ 226(a)(1) through (9).

Labor Code § 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 §§ 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 § 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 at the lawful "regular rate" (or multiple thereof) due for overtime, sick pay, and Labor Code §

226.7 premiums. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Additionally, the hours were incorrect due to illegal time rounding, in violation of Labor Code §§ 226(a)(2) and 226(a)(9).

Defendants also violated Labor Code § 226(a)(2) by not accurately listing the total hours worked on the wage statement. Defendants had a policy and practice of prohibiting employees from accurately recording their time entries and requiring off-the-clock work.

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

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

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

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

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

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

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

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants 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-competition 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-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. Plaintiff is informed, believes, and alleges Defendants violated California Labor Code section 432.5 by requiring that the aggrieved employees sign non-competition agreements prohibited by California law. Specifically, the offer letter and Employee Agreement given to aggrieved employees explicitly required the aggrieved employees to execute a 12-month non-competition agreement as a condition of employment and promotion.

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.

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 Raquel Felix

Brad Tiffée, IEM Legal Counsel
legal@iem.com