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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

INNOVATIVE EMERGENCY MANAGEMENT, INC., a corporation, SKAGGS MISSION SUPPORT SPECIALISTS, LLC, a limited liability company, SKAGGS MISSION SUPPORT SOLUTIONS, LLC, a limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00012142-CU-OE-CTL
[Consolidated with Case No.: 37-2023-00051810-CU-OE-CTL]

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

CLASS ACTION

CONSOLIDATED 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. Unpaid Vacation Wages
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Reimburse Business Expenses
11. Failure to Maintain Required Records
12. Unfair Competition
13. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiffs RAQUEL FELIX and RICARDO FLORES, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiffs") brings this SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants INNOVATIVE EMERGENCY MANAGEMENT, INC.; SKAGGS MISSION SUPPORT SPECIALISTS, LLC, SKAGGS MISSION SUPPORT SOLUTIONS, LLC (together, "Defendant Skaggs"); and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

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

2. Plaintiffs also seek civil penalties under the Private Attorneys General Act of 2004 for Defendants' violations of the California Labor Code.

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

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

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

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

7. Defendants failed to reimburse Plaintiff and class members for necessary business expenses.

8. Defendants also failed to maintain required records.

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

10. Plaintiffs seek to recover the underpaid damages, plus associated penalties, interest, attorney's fees and costs.

JURISDICTION & VENUE

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

12. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

13. 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.

14. 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. Plaintiffs Raquel Felix and Ricardo Flores

15. 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.

16. Plaintiff Flores is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2022 to May 2023. Plaintiff worked as a Support Specialist.

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

B. Defendants

18. Defendant Innovative Emergency Management, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

19. Defendant Skaggs Mission Support Specialists, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

20. Defendant Skaggs Mission Support Solutions, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

21. 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.

22. 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.

23. 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

24. 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.

25. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

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

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

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for

common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

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

27. 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

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

29. Defendants failed to pay Plaintiffs and the Class Members at the lawful minimum rate for all hours worked, resulting in unpaid minimum wages. Plaintiffs and the Class Members were routinely required to perform work while off-the-clock. Defendants' agents instructed the Class Members to not report any hours worked outside of the exact start and end times of their assigned shifts and informed the Class Members that work outside of those hours would not be compensated. Plaintiffs 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 their days off.

30. Plaintiff Flores and class members underwent an uncompensated security check before the start of each shift, which was unpaid. Further, as discussed below, Plaintiffs and class members worked through part or all of several meal periods while clocked out. Finally, Defendant Skaggs occasionally required Plaintiffs and class members to complete work-related errands, such as retrieving security badges from different worksites, while clocked out after the class members' shifts.

Defendant Skaggs did not compensate Plaintiffs or class members for time the class members spent completing these necessary work activities.

31. To the extent off-clock work resulted in unpaid overtime (i.e., hours exceeding 8 in a day or 40 in a week due to the off the clock work), Plaintiffs allege Defendants failed to pay those overtime wages to class members. Further, Plaintiffs and class members earned non-discretionary income, which Plaintiffs allege Defendants failed to factor that additional income into the regular rate of pay for purposes of overtime rate calculation.

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

33. Defendants failed to provide compliant first and second meal periods to Plaintiffs and the Class Members. Plaintiff and, on information and belief, the Class Members often experienced missed, short, and late meal periods. 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 Class Members, regardless of the length of their shift. Plaintiffs routinely worked 10+ and 12+ hour shifts but were not authorized to take a compliant second meal break. Defendants did not maintain a valid on-duty meal period agreement.

34. As a further example of Defendant Skaggs' failure to provide compliant meal periods, when guest buses would arrive back-to-back, as often was the case for Plaintiff Flores's team, Plaintiff Flores and class members needed to remain on duty to facilitate passenger arrival and avoid delays for dependent departments. In the week of March 17, 2023, to March 22, 2023, alone, Plaintiff Flores suffered four late meal periods. For these same reasons and practices, Plaintiff Flores and class members often suffered deficient rest periods as well.

35. Due to staffing issues, employees' job responsibilities, Defendants' own policies and practices, and the steady flow of work, Plaintiffs and the Class Members were not authorized or

permitted to take all their rest periods. Specifically, Defendants did not make rest periods available to Plaintiffs and the Class Members. 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.

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

37. 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.

38. 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.

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

40. For example, in the pay period February 11, 2023, to February 24, 2023, Plaintiff Flores performed work within the first and fifteenth day of February which was not paid within the sixteenth and twenty-sixth of February 2023, in violation of Labor Code section 204. Defendant Skaggs instead paid Plaintiff Flores two weeks after the close of the pay period on March 10, 2023.

41. Likewise, in the pay period January 28, 2023, to February 10, 2023, Plaintiff Flores performed work within the sixteenth and last day of January which was not paid within the first and

fifteenth day of the following month, February 2023. Defendant Skaggs instead paid Plaintiff Flores two weeks after the close of the pay period on February 24, 2023.

42. Because of these violations, Defendants failed to provide accurate, itemized wage statements to class members that included the accurate gross or net wages earned, as the employees earned overtime, sick leave, and premiums which were not paid at the lawful rate.

43. Further, Defendants did not consistently list the hours worked and applicable hourly rate for all wage categories on Plaintiffs and class members' wage statements. For example, in Plaintiff Flores' wage statement for pay period October 22, 2022 to November 4, 2022, Defendant Skaggs shows Plaintiff Flores had "Additional Earnings" of $112 in the pay period, but Defendant Skaggs only displayed this amount as a lump sum with no applicable hours worked or hourly rate for this wage category.

44. These violations create derivative liability for failure to pay all wages owed each pay day and upon separation of employment. Specifically, Defendant Skaggs failed to pay Plaintiff Flores his final wages and accrued but unused vacation wages on the date of Plaintiff Flores' termination, May 19, 2023. Instead, Defendant Skaggs did not initiate the mailing process of Plaintiff Flores' final check until May 22, 2023, and Plaintiff Flores had still not received his final wages as of November 2023.

45. Additionally, because Defendants neither provided accurate wage statements nor maintained time records showing when each employee began and ended each work period, Defendants failed to maintain required records for the Class Members.

46. Finally, Defendant Skaggs failed to reimburse Plaintiff Flores and class members for necessary business expenses the class members incurred in furtherance of the employee's job responsibilities. Defendant Skaggs expected Plaintiff Flores and class members to utilize their personal cell phones to clock in and out of their shifts each day and manage scheduling using the app QuickBooks. Further, Plaintiff Flores and class members needed to utilize their personal phones to communicate with supervisors thought the WhatsApp application. Additionally, Plaintiff Flores and aggrieved employees occasionally incurred mileage expenses for work-related travel using the employees' personal cars. For example, when Plaintiff Flores needed a different security badge,

Defendant Skaggs, through their supervisors, instructed Plaintiff Flores to drive to another worksite while clocked out, in his own car, to obtain the badge or he would not be able to work the next shift. Defendant Skaggs did not reimburse Plaintiff Flores for any of these expenses, and Plaintiff Flores alleges Defendant Skaggs likewise failed to reimburse other class members for similar expenses.

47. Through this action, Plaintiffs 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 Plaintiffs and Class Members Against All Defendants)

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

49. 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).

50. Defendants willfully failed in their affirmative obligation to pay Plaintiffs 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.

51. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs 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

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

53. 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.

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

57. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an

employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7

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

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

63. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

> [A]n employer shall calculate paid sick leave using any of the following calculations:
>
> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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

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

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

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

71. 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.

72. 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.

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

74. 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.

75. 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

UNPAID VACATION WAGES

Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198

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

77. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be timely paid all vested vacation wages at their final rate of pay upon separation of employment, and which further provide a private right of action for an employer's timely failure to pay all vacation compensation upon termination.

78. Defendant Skaggs offered Plaintiff Flores and class members an employment contract or policy providing for the accrual of vacation and/or paid time off. Plaintiff Flores and class members accrued vacation and/or PTO pursuant to the contract or policy.

79. Upon separation of Plaintiff Flores and class members, Defendant Skaggs willfully failed in their affirmative obligation to timely pay Plaintiff Flores and class members all accrued but unused vacation at their final rate during their employment with Defendant Skaggs, in violation of Labor Code sections 201(a), 202(a), and 227.3.

80. Plaintiff Flores and class members are entitled to recover the full amount of the accrued vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

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

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

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

EIGHTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

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

89. As a result, Plaintiffs 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).

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

91. 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.

92. 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.

93. Plaintiffs 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.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

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

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

ELEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN REQUIRED RECORDS

Violation of Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7

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

98. Defendants knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No.4-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; the number of piece-rate units earned and any applicable piece rate; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

99. Defendants unlawful acts and omissions damaged Plaintiffs and class members in amounts to be determined at trial. Plaintiffs and class members are entitled to all wages earned and

due, plus interest thereon. Additionally, Plaintiffs and class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, in addition to costs, expenses, and attorneys' fees to the extent permitted by law, including under Labor Code § 226(e).

TWELFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

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

105. Plaintiffs and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and

Professions Code § 17200 *et seq.* Plaintiffs and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

THIRTEENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

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

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

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

108. Plaintiffs reserve the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

109. 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."])

110. 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. "

111. 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."

112. 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."

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

114. On or about March 17, 2023, Plaintiff Felix 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.

115. A true and correct copy of Plaintiff Felix'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").

116. On or about November 21, 2023, Plaintiff Flores 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.

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

118. To date, neither Plaintiffs nor Plaintiffs' counsel have received a response to Plaintiffs' written PAGA notice from the LWDA.

119. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither Plaintiffs nor Plaintiffs' counsel have received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

120. Now that at least 65 days have passed from Plaintiffs 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, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

121. As set forth in the PAGA notices attached as Exhibit 1 and Exhibit 2 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

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

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

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

d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.

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

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

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

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

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

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

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

l. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

122. Plaintiffs seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notices (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

Plaintiffs pray for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiffs as the class representative;

c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of damages in amount according to proof;

f. For all recoverable pre- and post-judgment interest;

g. For recovery of all civil and statutory penalties and liquidated damages;

h. For disgorgement of all amounts wrongfully obtained;

i. For this action to be maintained as a representative action under the PAGA;

j. For Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

k. For recovery of all civil penalties and other recoverable amounts under the PAGA;

l. For restitution and injunctive relief;

m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and

n. For such other relief the Court deems just and proper.

Dated: April 9, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro
Attorneys for Plaintiff Raquel Felix and Ricardo Flores

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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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 employees[1]" 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 faction 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,

Nicholas J. Ferraro
Rayne A. Brown

Cc Plaintiff Raquel Felix

Brad Tiffee, IEM Legal Counsel
legal@iem.com

EXHIBIT 2

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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November 21, 2023

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

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

Skaggs Mission Support Specialists, LLC
379 Tegarden Road
Gulfport, Mississippi 39507

Skaggs Mission Support Solutions, LLC
379 Tegarden Road
Gulfport, Mississippi 39507

- 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 **RICARDO FLORES** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

SKAGGS MISSION SUPPORT SPECIALISTS, LLC; SKAGGS MISSION SUPPORT SOLUTIONS, 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. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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 Support Specialist from about October 2022 to May 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. Before Plaintiff and aggrieved employees were able to clock in for their shifts, the employees had to go through a security point, badge scan, and temperature check that took approximately 3-7 minutes each shift. Defendants did not record or compensate this time, despite requiring Plaintiff and aggrieved employees to undergo these procedures before beginning work.

Further, as discussed below, Plaintiff and aggrieved employees worked through several meal periods, uncompensated. When Plaintiff and aggrieved employees worked through part or all of their unpaid meal periods, Defendants failed to pay Plaintiff and aggrieved employees at least the applicable minimum wage for those hours worked.

Finally, Defendants occasionally required Plaintiff and aggrieved employees to conduct errands to other worksites while clocked out and uncompensated. For example, to obtain a replacement security badge, Defendants required Plaintiff to drive to another worksite, while clocked out, after his 12-hour shift. Defendants did not compensate Plaintiff for this time.

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.

To the extent Plaintiff and aggrieved employees' off-clock work resulted in unaccounted overtime hours, Plaintiff alleges Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Further, to the extent Plaintiff and aggrieved employees earned supplemental forms of non-discretionary remuneration, such as commissions, bonuses, or other incentive pay, Plaintiff alleges Defendants maintained an unlawful policy and practice of excluding that supplemental pay from the regular rate of pay for purposes of overtime pay calculation.

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 Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Defendants terminated Plaintiff's employment on May 19, 2023, and did not mail his final check, including his unused vacation wages, until May 22, 2023. Plaintiff still has not received his final pay and unused vacation wages as of the date of this notice. Defendants did not pay waiting time penalties for the late payments. Plaintiff alleges that Defendants likewise failed to timely pay out unused vacation wages upon termination for 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 section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the

workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

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

Plaintiff alleges Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Although Defendants provided Plaintiff with a bank of paid sick leave in early March 2023 (five months after Plaintiff commenced employment), Plaintiff alleges that Defendants did not previously provide paid sick leave or notice of paid sick leave to aggrieved employees prior to this date. Therefore, Defendants did not consistently comply with 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.

Plaintiff and aggrieved employees suffered many late, short, missed, and/or interrupted meal periods. For example, as seen on the time records below, Plaintiff consistently took late meal periods due to busy periods where buses would arrive unpredictably, and Plaintiff and aggrieved employees needed to remain on duty to facilitate passenger arrival and avoid delays for dependent departments.

03/17/23				12.0	8.0
	6:30 AM – 1:00 PM PDT	Generalist	night shift – Ricardo Flores		
	2:00 PM – 7:30 PM PDT	Generalist	night shift – Ricardo Flores		
03/18/23				12.0	8.0
	6:30 AM – 1:04 PM PDT	Generalist	night shift – Ricardo Flores		
	2:04 PM – 7:30 PM PDT	Generalist	night shift – Ricardo Flores		
03/19/23				12.0	8.0
	6:30 AM – 1:21 PM PDT	Generalist	night shift – Ricardo Flores		
	2:21 PM – 7:30 PM PDT	Generalist	night shift – Ricardo Flores		
03/20/23				0	0
03/21/23				0	0
03/22/23				12.0	8.0
	6:30 AM – 1:46 PM PDT	Generalist	night shift – Ricardo Flores		
	2:46 PM – 7:30 PM PDT	Generalist	night shift – Ricardo Flores		

Plaintiff's time records for March 17, 2023, to March 22, 2023, showing Plaintiff took four meal periods after his fifth hour of work.

Defendants did not pay Plaintiff any meal period premiums for these deficiencies, and Plaintiff alleges that Defendants likewise did not pay other aggrieved employees meal premiums for deficient meal periods.

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 faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

For the same reasons as stated above for meal periods, Plaintiff and aggrieved employees were not consistently able to take their full rest periods. Plaintiff alleges that Defendants maintained a policy and practice of not paying rest period premiums for aggrieved employees' deficient rest periods.

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." Further, "Labor performed between the 1st and 5th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." 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. Further, Defendants failed to pay Plaintiff and aggrieved employees within the required semi-monthly period following the payroll period. An example of Defendants' late payroll violations is below:

Statement

Specialists, LLC
Skaggs Mission Support Solutions, LLC
379 Tegarden Rd
Gulfport, MS 39507
228-365-7375

Pay period: Feb 11, 2023 - Feb 24, 2023 Pay Day: Mar 10, 2023
Ricardo Flores' bank accoun[redacted] $2,876.40

Employee Earnings

Description	Rate	Hours	Current
Regular Hours | Hourly	$28.00	80.0	$2,240.00
Overtime	$42.00	44.0	$1,848.00
Double Overtime	$56.00	0.0	$0.00
Total Hours Worked		124.0	
Gross Earnings			$4,088.00

Plaintiff's wage statement from pay period February 11, 2023, and February 24, 2023, showing that work performed between the 11th and 15th of February 2023 was not paid within the 16th and 26th of February 2023, or within seven days of the payroll period close, February 24, 2023.

Ricardo Flores Earnings Statement

Pay period: Jan 28, 2023 - Feb 10, 2023 Pay Day: Feb 24, 2023
Ricardo Flores' bank account[redacted]: $2,274.51

Company

Skaggs Mission Support Specialists, LLC
Skaggs Mission Support Solutions, LLC
379 Tegarden Rd
Gulfport, MS 39507
228-365-7375

Em

Ric[redacted]

Employee Earnings

Description	Rate	Hours	Current
Regular Hours | Hourly	$28.00	64.0	$1,792.00
Overtime	$42.00	30.467	$1,279.61
Double Overtime	$56.00	0.0	$0.00
Total Hours Worked		94.467	
Gross Earnings			$3,071.61

Plaintiff's wage statement from pay period January 28, 2023 to February 10, 2023, showing that work performed from the 28th and the last day of January 2023 was not paid within the 1st and 15th of February 2023, or within seven days of payroll period close, February 10, 2023.

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. Further, as mentioned above regarding vacation wages, Defendants failed to pay Plaintiff his due wages upon termination. Despite terminating Plaintiff's employment on May 19, 2023, Defendants did not mail Plaintiff his final wages until May 22, 2023, and Plaintiff still has not received his final wages. Defendants did not pay

waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

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

Ricardo Flores Earnings Statement

Pay period: Off-Cycle Payroll
Oct 22, 2022 - Nov 4, 2022 Pay Day: Nov 22, 2022
Ricardo Flores' bank account [redacted] $102.20

Company

Skaggs Mission Support Specialists, LLC
Skaggs Mission Support Solutions, LLC
379 Tegarden Rd
Gulfport, MS 39507
228-365-7375

Emplo [redacted]

Employee Earnings

Description	Rate	Hours	Current
Regular Hours | Hourly			
Overtime			
Double Overtime			
Total Hours Worked		0.0	
Additional Earnings			$112.00
Gross Earnings			$112.00

Plaintiff's wage statement for pay period October 22, 2022, to November 4, 2022, showing that plaintiff earned $112 in "additional earnings" that period with no applicable hourly rate or hours worked.

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.

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

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

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed

them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants expected Plaintiff and aggrieved employees to utilize their personal cell phones to clock in and out of their shifts each day and manage scheduling using the app Quikbooks. Further, Plaintiff and aggrieved employees needed to utilize their personal phones to communicate with supervisors through the WhatsApp app.

Additionally, Plaintiff and aggrieved employees occasionally incurred mileage for work-related travel using the employees' personal cars, which Defendants did not compensate. For example, Defendants required Plaintiff to drive to another worksite after his shift, while clocked out, to obtain a replacement security badge, and back to his original worksite to continue working. Defendants did not reimburse Plaintiff for the mileage incurred on his personal vehicle to make this trip. Plaintiff alleges that Defendants likewise required other aggrieved employees to conduct work-related errands in their personal vehicles without mileage reimbursement.

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.

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

- CONCLUSION -

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

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

Sincerely,

Nicholas J. Ferraro

Cc Plaintiff Ricardo Flores

Diana Wilson, HR Representative for Defendants
dwilson@skaggscompany.com