

07/20/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Concepcion Deputy

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
WILLIAM WILKINSON (SBN 346777)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MATTHEW SMITH, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NOVIPAX LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 23STCV04784

SECOND AMENDED COMPLAINT

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, et seq. (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MATTHEW SMITH (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of Los Angeles. Defendants employed Plaintiff within the State of California, County of Los Angeles.

///

///

///

PARTIES

5. Plaintiff MATTHEW SMITH is an individual residing in the State of California.

6. Defendant NOVIPAX BUYER, L.L.C., at all times herein mentioned, was, upon information and belief, a Delaware limited liability company, and at all times herein mentioned, was an employer whose employees were engaged throughout the State of California, including the County of Los Angeles.

7. At all relevant times, Defendant NOVIPAX BUYER, L.L.C. was an “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants NOVIPAX BUYER, L.L.C. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendants NOVIPAX BUYER, L.L.C. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

///

1 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
2 affected the working conditions, wages, working hours, and conditions of employment of
3 Plaintiff and the other class members so as to make each of said Defendants employers and
4 employers liable under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 12. Plaintiff brings this action individually and on behalf of all other members of the
7 general public similarly situated, and, thus, seeks class certification under Code of Civil
8 Procedure section 382.

9 13. The proposed class is defined as follows:

10 All current and former hourly-paid or non-exempt employees of Defendants
11 within the State of California at any time during the period from March 3, 2019
12 to final judgment.

13 14. Plaintiff reserves the right to establish subclasses as appropriate.

14 15. The class is ascertainable and there is a well-defined community of interest in
15 the litigation:

16 a. Numerosity: The class members are so numerous that joinder of all class
17 members is impracticable. The membership of the entire class is
18 unknown to Plaintiff at this time; however, the class is estimated to be
19 greater than fifty (50) individuals and the identity of such membership is
20 readily ascertainable by inspection of Defendants' employment records.

21 b. Typicality: Plaintiff's claims are typical of all other class members'
22 claims as demonstrated herein. Plaintiff will fairly and adequately
23 protect the interests of the other class members with whom Plaintiff has a
24 well-defined community of interest.

25 ///

26 ///

27 ///

1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom Plaintiff has a well-defined community
3 of interest and typicality of claims, as demonstrated herein. Plaintiff has
4 no interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

26 ///

27 ///

- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members to worked overtime and earned incentive pay;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code, including, inter alia, section 226;
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;

///

m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-exempt Machine Operator from 2017 until on or around June 26, 2021 in the State of California, County of Los Angeles at Defendants' worksite in La Verne, California. Plaintiff's duties included maintaining and tending to machines as they operated.

19. Defendants had the authority to hire and terminate Plaintiff and other class members; to set work rules and conditions governing Plaintiff's and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and other class members' employment for them to be joint employers of Plaintiff and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

///

///

///

1 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
3 employees within the State of California. This scheme involved, inter alia, failing to pay them
4 for all hours worked, missed meal periods, and missed rest breaks in violation of California
5 law.

6 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and other class members were entitled to receive
8 certain wages for overtime compensation and that Plaintiff and other class members were not
9 receiving wages for overtime compensation.

10 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 failed to provide Plaintiff and other class members the required rest and meal periods during
12 the relevant time period as required under the Industrial Welfare Commission Wage Orders
13 and thus they are entitled to any and all applicable.

14 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and other class members were entitled to receive all
16 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
17 the other class members' regular rate of pay when a meal period was missed, late or
18 interrupted, and that Plaintiff and other class members did not receive all timely and proper
19 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
20 period was missed.

21 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and other class members were entitled to receive all
23 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
24 and the other class members' regular rate of pay when a rest period was missed, late or
25 interrupted, and that Plaintiff and other class members did not receive all rest periods or
26 payment of one additional hour of pay at their regular rate of pay when a rest period was
27 missed.

1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive at
3 least minimum wages for compensation and that Plaintiff and other class members were not
4 receiving at least minimum wages for all hours worked.

5 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and other class members were entitled to receive the
7 wages owed to them upon discharge or resignation, including overtime and minimum wages
8 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
9 receive such wages owed to them at the time of their discharge or resignation.

10 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
13 and other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies included, inter alia, the failure to include the total number of
15 hours worked by Plaintiff and other class members.

16 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiff and other class members in accordance with California law, but, in fact, did not
22 keep complete and accurate payroll records for Plaintiff and other class members.

23 ///

24 ///

25 ///

1 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that they had a duty to compensate Plaintiff and other class
3 members pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
5 represented to Plaintiff and other class members that they were properly denied wages, all in
6 order to increase Defendants' profits.

7 35. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
9 worked. Plaintiff and other class members were required to work more than eight (8) hours per
10 day and/or forty (40) hours per week without overtime compensation.

11 36. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
13 Plaintiff and other class members.

14 37. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
16 hours worked.

17 38. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
19 discharge or resignation.

20 39. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to provide complete or accurate wage statements to Plaintiff and other class
22 members.

23 40. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to keep complete or accurate payroll records for Plaintiff and other class
25 members.

26 ///

27 ///

1 47. California Labor Code section 510 codifies the right to overtime compensation
2 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
3 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
4 of work, and overtime compensation at twice the regular hourly rate for hours worked in
5 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
6 of work.

7 48. During the relevant time period set forth herein, Plaintiff and other class
8 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
9 week. Plaintiff and other class members routinely worked consecutive shifts of twelve (12)
10 hours or more, including night shifts that began after midnight.

11 49. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other
13 class members (but not all). For example, Defendants maintained a policy that required
14 employees to be ready to work as soon as they clocked in at their scheduled start time, or else
15 they would be subject to disciplinary action up to and including termination. However,
16 employees could not simply report to be work and immediately start working at their scheduled
17 start time due to Defendants' good manufacturing practices, which required employees to don
18 personal protective equipment ("PPE") (including safety glasses, ear plugs, hairnets, gloves,
19 face shields, plastic shoe covers, snoods, and face masks), remove all jewelry, and sanitize
20 prior to starting work. To avoid being tardy and facing discipline, employees had to arrive
21 early to don the required PPE, and stand in line at the timeclock to clock-in and begin working.
22 Employees routinely experienced waiting times exceeding three (3) minutes to clock-in for
23 their shifts due to the sheer numbers of employees scheduled to work the same shifts, which
24 also forced them to report to work early to ensure they clock in and be ready to work on time.
25 Additionally, Defendants failed to factor shift differentials and non-discretionary bonuses in
26 calculating employees' regular rate for overtime purposes, resulting in underpaid overtime
27 wages.
28

50. Defendants' pattern and practice of failing to pay Plaintiff and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

51. Pursuant to California Labor Code section 1194, Plaintiff and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

54. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

55. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

/ / /

///

1 56. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) further provide that an employer may not
3 require, cause, or permit an employee to work for a work period of more than ten (10) hours
4 per day without providing the employee with a second uninterrupted meal period of not less
5 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
6 hours, the second meal period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.

8 57. As a pattern and practice, during the relevant time period set forth herein,
9 Plaintiff and other class members (but not all) who were scheduled to work for a period of time
10 no longer than six (6) hours, and who did not waive their legally-mandated meal periods by
11 mutual consent, were required to work for periods longer than five (5) hours without an
12 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

13 58. As a pattern and practice, during the relevant time period set forth herein,
14 Plaintiff and other class members (but not all) who were scheduled to work for a period of time
15 no longer than twelve (12) hours, and who did not waive their legally-mandated meal periods
16 by mutual consent, were required to work for periods longer than ten (10) hours without an
17 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

18 59. As a pattern and practice, during the relevant time period set forth herein,
19 Plaintiff and other class members (but not all) who were scheduled to work for a period of time
20 in excess of six (6) hours were required to work for periods longer than five (5) hours without
21 an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

22 60. As a pattern and practice, during the relevant time period set forth herein,
23 Plaintiff and other class members (but not all) who were scheduled to work for a period
24 of time in excess of twelve (12) hours were required to work for periods longer than ten
25 (10) hours without an uninterrupted meal period of not less than thirty (30) minutes
26 and/or without a rest period.

27 ///

61. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiff and other class members (but not all) to work during meal periods and failed to compensate Plaintiff and the other class members (but not all) the full meal period premium for work performed during meal periods. For example, Defendants maintained a policy and practice of understaffing its departments and failing to provide adequate relief, while imposing heavy workloads on Plaintiff and other class members and requiring them to respond to production needs and the maintenance of the machinery in operation, which prevented them from taking legally mandated meal periods and failed to pay them their full meal period premiums at their regular rate of pay.

62. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members (but not all) the full meal period premium due pursuant to California Labor Code section 226.7.

63. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

64. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)

65. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 64, and each and every part thereof with the same force and effect as though fully set forth herein.

66. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and other class members' employment by Defendants.

1 67. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any rest period
3 mandated by an applicable order of the California IWC.

4 68. During the relevant time period set forth herein, the applicable IWC Wage
5 Order provides that “[e]very employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period” and that the
7 “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
8 net rest time per four (4) hours or major fraction thereof” unless the total daily work time is
9 less than three and one-half (3 ½) hours.

10 69. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants required Plaintiff and other class members (but not all) to work four (4) or more
12 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
13 period worked.

14 70. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants willfully required Plaintiff and other class members (but not all) to work during
16 rest periods and failed to pay Plaintiff and the other class members the full rest period premium
17 for work performed during rest periods. For example, Defendants maintained a policy and
18 practice of understaffing its departments and failing to provide adequate relief, while imposing
19 heavy workloads on Plaintiff and other class members and requiring them to respond to
20 production needs and the maintenance of the machinery in operation, which prevented them
21 from taking legally mandated rest periods and failed to pay them their full rest period
22 premiums at their regular rate of pay.

23 71. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to pay Plaintiff and the other class members (but not all) the full rest period
25 premium due pursuant to California Labor Code section 226.7.

26 72. Defendants’ conduct violates applicable IWC Wage Orders and California
27 Labor Code section 226.7.
28

1 73. Pursuant to the applicable IWC Wage Orders and California Labor Code
2 section 226.7(b), Plaintiff and the other class members are entitled to recover from
3 Defendants one additional hour of pay at the employees' regular hourly rate of
4 compensation for each workday that the rest period was not provided.

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 1194 and 1197)**

7 **(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)**

8 74. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 73 and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 ///

12 ///

13 ///

1 75. During the relevant time period set forth herein, California Labor Code sections
2 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
3 lesser wage than the minimum so fixed, is unlawful. As a pattern and practice, during the
4 relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and
5 other class members (but not all) as required, pursuant to California Labor Code sections 1194
6 and 1197. For example, Defendants maintained a policy that required employees to be ready to
7 work as soon as they clocked in at their scheduled start time, or else they would be subject to
8 disciplinary action up to and including termination. However, employees could not simply
9 report to be work and immediately start working at their scheduled start time due to
10 Defendants' good manufacturing practices, which required employees to don personal
11 protective equipment ("PPE") (including safety glasses, ear plugs, hairnets, gloves, face
12 shields, plastic shoe covers, snoods, and face masks), remove all jewelry, and sanitize prior to
13 starting work. To avoid being tardy and facing discipline, employees had to arrive early to don
14 the required PPE, and stand in line at the timeclock to clock-in and begin working. Employees
15 routinely experienced waiting times exceeding three (3) minutes to clock in for their shifts due
16 to the sheer numbers of employees scheduled to work the same shifts, which also forced them
17 to report to work early to ensure they clock in and be ready to work on time. Additionally,
18 Defendants failed to include shift differentials, non-discretionary bonuses, and incentives, in
19 calculating Plaintiff's and other class members' regular rate of pay for purposes of paid sick
20 leave compensation.

21 76. Defendants' failure to pay Plaintiff and other class members the minimum wage
22 as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections,
23 Plaintiff and other class members are entitled to recover the unpaid balance of their minimum
24 wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon.

26 ///

27 ///

77. Pursuant to California Labor Code section 1194.2, Plaintiff and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)

78. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 77, and each and every part thereof with the same force and effect as though fully set forth herein.

79. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

80. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ. Specifically, for the reasons stated in paragraphs 49, 61, 70 and 75, Defendants willfully failed to pay Plaintiff and the other class members their earned and unpaid wages.

81. Defendants' pattern and practice of failing to pay Plaintiff and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

///

82. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

83. Plaintiff and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)

84. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 83, and each and every part thereof with the same force and effect as though fully set forth herein.

/ / /

/ / /

/ / /

1 85. During the relevant time period set forth herein, California Labor Code
2 section 226(a) provides that every employer shall furnish each of his or her employees
3 an accurate itemized statement in writing showing (1) gross wages earned, (2) total
4 hours worked by the employee, (3) the number of piece-rate units earned and any
5 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
6 provided that all deductions made on written orders of the employee may be aggregated
7 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
8 which the employee is paid, (7) the name of the employee and his or her social security
9 number, (8) the name and address of the legal entity that is the employer, and (9) all
10 applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate by the employee. The deductions made from
12 payments of wages shall be recorded in ink or other indelible form, properly dated,
13 showing the month, day, and year, and a copy of the statement or a record of the
14 deductions shall be kept on file by the employer for at least three years at the place of
15 employment or at a central location within the State of California.

16 86. As a pattern and practice, Defendants have intentionally and willfully failed to
17 provide Plaintiff and other class members (but not all) with complete and accurate wage
18 statements. The deficiencies include but are not limited to: the failure to list the total number
19 of hours worked by Plaintiff and other class members, and duplicating hours worked during
20 shifts subject to shift differentials.

21 87. As a result of Defendants' violation of California Labor Code section 226(a),
22 Plaintiff and other class members have suffered injury and damage to their statutorily protected
23 rights.

24 88. More specifically, Plaintiff and other class members have been injured by
25 Defendants' intentional and willful violation of California Labor Code section 226(a) because
26 they were denied both their legal right to receive, and their protected interest in receiving,
27 accurate and itemized wage statements pursuant to California Labor Code section 226(a).
28

89. Plaintiff and other class members are entitled to recover from Defendants the actual damages caused by Defendants' failure to comply with California Labor Code section 226(a).

90. Plaintiff and other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

93. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses and costs. Plaintiff and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California. For example, Plaintiff and other class members were required to purchase steel-toed boots for work, and Defendants failed to fully reimburse them for those necessary business expenses.

/ / /

/ / /

/ / /

1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 2698, *et seq.*)**

3 **(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)**

4 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 93, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 95. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
8 any provision of the Labor Code which provides for a civil penalty to be assessed and collected
9 by the California Labor and Workforce Development Agency (“LWDA”), or any of its
10 departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor
11 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself, and other current or former employees.

13 96. On March 3, 2023, Plaintiff provided written notice to the LWDA of the specific
14 provisions of the Labor Code he contends were violated, and the theories supporting his
15 contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the
16 March 3, 2023 written notice to the LWDA. Plaintiff believes that on or about May 8, 2023, the
17 sixty-five (65) days notice period expired, and the LWDA did not take any action to investigate
18 or prosecute this matter. Therefore, Plaintiff exhausted his administrative remedies.

19 97. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
20 employees” as defined by Labor Code section 2699(c) in that they are all current and former
21 hourly-paid or non-exempt employees of Defendants within the State of California at any time
22 during the period from March 3, 2022 to the present, and one or more of the alleged violations
23 was committed against them.

24 ///

25 ///

26 ///

1 **Failure to Pay Minimum and Overtime Wages**

2 98. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code sections 510, 1194, 1197, and 1198.

6 99. As a policy and practice, Defendants failed to compensate Plaintiff and the other
7 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
8 minimum wages and overtime wages, where applicable.

9 **Failure to Provide Meal Periods and Rest Breaks**

10 100. In accordance with the mandates of Labor Code sections 226.7 and 512,
11 Defendants were required to authorize and permit their non-exempt employees to take a 10-
12 minute rest break for every four (4) hours worked or major fraction thereof and were further
13 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
14 hours worked.

15 101. As a policy and practice, Defendants failed to provide Plaintiff and the other
16 aggrieved current and former employees with legally mandated meal periods and rest breaks and
17 failed to pay proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 102. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period pursuant to the mandate of Labor Code section 204.

21 103. As a policy and practice, Defendants failed to pay Plaintiff and the other
22 aggrieved current and former employees all wages due and owing them within the required time
23 period.

24 **Failure to Timely Pay Wages Upon Termination**

25 104. At all times relevant herein, Defendants were required to pay their employees all
26 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
27 to 204.

1 105. As a result of Defendants' Labor Code violations alleged above, Defendants
2 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
3 Labor Code sections 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
4 Code section 203.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 106. At all times relevant herein, Defendants were required to keep accurate records
7 regarding their California employees pursuant to the mandate of Labor Code sections 226 and
8 1174.

9 107. As a result of Defendants' various Labor Code violations, Defendants failed to
10 keep accurate records regarding Plaintiff and the other aggrieved current and former employees.
11 For example, Defendants failed in their affirmative obligation to keep accurate records regarding
12 Plaintiff and the other aggrieved current and former employees' gross wages earned, total hours
13 worked, all deductions, net wages earned, and all applicable hourly rates and the number of
14 hours worked at each hourly rate.

15 **Failure to Reimburse Business Expenses**

16 108. At all times relevant herein, Defendants were required to reimburse its employees
17 for any and all necessary expenditures or losses incurred by the employees in direct
18 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
19 sections 2800 and 2802.

20 109. As a policy and practice, Defendants failed to reimburse Plaintiff and the other
21 aggrieved current and former employees for all business expenses incurred and owing them
22 within the required time period.

23 ///

24 ///

25 ///

1 **Failure to Timely Produce Payroll Records and Personnel File**

2 110. At all times relevant herein, Defendants were required to produce their
3 employees' payroll records upon an employee's request within 21 calendar days pursuant to
4 Labor Code §§ 226(a) and (b). Moreover, Defendants were required to produce their employees'
5 personnel files upon an employee's request within 30 calendar days pursuant to California Labor
6 Code § 1198.5.

7 111. On December 19, 2022, Plaintiff requested his payroll records from Defendants.
8 On January 18, 2023, Plaintiff requested his personnel file from Defendants. Defendants'
9 deadlines to respond to each request were January 18, 2023 and February 17, 2023, respectively.
10 Defendants failed to produce the requested documents by their respective statutory deadlines.

11 **Penalties**

12 112. Pursuant to Labor Code section 2699, Plaintiff, individually, and on behalf of the
13 other current and former aggrieved employees, requests and is entitled to recover from
14 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but
15 not limited to:

- 16 a. Penalties under Labor Code section 2699 in the amount of a hundred
17 dollars (\$100) for each aggrieved employee per pay period for the initial
18 violation, and two hundred dollars (\$200) for each aggrieved employee
19 per pay period for each subsequent violation;
- 20 b. Penalties under Code of Regulations Title 8 section 11040 in the amount
21 of fifty dollars (\$50) for each aggrieved employee per pay period for the
22 initial violation, and one hundred dollars (\$100) for each aggrieved
23 employee per pay period for each subsequent violation;

24 ///

25 ///

26 ///

- 1 c. Penalties under Labor Code section 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the Labor
3 Code in the amount of a hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation, and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent
6 violation;
- 7 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
8 dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation, and two hundred fifty dollars (\$250) for each aggrieved
10 employee per pay period for each subsequent violation;
- 11 e. Any and all additional penalties as provided by the Labor Code and/or
12 other statutes; and
- 13 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
14 and 2699, and any other applicable statute.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

17 **(Against NOVIPAX BUYER, L.L.C. and DOES 1 through 100)**

18 113. Plaintiff incorporates by reference the allegations contained in paragraphs
19 1 through 112, and each and every part thereof with the same force and effect as though
20 fully set forth herein.

21 114. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
22 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
23 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
24 interest within the meaning of Code of Civil Procedure section 1021.5.

25 115. Defendants' activities as alleged herein are violations of California law, and
26 constitute unlawful business acts and practices in violation of California Business &
27 Professions Code section 17200, *et seq.*

1 116. A violation of California Business & Professions Code section 17200, *et seq.*
2 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
3 pattern and practice of requiring Plaintiff and other class members work overtime hours
4 without paying them proper compensation violate California Labor Code sections 510 and
5 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class
6 members, to work through their meal and rest periods without paying them proper
7 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
8 pattern and practice of failing to timely pay wages to Plaintiff and other class members violate
9 California Labor Code sections 201 and 202. Defendants also violated California Labor Code
10 sections 226(a), 1194, 1197, 2800 and 2802.

11 117. As a result of the herein described violations of California law, Defendants
12 unlawfully gained an unfair advantage over other businesses.

13 118. Plaintiff and other class members (but not all) have been personally injured by
14 Defendants' unlawful business acts and practices as alleged herein, including but not
15 necessarily limited to the loss of money and/or property.

16 119. Pursuant to California Business & Professions Code section 17200, *et seq.*,
17 Plaintiff and other class members are entitled to restitution of the wages withheld and retained
18 by Defendants during a period that commences four years prior to the filing of this Complaint;
19 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
20 other applicable laws; and an award of costs.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff, individually, and on behalf of other members of the general public similarly
23 situated, requests a trial by jury.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
26 public similarly situated, prays for relief and judgment against Defendants, jointly and
27 severally, as follows:
28

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and other class members (but not all);
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and other class members (but not all);
11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
12. For all actual, consequential, and incidental losses and damages, according to proof;

- 1 13. For premium wages pursuant to California Labor Code section 226.7(b);
2 14. For pre-judgment interest on any unpaid wages from the date such amounts
3 were due;
4 15. For reasonable attorneys' fees and costs of suit incurred herein; and
5 16. For such other and further relief as the court may deem just and proper.

6 **As to the Third Cause of Action**

7 17. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
9 rest periods to Plaintiff and other class members (but not all);

10 18. That the Court make an award to Plaintiff and the other class members of one
11 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
12 period was not provided;

13 19. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 20. For premium wages pursuant to California Labor Code section 226.7(b);

16 21. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due; and

18 22. For such other and further relief as the court may deem just and proper.

19 **As to the Fourth Cause of Action**

20 23. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
22 other class members (but not all);

23 24. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 25. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due;

27 ///

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

27. For liquidated damages pursuant to California Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other class members (but not all) no longer employed by Defendants;

30. For all actual, consequential, and incidental losses and damages, according to proof;

31. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and other class members (but not all), and willfully failed to provide accurate itemized wage statements thereto;

35. For actual, consequential and incidental losses and damages, according to proof;

36. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

37. For such other and further relief as the court may deem just and proper.

///

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

39. For actual, consequential and incidental losses and damages, according to proof;
40. For the imposition of civil penalties and/or statutory penalties;
41. For punitive damages and/or exemplary damages according to proof at trial;
42. For reasonable attorneys' fees and costs of suit incurred herein; and
43. For such other and further relief as the court may deem just and proper.

44. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a)-(c), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802;

46. For such other and further relief as the Court may deem just and proper.

47. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages timely as required by California Labor Code section 201, 202.

1 49. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of California Business and Professions Code section 17200,
4 *et seq.*;

5 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 51. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business and Professions Code section 17200, *et seq.*; and

9 52. For such other and further relief as the court may deem just and proper.

10
11 Dated: July 20, 2023

JUSTICE LAW CORPORATION

12
13
14 By: 
15 Douglas Han
16 Shunt Tatavos-Gharajeh
17 William Wilkinson
18 *Attorneys for Plaintiff*
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

March 3, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: NOVIPAX LLC AND NOVIPAX BUYER, L.L.C.

Dear Representative:

We have been retained to represent Matthew Smith against Novipax LLC and Novipax Buyer, L.L.C. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "NOVIPAX").

Mr. Smith is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Smith may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Novipax LLC and Novipax Buyer, L.L.C. are Delaware limited liability companies located at 2215 York Road Suite 504, Oak Brook, Illinois 60523.

NOVIPAX employed Mr. Smith as an hourly-paid non-exempt employee during the relevant time period in the State of California. NOVIPAX directly controlled the wages, hours and/or working conditions of Mr. Smith and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Smith may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of NOVIPAX within the State of California.

¹ Mr. Smith does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Smith will amend this notice when the true names and capacities are known. Mr. Smith is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Smith and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

NOVIPAX failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Smith has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at NOVIPAX, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

NOVIPAX has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a)-(c), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. NOVIPAX failed to compensate aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. NOVIPAX also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate 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. During the relevant time period, NOVIPAX failed to pay aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate 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.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, NOVIPAX routinely required aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with NOVIPAX's policies and expectations, and meet production quotas. NOVIPAX failed to provide coverage to aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, NOVIPAX also failed to authorize and permit aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, NOVIPAX failed to compensate aggrieved employees all the premium wages they were owed, including failing to pay premium wages at aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." NOVIPAX required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[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." NOVIPAX required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, NOVIPAX failed to pay aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, NOVIPAX failed to pay aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, NOVIPAX did not provide aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from NOVIPAX were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by aggrieved employees, (2) total hours worked by aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by aggrieved employees (4) all deductions for aggrieved employees, (5) net wages earned by aggrieved employees, (6) the inclusive dates of the period for which aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by aggrieved employees.

California Labor Code sections 226(b) and (c) requires an employer to produce an employee's payroll records upon request within 21 calendar days. California Labor Code section 1198.5 requires an employer to produce an employee's personnel file upon request within 30 calendar days. On December 19, 2022, and again on January 18, 2023, Mr. Smith requested his payroll records and personnel file from NOVIPAX. NOVIPAX's deadlines to produce the requested documents were January 18, 2023, and February 17, 2023, respectively. To date, NOVIPAX has yet to produce Mr. Smith's payroll records and personnel file.

///

///

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, NOVIPAX failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, NOVIPAX did not provide aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by NOVIPAX, including for purchasing tools and equipment they were required to use and wear while working.

We believe that Mr. Smith and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a)-(b), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Smith will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of NOVIPAX within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

C T Corporation System
c/o Novipax LLC and Novipax Buyer, L.L.C.
330 N. Brand Blvd., Suite 700
Glendale, California 91203
Agent for Service of Process for Novipax LLC and Novipax Buyer, L.L.C.

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

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is dmather@justicelawcorp.com.

On July 28, 2023, I served the foregoing document described as

SECOND AMENDED COMPLAINT

for the following case: **Smith v. Novipax, LLC**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-939892-23**
Court Case No.: 23STCV04784
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

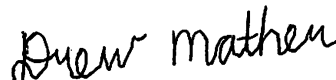
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 28, 2023, at Pasadena, California.



Drew Mather