

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Elyssa Martinez (State Bar No. 355589)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
elyssa@ferrarovega.com

Attorneys for Plaintiff Marissa Carter

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County of San Diego
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Clerk of the Superior Court
By K. Tirado ,Deputy Clerk

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

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

Plaintiffs,

vs.

HOBAN MANAGEMENT INC., and DOES 1
through 50, inclusive,

Defendants.

Case No. 26CU002141C

**REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed:

1 Plaintiff MARISSA CARTER, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants HOBAN MANAGEMENT INC. and DOES 1 through
4 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action brought under the California Private Attorneys General
7 Act (Labor Code 2698 *et seq.*).

8 2. Defendants failed to compensate Plaintiff and the aggrieved employees at the lawful
9 minimum wage rate for all hours worked resulting in unpaid minimum wages.

10 3. In addition, Defendants made unauthorized edits to Plaintiff’s and the aggrieved
11 employees’ time records, where they would remove time from their timecards resulting in unpaid
12 hours worked.

13 4. Defendants failed to compensate Plaintiff and the aggrieved employees all overtime
14 wages in violation of the applicable IWC wage order.

15 5. As a result of failing to account for all overtime hours worked, this practice often
16 resulted in the under calculation of paid sick leave earned, resulting in unpaid paid sick leave.

17 6. Plaintiff and the aggrieved employees were not always given adequate opportunity to
18 take compliant meal and rest breaks, yet Defendants did not pay Plaintiff and the aggrieved employees
19 for all meal and rest period premiums.

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

22 8. Defendants failed to reimburse Plaintiff and the aggrieved employees for necessary
23 expenses incurred in furtherance of the job.

24 9. As a condition of employment, Defendants required Plaintiff and the aggrieved
25 employees to enter into unlawful non-competition agreements, in violation of California public policy
26 and Business & Professions Code § 16600.

27 10. Defendants’ employment policies, practices, and payroll administration systems
28 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved

employees.

11. Plaintiff seeks to recover the unpaid damages, plus associated penalties, interests, and attorney's fees and costs.

JURISDICTION & VENUE

12. 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.

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

14. 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.

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

PARTIES

A. Plaintiff Marissa Carter

16. Plaintiff Carter is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2024 to August 2025. Plaintiff worked as a Property Manager in San Diego, California.

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

1 **B. Defendants**

2 18. Defendant Hoban Management Inc. is a California Corporation that maintains
3 operations and conducts business throughout the State of California, including in this county. Hoban
4 Management Inc. is a property management company based in El Cajon, California. They manage
5 properties throughout San Diego County.

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

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

16 21. Upon information and belief, at least some of the Defendants have common ownership,
17 common management, interrelationship of operations, and centralized control over labor relations and
18 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
19 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

24 **GENERAL ALLEGATIONS**

25 23. Plaintiff and the aggrieved employees worked for Defendants as non-exempt
26 employees and were compensated on an hourly basis.

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

1 25. Specifically, Defendants employed an unlawful policy of requiring work during unpaid
2 meal periods and outside of Plaintiff and the aggrieved employees' scheduled hours.

3 26. Plaintiff and the aggrieved employees routinely worked through all or part of their
4 unpaid meal periods as a result of resident demands, Defendants' requirement they be available to
5 residents and potential new residents at all times, and understaffing. This also led to Plaintiff and the
6 aggrieved employees working outside of their scheduled hours, but not being paid for this time
7 resulting in unpaid hours worked. For example, Plaintiff received a corrective action for clocking in
8 when required to provide tours after her normal hours of work.

9 27. In addition, Defendants made unauthorized edits to Plaintiff's and the aggrieved
10 employees' time records, where they would remove hours from their timecards resulting in unpaid
11 hours worked. Due to these unlawful practices, Plaintiff and the aggrieved employees were not
12 compensated for all hours worked.

13 28. Defendants also failed to pay Plaintiff and the aggrieved employees overtime wages
14 and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants
15 regularly failed to compensate Plaintiff and the aggrieved employees for time worked when they were
16 off-the-clock, and/or as a result of Defendants' practice of time shaving. When Plaintiff and the
17 aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices
18 resulted in unpaid overtime wages.

19 29. To the extent Defendants maintained a paid sick leave accrual system, Defendants
20 failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As a
21 result of failing to account for all overtime hours worked, this practice often resulted in the under
22 calculation of paid sick leave earned, resulting in unpaid paid sick leave. Rather than accruing 1 paid
23 sick leave hour for every 30 hours, Plaintiff and the aggrieved employees accrued less because all their
24 hours worked were not being accounted for.

25 30. Plaintiff and the aggrieved employees often experienced missed, late, short, and
26 interrupted meal periods. Due to understaffing and the demands of the job including being required to
27 always be available to attend to residents, potential residents, and vendors, Defendants often prevented
28 Plaintiff and the aggrieved employees from taking compliant meal periods.

1 31. Specifically, Plaintiff was required to take work calls during her meal periods and
2 residents and supervisors would go to her home (on-site) and contact her while she was on her meal
3 period. This resulted in frequent missed, short, and interrupted meal periods.

4 32. If Plaintiff and the aggrieved employees refused to assist because they were off-duty,
5 they would be reprimanded. For example, on one occasion, Plaintiff did not open her door when a
6 resident stopped by unannounced because she was on her meal period. Later, Plaintiff received a
7 corrective action form for not responding to residents during breaks.

8 33. Further, Defendant maintained an unlawful meal period policy. the policy states “if an
9 employee is required to work three or more hours of overtime following their regular workday, a
10 second meal period of at least thirty (30) minutes in length will be provided for employees who are
11 scheduled to work five hours or more in a day.” This does not comply fully with Labor Code 512
12 which requires “a second meal period after no more than 10 hours of work. Three hours of overtime
13 after a regular workday of 8 hours would be the 11th hour, therefore, this policy is not compliant.

14 34. Each time Plaintiff and the aggrieved employees experienced a non-compliant meal
15 period, Defendants owed meal period premiums. However, as a matter of policy and practice,
16 Defendants often failed to pay meal period premiums.

17 35. Plaintiff and the aggrieved employees often experienced missed, short, and interrupted
18 rest periods. Due to understaffing, Defendants often prevented Plaintiff and the aggrieved employees
19 from taking any rest periods in a day. Instead, Defendants often required Plaintiff and the aggrieved
20 employees to work through their days without rest periods.

21 36. Each time Plaintiff and the aggrieved employees experienced a non-compliant rest
22 period, Defendants owed rest period premiums. However, as a matter of policy and practice,
23 Defendants often failed to pay rest period premiums.

24 37. Because Defendants failed to pay all wages and premiums in each pay period in which
25 such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b
26 (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by
27 failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within
28

1 seven calendar days of the close of the payroll period, as a result of the policies and practices set forth
2 in this notice.

3 38. Defendants failed to pay all wages and premiums owed to aggrieved employees during
4 their employment, and also failed to timely pay those amounts to departing employees upon separation
5 of employment. Defendants did not pay waiting time penalties for the late payments. As a result,
6 Defendants violated Labor Code sections 201, 202, and 203.

7 39. Defendants failed to provide accurate itemized wage statements to the aggrieved
8 employees each pay period as a result of the policies and practices set forth in this notice. Defendants
9 violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net
10 wages earned,” as the employees earned wages and premiums that were not paid, resulting in an
11 inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in
12 violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements
13 each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as
14 Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead
15 depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

16 40. Additionally, Defendants violated Labor Code section 226(a)(2) by failing to
17 accurately list employees’ “total hours worked,” as the wage statements did not accurately include the
18 uncompensated time plaintiff and other aggrieved employees worked due to Defendants’ failure to
19 account for all hours worked.

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

27 42. Defendants required Plaintiff and the aggrieved employees to incur costs for work-
28 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and

1 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
2 as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved
3 employees to use their personal vehicles to drive to the store and buy cleaning supplies for the office
4 or any other supplies as needed with the company credit card. However, Plaintiff and the aggrieved
5 employees were not reimbursed for the mileage expended driving to and from the store.

6 43. Defendant required that Plaintiff and the aggrieved employees sign non-competition
7 and non-solicitation agreements restricting their ability to accept certain work on behalf of themselves
8 or other employers or to receive business from Defendants' customers. Specifically, as part of
9 Plaintiff's onboarding paperwork, she was required to sign an Employee Confidentiality, Non-
10 Disclosure, Non-Solicitation Proprietary Agreement includes an unlawful non-competition and non-
11 solicitation agreement with a 1-year duration.

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

15 **FIRST CAUSE OF ACTION**

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

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

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

19 45. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

5 49. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
6 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of the employee and other current or former
10 employees against whom a violation of the same provision was committed pursuant to the procedures
11 specified in Section 2699.3. “

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

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

17 52. On or about **October 29, 2025**, Plaintiff paid the requisite PAGA filing fee and
18 provided written notice (by online electronic filing with the LWDA and by certified mail to
19 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
20 the alleged violations.

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

24 54. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
25 written PAGA notice from the LWDA.

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

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

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

- 8 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
9 1197, 1198; IWC Wage Orders.
- 10 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
11 Orders.
- 12 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 13 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
14 1198; IWC Wage Orders.
- 15 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
16 1198; IWC Wage Orders.
- 17 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
18 §§ 204, 204b, 210.
- 19 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
20 Labor Code §§ 201, 202, 203, 256.
- 21 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 22 i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 23 j. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432,
24 1174, 1198.5; IWC Wage Orders.
- 25 k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
26 Wage Orders.
- 27 l. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

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

PRAAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- g. For such other relief the Court deems just and proper.

Dated: January 5, 2026

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferrara

Nicholas J. Ferraro
Attorneys for Plaintiff Melissa Carter

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

October 29, 2025

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

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

Hoban Management Inc.
215 W. Lexington Ave
El Cajon, CA 92020

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

HOBAN MANAGEMENT INC.

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

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Property Manager from about December 2024 to August 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those

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

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

Specifically, Defendants employed an unlawful policy of requiring work during unpaid meal periods and outside of Plaintiff and the aggrieved employees' scheduled hours. Plaintiff and the aggrieved employees routinely worked through all or part of their unpaid meal periods as a result of resident demands, Defendants' requirement they be available to residents and potential new residents at all times, and understaffing. This also led to Plaintiff and the aggrieved employees working outside of their scheduled hours, but not being paid for this time resulting in unpaid hours worked. For example, Plaintiff received a corrective action for clocking in when required to provide tours after her normal hours of work.

Finally, Defendants made unauthorized edits to Plaintiff's and the aggrieved employees' time records, where they would remove hours they worked resulting in unpaid hours worked. Due to these unlawful practices, Plaintiff and the aggrieved employees were not compensated for all hours worked.

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

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As stated in the “Unpaid Hours Worked” section above, Defendants regularly failed to compensate Plaintiff and the aggrieved employees for time worked when they were off-the-clock, and as a result of Defendants’ practice of timesharing. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages.

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

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

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

To the extent Defendants maintained a paid sick leave accrual system, Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. As a result of failing to account for all overtime hours worked, this practice often resulted in the under calculation of paid sick leave earned, resulting in unpaid paid sick leave. Rather than accruing 1 paid sick leave hour for every 30 hours, Plaintiff and the aggrieved employees accrued less because all their hours worked were not being accounted for.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the

employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted meal periods. Due to understaffing and the demands of the job including being required to always be available to attend to residents, potential residents, and vendors, Defendants often prevented Plaintiff and the aggrieved employees from taking compliant meal periods. Specifically, Plaintiff was required to take work calls during her meal periods and residents and supervisors would go to her home (on-site) and contact her while she was on her meal period. This resulted in missed, short, and interrupted meal periods. If Plaintiff and the aggrieved employees refused to assist because they were off-duty, they would be reprimanded. For example, on one occasion, Plaintiff did not open her door when a resident stopped by unannounced because she was on her meal period. Later, Plaintiff received a corrective action form for not responding to residents during breaks.

Further, Defendant maintained an unlawful meal period policy. An excerpt of the policy is shown below:

Employees will receive a paid 15-minute break once every 3-4 hours of scheduled work. Meal periods are at least thirty (30) minutes in length and will be provided for employees who are scheduled to work five hours or more in a day. Meal periods must be taken **prior** to the fifth hour of work. If an employee is required to work three or more hours of overtime following their regular workday, a second meal period of at least thirty (30) minutes will be provided. Breaks cannot be combined to create a lengthier break.

Extract from Defendant's Meal and Break Policy

Here, the policy states “if an employee is required to work three or more hours of overtime following their regular workday, a second meal period of at least thirty (30) minutes in length will be provided for employees who are scheduled to work five hours or more in a day.” This does not comply fully with Labor Code 512 which requires “a second meal period after no more than 10 hours of work. Three hours of overtime after a regular workday of 8 hours would be the 11th hour, therefore, this policy is not compliant.

Each time Plaintiff and the aggrieved employees experienced a non-compliant meal period, Defendants owed meal period premiums. However, as a matter of policy and practice, Defendants often failed to pay meal period premiums.

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

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

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

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

Plaintiff and the aggrieved employees often experienced missed, short, and interrupted rest periods. Due to understaffing, Defendants often prevented Plaintiff and the aggrieved employees from taking any rest periods in a day. Instead, Defendants often required Plaintiff and the aggrieved employees to work through their days without rest periods. Each time Plaintiff and the aggrieved employees experienced a non-compliant rest period, Defendants owed rest period premiums. However, as a matter of policy and practice, Defendants often failed to pay rest period premiums.

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

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

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

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to

pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

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

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

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

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

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

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

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.

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendants’ failure to account for all 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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to use their personal vehicles to drive to the store and buy cleaning supplies for the office or any other supplies as needed with the company credit card. However, Plaintiff and the aggrieved employees were not reimbursed for the mileage expended driving to and from the store.

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

Unlawful Employment Condition
Violation of Labor Code § 432.5

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

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

Non-competition and non-solicitation agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendant required that Plaintiff and the aggrieved employees sign non-competition and non-solicitation agreements restricting their ability to accept certain work on behalf of themselves or other employers or to receive business from Defendants’ customers. Specifically, as part of Plaintiff’s onboarding paperwork, she was required to sign an Employee Confidentiality, Non-Disclosure, Non-Solicitation Proprietary Agreement includes an unlawful non-competition and non-solicitation agreement with a 1-year duration.

Further, as discussed in the Meal Period Premium section above Defendants maintained an unlawful meal and rest break policy which failed to comply with Labor Code 512.

As such, Defendant violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign these agreements prohibited by California law.

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

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

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

Defendants failed to provide all records upon Plaintiff’s request. Specifically, Plaintiff requested her time records, which Defendants failed to provide, and of the date of this filing have not provided to Plaintiff.

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

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

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

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

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

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

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

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

- LITIGATION HOLD NOTICE -

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

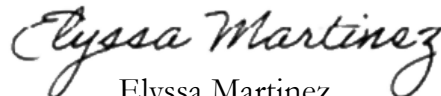
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,


Elyssa Martinez

Cc Plaintiff Marissa Carter
 Bradley A. Lebow, Esq. (blebow@ddwklaw.com)
 Attorney for Defendant