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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

YVONNE GONZALEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

WEST MARINE PRODUCTS, INC.; WEST MARINE, INC; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00017462-CU-OE-CTL

Assigned to the Hon. Keri Katz
Dept. C-74

CLASS ACTION

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Action Filed: April 25, 2023

Plaintiff YVONNE GONZALEZ, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants WEST MARINE PRODUCTS, INC.; WEST MARINE, INC.; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a class and representative action for wage and hour violations of the California Labor Code against West Marine Products, Inc., and West Marine, Inc., who, together, specialize in selling boating accessories and parts at their stores throughout the state.

2. Defendants employed Plaintiff and class members at multiple locations in San Diego County and in the State of California. Defendants failed to pay all overtime wages, meal and rest period premiums, and sick pay at the regular rate of pay, in violation of California law.

3. Additionally, Defendants failed to pay premiums owed for non-compliant rest periods and late, short, missed, or interrupted meal periods. Plaintiff and class members were further required to use their personal cell phones for work purposes and were not compensated for those work-related costs.

4. Plaintiff brings this action to recover the underpaid damages, plus interest, penalties, attorneys' fees, and costs.

JURISDICTION & VENUE

5. 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.

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

7. 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.

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

PARTIES

A. Plaintiff Yvonne Gonzalez

9. Plaintiff is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2017 to February 2023. Plaintiff worked as a Manager.

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

B. Defendants

11. Defendant West Marine Products, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant West Marine, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

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

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

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

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

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

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

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

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

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

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

GENERAL ALLEGATIONS

21. Plaintiff and class members worked for Defendants and were compensated on an hourly basis as nonexempt employees.

22. In addition to earning hourly compensation, Defendants paid Plaintiff and class members other forms of non-discretionary remuneration. Defendants failed to include employees' additional remuneration in the regular rate of pay used to calculate and pay overtime, sick pay, and Labor Code § 226.7 premiums.

23. Plaintiff and class members received referral bonuses if they successfully referred an individual to Defendants who got hired by the company.

24. Additionally, Plaintiff and class members received quarterly bonuses based on performance and sales.

25. Plaintiff and class members also receive spiff pay separate from their base pay.

26. Plaintiff and class members also receive disaster pay separate from their base pay.

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

28. An illustrative example of this practice appears on Plaintiff's June 30, 2022 wage statement for the pay period of June 12, 2022 to June 30, 2022, where Plaintiff earned an "Assoc Referral" bonus for $500, which was not calculated into Plaintiff's overtime or PTO (to the extent such PTO qualified as sick pay) for the same pay period. Defendants paid Plaintiff's overtime and sick pay at her hourly rate of $28 per hour rather than the regular rate of pay (or other permissible statutory method provided in Labor Code § 246 et seq.).

29. Another illustrative example of this practice appears on Plaintiff's May 27, 2022 wage statement for the pay period of May 24, 2022 to May 25, 2022, where Plaintiff earned a "01 Period Bonus" for $1,028.60, which was not included in Plaintiff's overtime, PTO, or premium pay for the period in which it was earned.

30. Additionally, Defendants failed to consistently provide compliant first and second meal periods to Plaintiff and class members, in violation of Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Wage Orders. Plaintiff and the Class Members often experienced late, short, missed, and interrupted meal periods due to staffing issues, employees' responsibilities, and the steady flow of work.

31. When Defendants paid meal or rest period premiums, Defendants failed to pay all the premiums owed at the "regular rate of compensation" because they did not factor in bonuses, stipends, shift differentials, and other forms of remuneration, instead electing to pay Class Members at the base hourly rate, in violation of Labor Code section 226.7.

32. Moreover, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major faction thereof as required by Labor Code §§ 226.7, 516, and § 12 of the applicable IWC Wage Order. When Defendants did not provide fully compliant rest periods, Defendants failed to pay Plaintiff and other class members a rest period premium at the lawful "regular rate of compensation" in violation of Labor Code section 226.7.

33. In pay periods where Defendants provided Plaintiff and other employees with non-excludable remuneration in addition to their respective base hourly rate for hours worked, Defendants failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor Code §§ 246 through 248 *et seq*.

34. Because of these violations, Defendants failed provide accurate itemized wage statements to class members that included the accurate gross or net wages earned, as the employees earned sick leave wages, overtime pay, and premiums, which were not paid at the lawful rate in light of the regular rate violations. Likewise, sick pay, overtime, and premium wages were paid at inaccurate hourly wage rates (i.e., the base rate or a multiple of the base rate for overtime instead of the regular rate) which violates the wage statement requirement to include the correct hourly rate in effect each pay period along with the correct number of hours. Therefore, Defendants have provided inaccurate and non-compliant wage statements to class members.

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

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

37. Defendants failed to provide all timekeeping records upon Plaintiff's request under the above-mentioned Labor Code provisions, including Plaintiff's timekeeping records.

38. Additionally, Defendants maintained a workplace policy which explicitly prohibited employees from discussing pay and compensation directly in violation of Fair Pay Act and Equal Pay Act. Plaintiff received corrective actions for publicly discussing pay and compensation, and was threatened with additional progressive disciplinary action.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

40. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

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

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

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

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

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

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

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

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

> [A]n employer shall calculate paid sick leave using any of the following calculations:
>
> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
>
> (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

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

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

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

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

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

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

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

(III) The state minimum wage.

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

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

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

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

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

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

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

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

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

73. This cause of action is brought by the Waiting Time Class pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

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

75. Plaintiff and the Waiting Time Class are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

77. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and the Reimbursement Class for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

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

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE RECORDS

Violation of Labor Code §§ 226, 432, and 1198.5

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

80. Plaintiff brings this cause of action exclusively *in an individual capacity*.

81. 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."

82. Labor Code section 226(b) grants employees the right to inspect or receive "a copy of records pertaining to their employment." Labor Code section 226(f) authorizes a penalty of $750 for an employer's failure to comply with a request for records made under section 226.

83. Labor Code section 1198.5 requires employers to provide an employee's "personnel records" within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of $750 for an employer's failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l) allows an employee to seek injunctive relief to obtain an employer's compliance with this section and authorizes the recovery of attorneys' fees and costs.

84. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, requires that employers maintain time records of when an employee begins and ends each work period and when the employee takes meal periods, among other required employment and payroll records. Section 7(C) states that "[a]n employee's records shall be made available for inspection by the employee upon reasonable request."

85. Plaintiff requested from Defendants all records due under the IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5. As an hourly employee, Plaintiff clocked in and out for work. Defendant failed to provide Plaintiff's time records.

86. Defendants' unlawful acts and omissions deprived Plaintiff of the ability review the documents they received during their employment and to inspect and reconcile their actual time worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover the penalties and injunctive relief, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

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

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

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

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

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

101. On or about April 21, 2023, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

i. ***Unlawful Employment Condition/Violation of Fair Pay Act and Equal Pay Act***. Violation of Labor Code §§ 432.3, 432.5, and 1197.5.

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

PRAYER

Plaintiff prays for judgment as follows:

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

b. For appointment of Plaintiff as the class representative;

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

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

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

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

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

h. For disgorgement of all amounts wrongfully obtained;

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

j. For 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;

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

l. For restitution and injunctive relief;

m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and

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

Dated: June 26, 2023

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro
Attorneys for Plaintiff Yvonne Gonzalez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

April 21, 2023

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

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

West Marine Products, Inc.
1 East Broward Blvd, Suite 200
Fort Lauderdale, FL 33301

West Marine, Inc.
1 East Broward Blvd, Suite 200
Fort Lauderdale, FL 33301

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

WEST MARINE PRODUCTS, INC.
WEST MARINE, 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. 73, 79.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Hub Manager from about June 2016 to February 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid 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.

First, Plaintiff and the aggrieved employees often worked off the clock as Defendant would often call them before or after work to discuss work related matters. Plaintiff and the aggrieved employees were not allowed to add time on their timesheets for these calls and thus never paid for their off the clock work.

Second, Plaintiff and the aggrieved employees also earned spiff pay and disaster pay. Defendants failed to factor in these earnings when calculating overtime pay. Plaintiff and the aggrieved employees were paid straight overtime instead of at the regular rate of pay as required by the labor code.

Pay Type	Week	Job	Hours	Pay Rate	Current	YTD
08 Period Bonus			0.0000	$0.0000	$0.00	$1,611.80
9FWP Spiff	2	Hub Manager			$1.07	$2.07
Assoc Referral			0.0000	$0.0000	$0.00	$500.00
CompanyPaidLife	2	Hub Manager			$0.33	$4.83
Disaster Pay			0.0000	$0.0000	$0.00	$803.84
Doubletime Pay-Hourly			0.0000	$0.0000	$0.00	$9.44
DoubleTimePreim			0.0000	$0.0000	$0.00	$9.44
Holiday			0.0000	$0.0000	$0.00	$822.96
Overtime Preimu	1	Hub Manager	0.0700	$14.0000	$0.98	
Overtime Preimu	2	Hub Manager	0.0300	$14.0141	$0.42	$411.10
Overtime Premiu			0.0000	$0.0000	$0.00	$1.73
Overtime-Hourly	1	Hub Manager	0.0700	$28.0000	$1.96	
Overtime-Hourly	2	Hub Manager	0.0300	$28.0000	$0.84	$822.28
PTO not Kronos			0.0000	$0.0000	$0.00	($56.61)
PTO Pay			0.0000	$0.0000	$0.00	$3,285.49
Reg Not Krono-Hourly			0.0000	$0.0000	$0.00	$56.61
Regular Pay-Hourly	1	Hub Manager	30.3700	$28.0000	$850.36	
Regular Pay-Hourly	2	Hub Manager	37.8600	$28.0000	$1,060.08	$39,857.38

Excerpt from Plaintiff's wage statement dated November 17, 2022 for the pay period of October 30, 2022 to November 12, 2022.

Additionally, Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to calculate Plaintiff and the aggrieved employees' correct overtime using

the regular rate of pay, as bonuses, commissions, and other supplemental income were not factored in. This violation is evident on Plaintiff's wage statements as well as the wage statements of other aggrieved employees, as illustrated on the following page:

West Marine
UltiPro/Passport

West Marine Products, Inc.
1 East Broward Blvd
Suite #200
Fort Lauderdale, FL 33301
831-728-2700

Pay Statement

Period Start Date	06/12/2022
Period End Date	06/25/2022
Pay Date	06/30/2022
Document	1990472
Net Pay	**$313.25**

Pay Details

Yvonne Gonzalez
[redacted]
San Diego, CA 92113
USA

Associate Number	54593	Pay Group	BiWeekly US
SSN	XXX-XX-2728	Location	0616CA
Job	Hub Manager	Region	WC - West Central Region
Pay Rate	$28.0000	District	01 - Southern California
Pay Frequency	Biweekly	Department	00616 - 616 - WMP Hub in str 16
		Functional	STRHBS - Stores & Hubs

Earnings

Pay Type	Week	Job	Hours	Pay Rate	Current	YTD
08 Period Bonus			0.0000	$0.0000	$0.00	$1,611.80
9FWP Spiff			0.0000	$0.0000	$0.00	$1.00
Assoc Referral	2	Hub Manager			$500.00	$500.00

Excerpt from Plaintiff's wage statement dated June 30, 2022 for the pay period of June 12, 2022 to June 30, 2022 showing a $500 referral bonus.

West Marine
UltiPro/Passport

West Marine Products, Inc.
1 East Broward Blvd
Suite #200
Fort Lauderdale, FL 33301
831-728-2700

Pay Statement

Period Start Date	06/12/2022
Period End Date	06/25/2022
Pay Date	06/30/2022
Document	1990471
Net Pay	**$1,660.87**

Pay Details

Yvonne Gonzalez
[redacted]
San Diego, CA 92113
USA

Associate Number	54593	Pay Group	BiWeekly US
SSN	XXX-XX-2728	Location	0616CA
Job	Hub Manager	Region	WC - West Central Region
Pay Rate	$28.0000	District	01 - Southern California
Pay Frequency	Biweekly	Department	00616 - 616 - WMP Hub in str 16
		Functional	STRHBS - Stores & Hubs

Earnings

Pay Type	Week	Job	Hours	Pay Rate	Current	YTD
08 Period Bonus			0.0000	$0.0000	$0.00	$1,611.80
9FWP Spiff			0.0000	$0.0000	$0.00	$1.00
CompanyPaidLife	2	Hub Manager			$0.33	$1.53
Disaster Pay			0.0000	$0.0000	$0.00	$603.84
Doubletime Pay-Hourly			0.0000	$0.0000	$0.00	$9.44
DoubleTimePreim			0.0000	$0.0000	$0.00	$9.44
Holiday			0.0000	$0.0000	$0.00	$374.96
Overtime Preimu	1	Hub Manager	0.0200	$14.0000	$0.28	
Overtime Preimu	2	Hub Manager	0.0700	$14.0000	$0.98	$262.98
Overtime Premiu			0.0000	$0.0000	$0.00	$1.73
Overtime-Hourly	1	Hub Manager	0.0200	$28.0000	$0.56	
Overtime-Hourly	2	Hub Manager	0.0700	$28.0000	$1.96	$526.04
PTO not Kronos			0.0000	$0.0000	$0.00	($56.61)
PTO Pay	2	Hub Manager	8.0000	$28.0000	$224.00	$1,157.49
Reg Not Krono-Hourly			0.0000	$0.0000	$0.00	$56.61
Regular Pay-Hourly	1	Hub Manager	39.4400	$28.0000	$1,104.32	
Regular Pay-Hourly	2	Hub Manager	29.7000	$28.0000	$831.60	$20,737.86

Excerpt from Plaintiff's wage statement dated June 30, 2022 for the pay period of June 12, 2022 to June 30, 2022 showing that the $500 referral bonus was not calculated into her overtime and PTO pay.

Earnings

Pay Type	Week	Job	Period Start	Period End	Hours	Pay Rate	Current	YTD
08 Period Bonus	2	Hub Manager	01/01/2022	03/31/2022			$1,028.60	$1,611.80
9FWP Spiff					0.0000	$0.0000	$0.00	$1.00
CompanyPaidLife					0.0000	$0.0000	$0.00	$0.54
Disaster Pay					0.0000	$0.0000	$0.00	$603.84
DoubleTime Pay-Hourly					0.0000	$0.0000	$0.00	$9.44
DoubleTimePrem					0.0000	$0.0000	$0.00	$9.44
Holiday					0.0000	$0.0000	$0.00	$150.96
Overtime Premu					0.0000	$0.0000	$0.00	$239.74
Overtime Premlu					0.0000	$0.0000	$0.00	$1.73
Overtime-Hourly					0.0000	$0.0000	$0.00	$479.56
PTO not Kronos					0.0000	$0.0000	$0.00	($56.61)
PTO Pay					0.0000	$0.0000	$0.00	$709.49
Reg Not Krono-Hourly					0.0000	$0.0000	$0.00	$56.61
Regular Pay-Hourly					0.0000	$0.0000	$0.00	$14,965.66

Total Hours 0.0000

Excerpt from Plaintiff's wage statement dated May 27, 2022 for the pay period of May 24, 2022 to May 25, 2022.

As illustrated above, Plaintiff earned a bonus pursuant to a non-discretionary written bonus plan for the period of January 1, 2022 to March 31, 2022. She worked overtime during this period, however the bonus was not factored into her overtime rate nor was an additional true up payment made to compensate her for the increase to her regular rate when it was paid out in May 2022. This practice applied to other aggrieved employees as well as a matter of common policy and practice.

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

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

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

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

in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Throughout Plaintiff and aggrieved employees' employment, Defendants failed to provide any notice of the amount of sick leave available to Plaintiff and aggrieved employees. This information was not provided in writing either on the wage statements or any other format. Additionally, to the extent sick pay was paid, Plaintiff alleges, based on information and belief and due to Defendants' non-compliant overtime practices, that the sick pay was not at the correct statutory or regular rate of pay, in violation of California law.

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

Unpaid 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 a late, shortened, interrupted or missed meal period due to staffing issues and the nature of the job. Plaintiff, as a Hub Manager, was often interrupted during her meal break to attend to the needs of her subordinates or customers. Plaintiff also experienced missed and shortened meal periods for the same reason. Defendants failed to pay Plaintiff and the aggrieved employees a premium pay for the meal period violations, which are evident on the face of the time records issued to Plaintiff and other aggrieved employees. To the extent that any premiums were paid, they were not calculated or paid based on the regular rate of pay as bonuses, commissions, and other supplemental income were not factored into such calculations, as discussed above.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11

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

As explained above, Plaintiff and the aggrieved employees were not able to take a rest period for the same reasons they were not able to take a lunch period. Defendants equally failed to pay Plaintiff and the aggrieved employees a premium pay for the rest period violations. To the extent that any premium was paid, the premiums were underpaid as they were not calculated using the required regular rate of pay, as bonuses, commissions, and other supplemental income were not factored into such calculations.

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

Untimely Payment of Wages 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 explained above, Defendant underpaid Plaintiff and aggrieved employees' regular, overtime, and premium pay, including at the lawful regular rate of compensation/pay.

Defendant is separately liable for not paying the full amount owed to Plaintiff and the aggrieved employee' each payday in violation of Labor Code section 204 and/or 204b.

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

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

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

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

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

Additionally, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Plaintiff and aggrieved employees' wage statements. The hourly rates on the wage statement are inaccurate with respect to the hours that were not paid at the "regular rate of pay" with respect to overtime, meal/rest period premiums, and sick pay, if any, as those hours were paid at the improper base rate and reflected as such on Plaintiff's wage statements or the wage statements of other aggrieved employees. Additionally, the same violation occurred with respect to off-the-clock hours worked.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or

information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and aggrieved employees were often contacted on their personal cell phones while off-the-clock, including but not limited to after work hours and weekends, for work related purposes. Plaintiff and aggrieved employees were never provided any reimbursement for their cell phone usage.

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

Failure to 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. Plaintiff was employed from 2017 to 2023, however, Defendant only provided Plaintiff's payroll records from April 2022 to the end of her employment.

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

Unlawful Employment Condition / Violation of Fair Pay Act and Equal Pay Act
Violation of Labor Code §§ 432.3, 432.5, 1197.5

Defendants violated Labor Code sections 432.3, 432.5 and 1197.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

On October 6, 2015, Governor Jerry Brown signed the California Fair Pay Act, which took effect January 1, 2016. The law protects employees and promotes fair pay for hard work. As part of this legislation, Labor Code section 1197.5 was amended to prohibit an employer from preventing an employee from disclosing the employee's wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her right to do the same. *See* Labor Code section 1197.5(k).

Here, Defendants maintained a pay secrecy policy that effectively prohibited Plaintiff and other employees from discussing or disclosing their wages with coworkers or other individuals. Defendants' policies and practices regarding pay secrecy and confidentiality regarding employee payment and compensation terms violate Labor Code section 1197.5, as well as sections 432.3 and 432.5. As a result, Defendants have violated the California Fair Pay Act with respect to Claimant and all other aggrieved employees.

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."

Under the Equal Pay Act, an employer may not prohibit an employee from disclosing his or her own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise such rights. Accordingly, an employer may not retaliate against an employee for engaging in such conduct.

Defendants violated Plaintiff and the aggrieved employee's right to discuss their own wages and wages of other employees. Plaintiff and the aggrieved employee were explicitly informed that it was not appropriate to publicly discuss pay and compensation. The consequence of such an action is a corrective action. Plaintiff received such corrective action for discussing her wages with her team.

West Marine

CORRECTIVE ACTION FORM

Employee Name	YVONNE GONZALEZ	Meeting Date	
Employee Number		Position	HUB ASSISTANT
Prepared by	MARK ZEGLER	Department	616

The purpose of this written warning is to document deficiencies in your conduct and/or performance. The intent is to define for you the seriousness of the situation, so that you may take immediate corrective action. If you are unable to make the necessary changes outlined here, further disciplinary action, to include separation from West Marine may occur. This written warning will be placed in your personnel and UltiPro file.

Reason for Corrective Action:

- [ ] Attendance/Tardiness
- [ ] Efficiency (Quality of Work)
- [ ] Productivity (Quantity of Work)
- [ ] Other
- [x] Standards of Conduct
- [ ] Safety
- [ ] Theft

Prior written or verbal warnings? [ ] No [x] Yes Date(s) VERBAL

Description of incident(s) and/or performance under review

An incident occurred last week where pay and compensation was discussed publicly amongst the team. Leadership has verbally indicated previously that it is not appropriate to publicly discuss pay and compensation. This public discussion amongst the team was noted by other crew members and this affected attitudes. The consequence of discussing pay and wage compensation amongst the team is a corrective action.

Another instance of discussing pay amongst the team will result in progressive disciplinary actions. It is not OK to discuss this amongst the team.

Expectation(s)/ Action Plan

There are future opportunities to raise wages during the annual merit review cycle. Moving forward it is imperative to focus on your new responsibilities and skills to be developed with your Associate Development Plan. The goal is to learn all you can to better yourself and the team and to apply that knowledge to team tasks. Focus on what you can control and the Friendly, Helpful, and Knowledgeable aspects of the position.

Friendly - Be positive and supportive

Helpful - Continue to develop office/customer service skills to help our customers

Knowledgeable - Take all your Tech Tests to reach Tech 15

These efforts are recognized during the annual merit review cycle.

Defendants' Corrective Action to Plaintiff's for publicly discussing wages with colleagues.

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

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

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

- LITIGATION HOLD NOTICE –

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

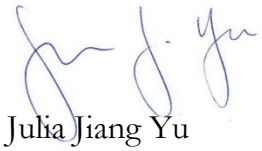
If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,



Julia Jiang Yu

Cc Plaintiff Yvonne Gonzalez

Jennifer Seminara, HR
Jennifer@westmarine.com