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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MICHAEL DEL TORO, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ABZENA (SAN DIEGO) INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00017443-CU-OE-CTL

*Assigned to the Hon. Joel R. Wohlfeil
Dept. C-73*

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

Action Filed: April 25, 2023

1 Plaintiff MICHAEL DEL TORO, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 ABZENA (SAN DIEGO) INC. and DOES 1 through 50, inclusive (collectively “Defendants” or
5 “Abzena”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action filed for wage and hour violations of the
8 California Labor Code against Abzena, which manufactures pharmaceuticals in San Diego County
9 and the State of California.

10 2. Abzena failed to lawfully compensate Plaintiff and the class at the regular rate of pay
11 for overtime, double time, meal and rest period premiums, and sick pay as required by California law.

12 3. As a result, Abzena is liable to Plaintiff and class members for the underlying wages,
13 interest, and penalties, including waiting time, late payment of wages, and wage statement penalties,
14 in the amounts according to proof.

15 **JURISDICTION & VENUE**

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

18 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
19 the Superior Court.

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

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

PARTIES

A. Plaintiff Michael Del Toro

8. Plaintiff Del Toro is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2022 to January 2023. Plaintiff worked as a Manufacturing Technician.

9. 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

10. Defendant Abzena (San Diego) Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. 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.

12. 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, including those class members, if any, who were legally employed by Defendants, but whose payroll is managed through a related or separate entity such as Abzena, Inc. or other parent or subsidiary entity.

13. 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.

14. 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

15. 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.

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

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

b. 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.

c. 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.

d. 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

1 who have substantial experience prosecuting, defending, resolving, and
2 litigating wage and hour class, collective, and representative actions in
3 California state and federal courts.

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

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

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

18 GENERAL ALLEGATIONS

19 19. Defendants failed to pay Plaintiff and class members overtime and double time at the
20 lawful regular rate of pay as required by Labor Code section 510, resulting in unpaid overtime wages.

21 20. Plaintiff and class members earned bonuses, differentials, and other forms of additional
22 remuneration that Defendants failed to properly include in the regular rate of pay when employees
23 earned overtime or double time in the same period, as required by Labor Code section 510.

24 21. Defendants unlawfully paid overtime to Plaintiff and the class members at 1.5x their
25 straight hourly rate and double time at 2.0x their straight hourly rate. For each overtime hour worked
26 during the period in which Plaintiff and the class members earned additional remuneration, Defendants
27 should have (but failed to) pay overtime "at a rate no less than *one and one-half times the regular*
28

1 **rate of pay** for an employee” and “**twice** the regular rate of pay” for double time hours are required by
2 the plain language of Labor Code section 510(a) and the IWC Wage orders.

3 22. An illustrative example of this regular rate of pay violation is shown on Plaintiff’s wage
4 statements from the pay period 5/16/2022 to 5/29/2022.

5 23. Defendants failed to provide compliant meal periods to Plaintiff and the class members
6 and as a result, Plaintiff and the class members often experienced missed, short, and late meal periods.

7 24. When Plaintiff and class members experienced any non-compliant meal periods,
8 Defendants failed to pay meal period premiums at the regular rate of compensation in violation of
9 Labor Code section 226.7.

10 25. Plaintiff’s and, on information and belief, class members’ time records and pay stubs
11 establish meal period liability on their face as they show they incurred meal period premium hours;
12 however, were not bring paid meal period premiums properly. Specifically, Plaintiff’s time records
13 and wage statements both treat meal period premiums hours as regular hours, resulting in a failure to
14 pay meal period premiums at the regular rate of pay in violation of Labor Code section 226.7.

15 26. An illustrative example of Defendants failure to provide timely meal periods or
16 otherwise properly pay meal period premiums can be found on Plaintiff’s time record and wage
17 statement from 5/16/2022 to 5/29/2022.

18 27. The failure to pay meal period premiums at the regular rate resulted in an underpayment
19 of meal period premium wages pursuant to Labor Code § 226.7’s obligation to pay premiums at the
20 “regular rate of compensation,” rather than a lesser hourly rate. *See Ferra v. Loews Hollywood Hotel,*
21 *LLC* (2021) 11 Cal. 5th 858, 862.

22 28. Defendants committed the same regular rate of pay violations against Plaintiff and
23 other class members as a matter of common payroll administration and company policy in a manner
24 susceptible to common proof.

25 29. Similarly, Plaintiff and, on information and belief, the class members experienced
26 interrupted and missed rest periods due to high turnover, understaffing, and the pressure to keep up
27 with the high demands of the job.

1 30. When Plaintiff and other class members experienced these missed and interrupted rest
2 periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code
3 section 226.7.

4 31. Defendants failed to pay sick leave in accordance with one of the permissible methods
5 in Labor Code § 246(1)(1)-(3). Specifically, Defendants failed to pay paid sick leave at the regular
6 rate by failing to factor in differentials, bonuses, and other forms of remuneration into the paid sick
7 leave rate.

8 32. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in
9 Labor Code §§ 248.2 and 248.6 was applied as a matter of common policy and practice to Plaintiff
10 and the class members in those pay periods where they earned differentials, or other forms of non-
11 excludable remunerations and also received paid sick leave.

12 33. Defendant's failure to pay all wages each period or upon separation of employment,
13 rendered the payments untimely and subject to civil penalties for the violations committed against the
14 class members under Labor Code §§ 201 through 203.

15 34. Defendants failed to provide accurate itemized wage statements to the class members
16 each pay period as a result of these policies and practices.

17 35. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
18 the correct "total hours worked," "gross wages earned" or "net wages earned" on those statements
19 because the amounts listed failed to include and account for the unpaid meal and rest period premiums
20 Plaintiff and class members earned but were not paid.

21 36. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
22 employee statements each pay period the applicable hourly rates and the number of hours worked at
23 that rate, as Defendants failed to pay all wages and premiums owed to employees each pay period (i.e.,
24 meal and rest period premiums). The amounts stated are instead depreciated and underpaid, resulting
25 in an inaccurate reflection to the pay stub.

26 37. Specifically, Defendants included meal period premium hours as regular hours, failing
27 to list them as their own category with their corresponding regular rate. The amounts stated are
28 therefore incorrect in violation of Labor Code section 226(a)(9).

38. Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements do not properly total the hours worked.

39. These wage statement violations created significant confusion among Plaintiff and other class members with respect to what amounts to were owed and paid, at what rates, the number of hours worked, and how those 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 of underpayment of employee wages.

40. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and the class. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Order by maintaining practices, policies, and customs that are inconsistent with their obligations under California Law.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

42. 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.

43. 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).

44. 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

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

46. 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.

47. 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).

48. 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).

49. 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.

1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7**

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

5 51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
7 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
8 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
9 regular rate of compensation.

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

22 54. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

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

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

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

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

21 59. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
22 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
23 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
24 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
25 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
26 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
27 to September 30, 2022, and may be extended thereafter.

60. 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.

61. 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.

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

63. 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.

64. 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

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

66. 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

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

14 **SIXTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

17 69. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

1 73. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
2 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
3 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
4 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
5 Code section 226(e).

6 **SEVENTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

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

9 74. All outside paragraphs of this Complaint are incorporated into this section.

10 75. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
11 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
12 employment, and which further provide a private right of action to recover statutory waiting time
13 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
14 wages.

15 76. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
16 wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
17 termination of employment or within 72 hours thereafter for employees who did not provide at least
18 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
19 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

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

23 **EIGHTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

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

26 78. All outside paragraphs of this Complaint are incorporated into this section.
27
28

79. 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.

80. 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.*

81. 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.

82. 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.

83. 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.

NINTH 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)

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

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

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

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

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

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

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

25 90. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

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

3 92. On or about April 17, 2023, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

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

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

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

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

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

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

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

25 i. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
26 1198; IWC Wage Orders.

27 j. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
28 1198; IWC Wage Orders.

- 1 k. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
2 §§ 204, 204b, 210.
- 3 l. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
4 Labor Code §§ 201, 202, 203, 256.
- 5 m. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 6 n. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
7 Wage Orders.

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

12 **PRAYER**

13 Plaintiff prays for judgment as follows:

- 14 a. For certification of this action as a class action;
- 15 b. For appointment of Plaintiff as the class representative;
- 16 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 17 d. For division of class members into appropriate classes and/or subclasses according to
18 proof;
- 19 e. For recovery of damages in amount according to proof;
- 20 f. For all recoverable pre- and post-judgment interest;
- 21 g. For recovery of all civil and statutory penalties and liquidated damages;
- 22 h. For disgorgement of all amounts wrongfully obtained;
- 23 i. For this action to be maintained as a representative action under the PAGA;
- 24 j. For Plaintiff and counsel of record to be provided with all enforcement capability as if
25 the action were brought by the State of California or the California Division of Labor
26 Enforcement;
- 27 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 28 l. For restitution and injunctive relief;

- 1 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
3 1194, 2699, and Code of Civil Procedure section 1021.5; and
4 n. For such other relief the Court deems just and proper.

5
6 Dated: June 22, 2023

Ferraro Vega Employment Lawyers, Inc.

7
8 

Nicholas J. Ferraro

Attorneys for Plaintiff Michael Del Toro

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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619-350-6855 fax
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April 17, 2023

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

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

Abzena, Inc.
251 Little Falls Drive
Wilmington, DE 19808

Abzena (San Diego) Inc.
8810 Rehco Road, Suite E
San Diego, CA 92121

- 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 **MICHAEL DEL TORO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

ABZENA, INC.;
ABZENA (SAN DIEGO) 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 Manufacturing Technician from about May 2022 to January 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.

Defendants failed to pay Plaintiff and the aggrieved employees’ overtime and double time wages at the lawful regular rate of pay as required by Labor Code section 510, resulting in unpaid overtime wages.

Plaintiff and aggrieved employees earned bonuses, shift differentials, and other forms of additional remuneration that Defendants failed to properly include in regular rate of pay when employees earned overtime or double time in the same period, as required by Labor Code section 510.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate and double time at 2.0x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have (but failed to) pay overtime “at the rate no less than *one and one-half times the regular rate of pay* for an employee” and “*twice* the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of this regular rate of pay violation is shown on Plaintiff’s wage statement below:

Earnings					
	Rate	Hours	YTD	Current	YTD
GTL				9.27	9.27
PTO	43.00	8.00	8.00	344.00	344.00
Shift	47.30	27.50	27.50	1,300.75	1,300.75
ShiftDT	94.60	0.17	0.17	16.08	16.08
ShiftOT	70.95	7.93	7.93	562.63	562.63
Gross Pay				2,232.73	2,232.73

Extract from Plaintiff's Wage Statement from the Pay Period 5/16/2022 to 5/29/2022 (1)

Earnings			
	YTD	Current	YTD
Bonus (Supplemental Tax Rate)		5,000.00	5,000.00
GTL			18.54
Holiday	8.00		344.00
PTO	16.00		688.00
Shift	73.73		3,487.43
ShiftDT	8.19		774.77
ShiftOT	27.93		1,981.63
Gross Pay		5,000.00	12,294.37

Extract from Plaintiff's Wage Statement from the Pay Period 5/16/2022 to 5/29/2022 (2)

Plaintiff earned additional remuneration titled "GTL" in the amount of \$9.27 and a \$5,000 bonus in the same period as Plaintiff earned overtime and double time. Defendants should have (but failed to) factor that bonus and additional remuneration into the regular rate of pay for all overtime and double time hours. Defendants instead unlawfully paid Plaintiff at 1.5x and 2.0x his straight hourly rate.

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.”

To the extent the aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful rate of pay throughout the relevant period. The lawful rate of pay had to factor in commissions, bonuses, and all other forms of compensation. Based on Defendants’ noncompliance with the regular rate of pay requirement applicable to overtime, and meal and rest period premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applies to standard and supplemental paid sick leave with respect to the aggrieved employees, resulting in underpayments.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, commissions, bonuses, or other forms of non-excludable remuneration and also received paid sick leave.

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 Vacation Wages **Violation of Labor Code § 227.3**

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

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

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages.

First, Defendants failed to pay Plaintiff “PTO” at the regular rate of pay. In fact, PTO was paid at lower rate than Plaintiff’s base rate. An illustrative example is shown below:

Earnings					
	Rate	Hours	YTD	Current	YTD
Bonus (Sup					5,000.00
GTL				9.27	101.97
Holiday			24.00		1,032.00
PTO	43.00	8.00	70.00	344.00	3,010.00
Shift	47.30	46.20	399.79	2,185.26	18,910.07
Shift15			100.60		4,974.67
Shift15DT			8.28		818.89
Shift15OT			41.08		3,047.11
ShiftDT	94.60	4.67	81.93	441.78	7,750.57
ShiftOT	70.95	17.85	162.26	1,266.46	11,512.35
Gross Pay				4,246.77	56,157.63

Extract of Plaintiff’s Wage Statement from Pay Period 10/17/2022 to 10/30/2022.

Plaintiff’s records show “PTO” was being underpaid due to Defendant’s failure to include Plaintiff’s additional remuneration (“GTL” and shift differentials) into the regular rate of pay. On information and belief, Defendant’s failure to pay “PTO” at the regular rate of pay was applied as a matter of common policy and practice.

Second, Defendants failed to pay Plaintiff for all Holiday hours. Specifically, during the pay period of 5/30/2022 to 6/12/2022 Plaintiff’s time records show he should have been paid 16.00 Holiday hours. Yet, when compared to Plaintiff’s wage statement for the corresponding pay period, Plaintiff was only paid 8 Holiday hours.

Total Summary			
		Holiday:	16.00
		Work:	43.23
		Meal:	3.00
		PTO:	8.00
		OT1:	20.00
		OT2:	8.02
		Total	70.23

Extract from Plaintiff’s Time Records for the Pay Period 5/30/2022 to 6/12/2022

Earnings					
	Rate	Hours	YTD	Current	YTD
GTL				9.27	18.54
Holiday	43.00	8.00	8.00	344.00	344.00
PTO	43.00	8.00	16.00	344.00	688.00
Shift	47.30	46.23	73.73	2,186.68	3,487.43
ShiftDT	94.60	8.02	8.19	758.69	774.77
ShiftOT	70.95	20.00	27.93	1,419.00	1,981.63
Gross Pay				5,061.64	7,294.37

Extract from Plaintiff’s Wage Statement for the Pay Period 5/30/2022 to 6/12/2022

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

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

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

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

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees due to high turnover and understaffing. As a result, Plaintiff and aggrieved employees often experienced missed, short, and late meal periods.

Plaintiff's and, on information and belief, the aggrieved employees' time records and pay stubs establish meal period liability on their face as they show they incurred meal period premium

hours; however, were not being paid meal period premiums properly. Specifically, Plaintiff's time records and wage statements both treat meal period premium hours as regular hours, resulting in a failure to pay meal period premiums at the regular rate of pay.

An illustrative example of Defendant's failure to provide timely meal periods is shown below:

1093 - Del Toro, Michael									
Pay Period		05/30/2022 - 06/12/2022		Week					
Add Shift	Type	In	Org Unit	Type	Out	Reg	OT	Unpaid	
Monday	05/30/2022								Pay Policy: 12 Hour Shifts*
	Holiday	08:00 AM	114/1			Total:	8.00	0.00	0.00
Tuesday	05/31/2022								Pay Policy: 12 Hour Shifts*
	Holiday	08:00 AM	114/1			Total:	8.00	0.00	0.00
Thursday	06/02/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:27 AM	114/1	Clock Out	07:34 PM	Total:	8.00	4.10	0.02
Friday	06/03/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:26 AM	114/1	Clock Out	08:49 PM	Total:	8.00	4.90	0.48
Saturday	06/04/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:28 AM	114/1	Clock Out	11:05 PM	Total:	8.00	7.53	0.08
Wednesday	06/08/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:31 AM	114/1	Clock Out	02:51 PM	Total:	6.23	0.00	1.10
Thursday	06/09/2022								Pay Policy: 12 Hour Shifts*
	PTO	08:00 AM	114/1			Total:	8.00	0.00	0.00
Friday	06/10/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:27 AM	114/1	Clock Out	07:43 PM	Total:	8.00	4.27	0.00
Saturday	06/11/2022								Pay Policy: 12 Hour Shifts*
	Clock In	07:38 AM	114/1	Clock Out	10:53 PM	Total:	8.00	7.22	0.03
Total Summary									
						Holiday:	16.00		
						Work:	43.23		
						Meal:	3.00		1.72
						PTO:	8.00		
						OT1:		20.00	
						OT2:		8.02	
						Total	70.23	28.02	1.72

Extract from Plaintiff's Time Record for the Period 5/16/2022 to 5/29/2022

Earnings					
	Rate	Hours	YTD	Current	YTD
GTL				9.27	18.54
Holiday	43.00	8.00	8.00	344.00	344.00
PTO	43.00	8.00	16.00	344.00	688.00
Shift	47.30	46.23	73.73	2,186.68	3,487.43
ShiftDT	94.60	8.02	8.19	758.69	774.77
ShiftOT	70.95	20.00	27.93	1,419.00	1,981.63
Gross Pay				5,061.64	7,294.37

Extract of Plaintiff's Wage Statement from the Pay Period 5/16/2022 to 5/29/2022
Showing No Meal Premium Paid

Plaintiff's time records improperly include meal period premium hours as regular hours and as a result, Defendants improperly paid these hours as such. Specifically, instead of listing "Meal Period Premiums" as their own category, Defendants improperly added them to Plaintiff's regular "work" hours (i.e., 42.23 "work" hours plus 3 "meal" period premium hours

is equal to the 46.23 “shift” hours paid on the wage statement.) In this pay period, Plaintiff also earned additional remuneration of \$9.27 that Defendants failed to include in regular rate of pay as applied to meal period premiums. The failure to pay meal period premiums at the regular rate of pay was 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 section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Plaintiff and, on information and belief, other aggrieved employees experienced interrupted and missed rest periods due to high turnover, understaffing, and the pressure to keep up with the high demand of the job. Plaintiff and other aggrieved employees were not authorized to take complaint rest periods as required by Labor Code 226.7. When Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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

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

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

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

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

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

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

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

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

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

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

Defendants violated Labor Code 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 at the lawful rate, 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. Specifically, Defendants included meal period premium hours as regular hours, failing to list them as their own category with their corresponding regular rate. The amounts stated are therefore incorrect.

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements do not properly total the 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.

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for

violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

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

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Michael Del Toro
Selena Cooper, Director of Human Resources
selena.cooper@abzena.com