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Attorneys for Plaintiff Samuel Medina

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

SAMUEL MEDINA, individually and on behalf
of all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

PRIME ADMINISTRATION, LLC; and DOES
1 through 50, inclusive,

Defendants.

Case No. 37-2023-00047293-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff SAMUEL MEDINA, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants PRIME ADMINISTRATION,
4 LLC; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

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

8 2. Defendants employed Plaintiff and aggrieved employees in San Diego County and
9 throughout the state. Defendants failed to pay all overtime wages, meal and rest period premiums,
10 sick pay at the regular rate of pay, and all wages at the end of Plaintiff’s employment, in violation of
11 California law.

12 3. Additionally, Defendants failed to pay premiums owed for non-compliant rest periods
13 and late, short, missed, or interrupted meal periods.

14 **JURISDICTION & VENUE**

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

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

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

23 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
24 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
25 of the alleged violations in this county.
26
27
28

PARTIES

A. Plaintiff Samuel Medina

8. Plaintiff Medina is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 18, 2014, to February 13, 2023. Plaintiff worked as a Maintenance Supervisor.

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 Prime Administration, LLC is a California limited liability company 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.

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.

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.

GENERAL ALLEGATIONS

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

16. In addition to earning hourly compensation, Defendants paid Plaintiff and the aggrieved employees 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.

17. An illustrative example of this practice appears on Plaintiff's wage statement for the pay period of December 31, 2022 to January 13, 2023 where Plaintiff earned a commission for \$1,650, which was not calculated into Plaintiff's overtime. Defendant paid Plaintiff's overtime at his hourly rate of \$32.56 rather than at his regular rate of pay.

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

19. 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 the aggrieved employees at the base hourly rate, in violation of Labor Code section 226.7.

20. Moreover, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code §§ 226.7, and § 12 of the applicable IWC Wage Order. When Defendants did not provide fully compliant rest periods,

1 Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium at the lawful
2 “regular rate of compensation” in violation of Labor Code section 226.7.

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

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

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

17 24. As a result of the foregoing violations, Defendants also failed to timely pay all wages
18 as they were due to Plaintiff and the aggrieved employees while they were employed and also failed
19 to timely pay all wages due to Plaintiff and the aggrieved employees at their separation of employment.

20 **FIRST CAUSE OF ACTION**

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

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

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

24 25. All outside paragraphs of this Complaint are incorporated into this section.

25 26. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
26 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
27 codified as Labor Code section 2698 *et seq.*:
28

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

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

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

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

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

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

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

27 33. On or about **April 14, 2023**, Plaintiff paid the requisite PAGA filing fee and provided
28 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.

34. 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").

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

36. 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.

37. 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.*

38. 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 §§ 223, 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, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 210, 223.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code §§ 1174; 1174.5; IWC Wage Orders.

39. 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) and section 2699.5, 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 recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. 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;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 2699; and
- j. For such other relief the Court deems just and proper.

1 Dated: October 20, 2023

Ferraro Vega Employment Lawyers, Inc.

2 

3 Nicholas J. Ferraro

4 Attorneys for Plaintiff Samuel Medina

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
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April 14, 2023

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

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

Prime Residential 2020 Fund
600 Montgomery Street Suite 1700
San Francisco, CA 94111

Prime Administration, LLC
600 Montgomery Street Suite 1700
San Francisco, CA 94111

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

PRIME RESIDENTIAL 2020 FUND
PRIME ADMINISTRATION, LLC

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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 Maintenance Supervisor from about June 2014 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 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 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 like Plaintiff. While Defendants paid sick pay to aggrieved employees, it was at a rate less than the required regular rate of pay. This is a violation of the labor code on its face, as Defendants were required to pay sick leave at the “regular rate of pay.” Instead, Defendants paid sick pay at the base hourly rate for Plaintiff and other aggrieved employees. Defendants did not factor Plaintiff’s commissions, bonuses, and supplemental income into his sick leave pay calculation, as illustrated below:

Earnings	RATE	HOUR/UNIT	CURRENT	YTD HOUR/UNIT	YTD
Hourly	31.61	64.00	2,023.04	210.00	6,638.10
OT	47.415	7.2168	342.18		
OT	47.415	1.7333	82.18	32.20	1,528.83
Hol	31.61	8.00	252.88	24.00	758.64
±Phone			50.00		100.00
GL50 1.0			1.68		5.04
Personal	31.61	8.00	252.88	8.00	252.88
Com					3,648.00
OTLookbk					25.90
Sick Covid				8.00	252.88
Total		88.9501	\$3,004.84	282.20	\$13,210.27

Excerpt from Plaintiff’s wage statement for Pay Period of 01/26/2023 to 02/10/2023

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

First, Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees due to the nature of the job, understaffing, and interruptions. Plaintiff, as a supervisor, was often called back to work due to an emergency or understaffing. Plaintiff also missed meal periods on ten-hour workdays. The failure to provide meal periods in accordance with California law applied to all aggrieved employees regardless of job position and are evident from the time records Defendants were required to maintain.

Additionally, Defendant has failed to provide the time records showing when Plaintiff began his meal period and when he ended his meal periods. For every noncompliant meal period Plaintiff and the aggrieved employees experienced, they were owed a meal period premium paid at their regular rate of pay.

Furthermore, based on Defendants' policy and practice of miscalculating the regular rate of pay, Plaintiff alleges on information and belief that Defendants failed to pay meal period premiums at the regular rate of compensation to aggrieved employees when those premiums were owed, resulting in an underpayment of premium 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 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.

Due to staffing issues and employees' job responsibilities, Plaintiff and the aggrieved employees were not always authorized and permitted to take all their rest periods. Additionally, any bathroom breaks taken were counted as the employee's rest period, which does not qualify as a rest period under California law.

Furthermore, based on Defendants' policy and practice of miscalculating the regular rate of pay, Plaintiff alleges on information and belief that Defendants failed to pay rest period

premiums at the regular rate of compensation to aggrieved employees when those premiums were owed, resulting in an underpayment of premium 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 section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. In pay periods in which Defendants paid overtime compensation with commissions or other forms of non-excludable remuneration, Defendants often paid a true up payment. However, in some pay periods, the true up payment to account for the increase in the regular rate of pay is depreciated, resulting in underpayment of overtime wages to the aggrieved employees 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 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.

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,

resulting in an inaccurate reflection, and recording of “gross wages earned” and “net wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

In pay periods in which aggrieved employees received OTLookbk pay on their wage statements, Defendants failed to accurately state the actual overtime rate in effect, and instead listed a depreciated overtime rate with the lump sum “regular rate” earnings separately. However, subd. (9) requires the wage statements list all applicable hourly rates in effect and the total number of hours in effect at such rate. The lump sum listed for this pay category does not comply with the wage statement’s hourly rate disclosure and notice requirement, and this violation occurred in each of those pay periods with look back compensation.

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

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

Failure to 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. Despite numerous requests, Defendant refuses to produce the time records showing when Plaintiff began and ended each work period as well as any records showing when meal periods were taken.

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.

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

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

- LITIGATION HOLD NOTICE -

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

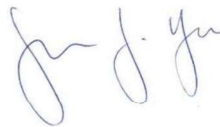
If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- 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, appearing to read "Julia J. Yu".

Julia Jiang Yu, Esq.

Cc Plaintiff Samuel Medina

Karen James
Karen.james@Primegrp.com