

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Sergio Avila

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Superior Court of California,
County of San Diego
06/20/2023 at 12:01:00 AM
Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

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

SERGIO AVILA, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

ASC PROTECTION INC.; ADVANCED
SECURITY CONCEPTS CORPORATION;
ADVANCED SECURITY CONCEPTS; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00015348-CU-OE-CTL

*Assigned to the Hon. Carolyn Caietti
Dept. C-70*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff SERGIO AVILA, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants ASC
4 PROTECTION INC.; ADVANCED SECURITY CONCEPTS CORPORATION; ADVANCED
5 SECURITY CONCEPTS; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
6 follows:

7 **INTRODUCTION**

8 1. This is a class and representative action for wage and hour violations of the California
9 Labor Code against ASC Protection INC.; Advanced Security Concepts Corporation; and Advanced
10 Security Concepts, which together provide an array of security services including but not limited to
11 residential security, executive protection, crowd management, and risk assessment.

12 2. Defendants employed Plaintiff and class members at multiple locations in San Diego
13 County and Los Angeles County. Defendants failed to pay all meal and rest period premiums,
14 maintained an unlawful on-duty and on-premises meal and rest period policy, failed to pay the regular
15 rate of compensation for missed, shortened, or interrupted meal periods, and failed to pay all wages
16 owed each pay period and upon separation of employment accordingly. Plaintiff and class members
17 were further required to use their personal cell phones for work purposes and were not compensated
18 for those work-related costs.

19 3. Plaintiff brings this action to recover the underpaid damages, plus interest, penalties,
20 attorneys’ fees, and costs.

21 **JURISDICTION & VENUE**

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

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

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

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

6 **PARTIES**

7 **A. Plaintiff Sergio Avila**

8 8. Plaintiff Avila is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about December 2019 to March 2023. Plaintiff worked as
10 a Security Officer Supervisor.

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

15 **B. Defendants**

16 10. Defendant ASC Protection, Inc is a California corporation that maintains operations
17 and conducts business throughout the State of California, including in this county.

18 11. Defendant Advanced Security Concepts Corporation is a California corporation that
19 maintains operations and conducts business throughout the State of California, including in this
20 county.

21 12. Defendant Advanced Security Concepts is a California organization that maintains
22 operations and conducts business throughout the State of California, including in this county.

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

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

- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

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

GENERAL ALLEGATIONS

21. Plaintiff and class members experienced missed, late, short, and interrupted meal periods due to staffing issues, employees' job responsibilities, and the steady flow of business. When

1 Plaintiff and class members experienced non-compliant meal periods, Defendants failed to pay meal
2 period premiums at the regular rate of compensation in violation of Labor Code section 226.7.
3 Plaintiff's time records and the records of other class members reflect late, short, and missed lunch
4 breaks without a corresponding meal period premium payment on the wage statement for that pay
5 period.

6 22. Defendants had the unlawful practice of prohibiting class members from leaving the
7 premises during their meal and rest periods, making all meal periods essentially "on duty." Defendants
8 did not maintain a lawful on-duty meal period agreement or employ labor under conditions where such
9 an on-duty agreement would be permissible or lawful. Defendants owe meal period premiums for the
10 non-compliant on-duty meal periods. Additionally, Defendants' on duty and on premises rest period
11 agreement is unlawful and results in the obligation to pay rest period premiums each pay period it was
12 in effect.

13 23. Plaintiff's time keeping records and wage statements provide an illustrative example
14 of Defendant's failure to provide compliant meal periods.

15 24. Defendants additionally had a policy and practice of not paying for missed meal periods
16 when they were late, shortened, interrupted, or missed all together.

17 25. Defendants also had the unlawful practice of prohibiting employees from leaving the
18 premises during meal and rest periods, which is explicitly expressed in Defendant's workplace
19 policies.

20 26. In effect, Defendant's required Plaintiff and class members to work off-the-clock
21 without pay. When Plaintiff and class members worked more than 8 hours, this practice resulted in
22 unpaid overtime wages, due to the off-the-clock compensable work during the meal periods.

23 27. Defendants' failure to pay regular and overtime and premium payments each pay
24 period or upon separation of employment, rendered the payments untimely and subject to civil
25 penalties for the violations committed against the aggrieved employees under Labor Code §§ 201
26 through 203.

27 28. Defendants failed to provide accurate itemized wage statements to the aggrieved
28 employees each pay period as a result of these policies and practices.

1 29. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
2 the correct “gross wages earned” or “net wages earned” on those statements because the amounts listed
3 failed to include and account for the unpaid meal and rest period premiums Plaintiff and class members
4 earned but were not paid.

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

10 31. These wage statement violations created significant confusion among Plaintiff and
11 other aggrieved employees with respect to what amounts were owed and paid, at what rates, the
12 number of hours worked, and how those amounts were or should be calculated. The wage statements
13 reflect a false statement of earnings and concealed the underlying problems of underpayments of
14 employee wages.

15 32. Defendants had the unlawful practice of refusing to provide any paid sick leave to
16 employees in violation of Labor Code Section 246 *et seq.* If Plaintiff or any class members were able
17 to come to work due to illness, they were required to take an unpaid personal day off.

18 33. Defendants required and expected Plaintiff and the class members to use their own
19 personal cell phones to perform work for Defendants. Defendants were aware that the aggrieved
20 employees used their own cell phones for work related purposes and did not provide reimbursement
21 resulting in Defendants' violation of Labor Code section 2802.

22 34. Plaintiff is informed, believes, and alleges that Defendant’s acts and omissions have
23 knowingly and intentionally caused harm to Plaintiff and the class. Plaintiff is informed, believes, and
24 alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Order
25 by maintaining practices, policies, and customs that are inconsistent with their obligations under
26 California Law.

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

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

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

THIRD CAUSE OF ACTION

UNPAID SICK LEAVE

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

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

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

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

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

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

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

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

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

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

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

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

27 51. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
28 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.

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

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

54. 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.

55. 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.

FOURTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

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

58. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice

1 during each calendar month on days designated in advance by the employer as regular paydays (for
2 employees paid on a non-weekly bASCs) and on the regularly-scheduled weekly payday weekly
3 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
4 “Minimum Wages” sections of the applicable orders).

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

10 **FIFTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **Violation of Labor Code §§ 226**

13 60. All outside paragraphs of this Complaint are incorporated into this section.

14 61. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
15 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
16 pay period, and which further provide a private right of action for an employer’s failure to comply
17 with this obligation.

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

22 63. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
23 accurate itemized wage statements, causing confusion and concealing wage and premium
24 underpayments.

25 64. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
26 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
27 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
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1 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
2 Code section 226(e).

3 **SIXTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

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

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

7 66. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
8 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
9 employment, and which further provide a private right of action to recover statutory waiting time
10 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
11 wages.

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

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 **Violation of Labor Code § 2802**

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

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

27 71. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
28 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class

members are entitled to recover the amount of unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE RECORDS

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

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

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

74. 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."

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

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

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

78. Plaintiff requested from Defendants all records due under the IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5. Defendant failed to produce the time records showing when Plaintiff started and ended his work shifts. Defendant also failed to produce the time record showing when Plaintiff began and ended his meal periods.

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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

81. 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.

82. 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.*

83. 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.

84. 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.

85. 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.

TENTH 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)

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

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

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

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

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

90. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil

1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

14 94. On or about April 12, 2023, Plaintiff paid the requisite PAGA filing fee and provided
15 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
16 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
17 violations.

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

21 96. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
22 written PAGA notice from the LWDA.

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

26 98. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
27 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
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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.*

99. 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 Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- b. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- e. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- g. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- j. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

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

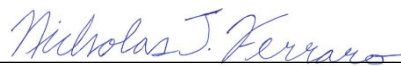
PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

Dated: June 19, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Sergio Avila

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

April 12, 2023

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

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

ASC Protection, Inc.
16117 Covello Street
Van Nuys, California 91406

Advanced Security Concepts
3333 Midway Drive Suite 203
San Diego, CA 92110

**Advanced Security Concepts
Corporation**
16117 Covello Street
Van Nuys, California 91406

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

ASC Protection, Inc.;
Advanced Security Concepts; and
Advanced Security Concepts Corporation

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 also be 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 Security Officer Supervisor from about December 2019 to March 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 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 (emphASCs 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. Defendants had a strict policy and practice of preventing employees from leaving their post during meal periods. Plaintiff, as a supervisor, was required to keep his walkie-talkie on at all times in case of an emergency and thus was unauthorized to take a compliant meal break. The Defendant's policy effectively made all meal periods "on-duty," although Defendants did not maintain any lawful on duty meal period agreements. Defendant required Plaintiff and the aggrieved employees to remain on the premises during their meal periods in case of an emergency do not satisfy the narrow statutory carve-out for lawful on-duty meal periods as this can be addressed by hiring another individual to relieve the employee to their lawfully entitled meal periods.

Additionally, Defendant has failed to provide the time records showing when Plaintiff began his meal period and when he ended his "on duty" meal period. On occASCon, Plaintiff experienced late meal periods, as he was unauthorized to take a meal period before the fifth hour of work. Plaintiff additionally missed meal periods on ten-hour workdays. 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.

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. Specifically, as mentioned in the various sections above, Defendant had a strict policy which prohibited Plaintiff and other aggrieved employees from leaving the premises for 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.

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 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. Defendant did not provide Plaintiff with any written notice of the amount of sick leave available to him. Defendant has a policy of not providing any sick leave forcing its employees to take personal days off without pay instead. Defendants violated California’s sick pay laws accordingly, as employees did not accrue paid sick hours, were unable to use paid sick leave hours, and Defendants failed to maintain the necessary records and provide the required notices regarding sick pay as well.

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.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ meal and rest period premium pay, including at the lawful rate of compensation. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each pay day in violation of Labor Code sections 204 and/or 204b.

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.

Due to the premium underpayments, Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

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

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

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

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

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

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

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

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

First, Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees to use their personal cell phones for business purposes. Plaintiff and the aggrieved employees received calls and messages from colleagues, supervisors, and managers. Plaintiff and aggrieved employees were required to answer anytime a manager or supervisor contacted them. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and aggrieved employees were required to use their personal cell phone to maintain contact with supervisors and managers. Specifically, as a supervisor, Plaintiff would routinely use his personal cell phone to coordinate scheduling with supervisors and subordinate employees. As a result, Plaintiff incurred expenditures due to Defendants failure to properly reimburse Plaintiff.

Thus, in direct consequences of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. To the extent Defendants reimbursed aggrieved employees, those amounts were underpaid. At all times. Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

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

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

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

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

Defendants failed to provide all records upon Plaintiff’s request. 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.

Unlawful Employment Condition
Violation of Labor Code § 432.5

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

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

Defendant required Plaintiff and all other aggrieved employees to sign an acknowledgement that they have received all their rest and meal periods with pay and that if they did work through any meal periods that it was voluntary and they were paid for it. Part of the language in the acknowledgement that employees are required to sign is below:

I hereby certify and declare under penalty of perjury in the state of California that (1) I have received all the rest periods and meal periods that I was Legally entitled to on each work day within the pay period covered by this work schedule (2) this work schedule fully and accurately reports all the time that I have worked during the covered pay period, (3) if I was required to work through my meal period, I was paid to do so and did it voluntarily and (4) I am making this declaration freely, voluntarily and without duress or undue influence, and understand that I may revoke this agreement in writing at any time.

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

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

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Sergio Avila

Arthur D. Morrow, Defense Counsel
art@DeCastroMorrow.com