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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/21/2023 at 01:45:00 PM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

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

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

Plaintiff,

vs.

TCP - THE CHILDREN'S PLACE, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00021324-CU-OE-CTL

*Assigned to the Hon. Matthew C. Braner
Department C-60*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

Action Filed: May 19, 2023

1 Plaintiff VALERIE VASQUEZ, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED REPRESENTATIVE ACTION COMPLAINT against Defendants TCP - THE
4 CHILDREN’S PLACE, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging
5 as follows:

6 **INTRODUCTION**

7 1. Defendants failed to pay overtime, sick pay, and Labor Code § 226.7 premiums at the
8 lawful “regular rate” that is inclusive of bonuses and other forms of remuneration.

9 2. Furthermore, Defendants did not pay out all accrued PTO upon separation of
10 employment to Plaintiff and, on information and belief, other aggrieved employees.

11 3. In addition to the regular rate violations that apply to Labor Code § 226.7 premiums
12 paid, Defendants also violated this statute by not providing premiums when due for non-compliant
13 meal and rest periods.

14 4. Defendants’ wage statements were non-compliant as a result of the unlawful wage
15 practices which deprived aggrieved employees of accuracy on their paystubs, and Defendants’ wage
16 statements also appeared to list an employer name different from the legal name of the employer.

17 5. For these reasons, Defendants are liable for the balance of the unpaid wages, interest,
18 penalties, including late payment and waiting time penalties, plus attorneys’ fees and costs of suit, all
19 in amounts according to proof.

20 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Valerie Vasquez

10. Plaintiff Vasquez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2016 to March 2023. Plaintiff worked as a Sales Lead.

11. 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

12. Defendant TCP - The Children's Place, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

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

GENERAL ALLEGATIONS

17. Defendants paid overtime to Plaintiff and aggrieved employees at a rate less than 1.5x the “regular rate” which would have factored in all non-excludable forms of pay, such as the place card bonus earned on her 01/13/2023 paystub.

18. Additionally, this practice of not adjusting the base rate (or multiple thereof) extended to paid sick leave, as Defendants paid sick pay at the base hourly rate for Plaintiff and aggrieved employees, rather than the statutory rate that is inclusive of all forms of non-excludable remuneration, like the bonuses Plaintiff and other aggrieved employees received.

19. On information and belief, Plaintiff alleges Defendants equally failed in their affirmative obligation to pay Labor Code § 226.7 premiums at the lawful regular rate of compensation based on the common payroll practice of failing to adjust the “regular rate” for premium pay and overtime.

20. As a separate basis for meal period liability, Plaintiff alleges that, despite non-compliant meal periods evident on the face of Plaintiff’s records and the records of other aggrieved employees, Defendants failed to pay a meal period premium when those premiums were due.

21. Furthermore, upon separation of employment, Plaintiff had a PTO balance that was not duly paid out immediately upon separation. Defendants therefore have failed to comply with California law requiring vacation/PTO wages be paid out upon separation of employment with respect to Plaintiff and, on information and belief, other aggrieved employees.

22. Based on these violations, Defendants are liable for waiting time and late payment penalties, along with wage statement penalties for Defendants’ failure to accurately state gross and net

1 wages earned, and all hourly rates in effect and the corresponding number of hours worked at the
2 lawful rate actually in effect.

3 23. Finally, Defendants issued wage statements that listed a company name that is different
4 than the legal name that is the employer. The legal name is TCP – The Children’s Place, Inc.,
5 according to the California Secretary of State, but that name was not listed on employee wage
6 statements in violation of Labor Code section 226(a).

7 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

24 28. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
25 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
26 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
27 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
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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 29. 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 30. 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 31. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
13 penalties under the PAGA.

14 32. On or about **May 16, 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 33. 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 34. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
22 written PAGA notice from the LWDA.

23 35. 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 36. 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
28

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.*

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

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

38. 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

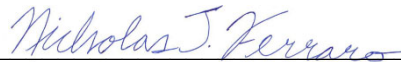
Plaintiff prays for judgment as follows:

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

- 1 b. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 c. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 d. For restitution and injunctive relief;
6 e. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code § 2699, and Code
8 of Civil Procedure section 1021.5; and
9 f. For such other relief the Court deems just and proper.

10
11 Dated: July 21, 2023

Ferraro Vega Employment Lawyers, Inc.

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13 

Nicholas J. Ferraro

Attorneys for Plaintiff Valerie Vasquez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

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May 16, 2023

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

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

TCP - The Children's Place, Inc.
500 Plaza Drive, Third Floor
Secaucus, NJ 07094

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

TCP - THE CHILDREN'S PLACE, INC.

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

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

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Sales Lead from about December 2016 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 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.

When Plaintiff and other aggrieved employees worked overtime, Defendants failed to pay overtime at the “regular rate of pay.” Defendants paid Plaintiff and other aggrieved employees a “Place Card Bonus” when customers signed up for a store credit card. Defendants failed to include that bonus and other remunerations in the overtime rate when employees worked overtime hours. Previously, Plaintiff and aggrieved employees had also received a Covid bonus that was not included in the regular rate.

Defendants paid overtime to Plaintiff and the aggrieved employees at a rate less than 1.5x the “regular rate” which would have factored in all non-excludable forms of pay, such as the place card bonus.

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

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
Holiday Overtime	01/01/2023-01/07/2023	3.88	27.75	107.67	107.67
Place Card Bonus	12/25/2022-12/31/2022			11.00	11.00
Regular	12/25/2022-12/31/2022	13.97	18.50	258.45	
Regular	01/01/2023-01/07/2023	23.48	18.50	434.38	692.83
Sick	12/25/2022-01/07/2023	5.00	18.50	92.50	92.50
Earnings		46.33		904.00	904.00

Excerpt from Plaintiff’s wage statement dated January 13, 2023 for the pay period from December 25, 2022 to January 07, 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 sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Specifically, based on the regular rate of pay allegations, when employees earned sick pay in the same pay period in which they earned bonuses, commissions, place card bonuses, or other forms of compensation, the sick pay was paid at the incorrect hourly rate. Previously, Plaintiff and aggrieved employees had also received a Covid bonus that was not included in the regular rate.

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

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
Holiday Overtime	01/01/2023-01/07/2023	3.88	27.75	107.67	107.67
Place Card Bonus	12/25/2022-12/31/2022			11.00	11.00
Regular	12/25/2022-12/31/2022	13.97	18.50	258.45	
Regular	01/01/2023-01/07/2023	23.48	18.50	434.38	692.83
Sick	12/25/2022-01/07/2023	5.00	18.50	92.50	92.50
Earnings		46.33		904.00	904.00

Excerpt from Plaintiff's wage statement dated January 13, 2023 for the pay period from December 25, 2022 to January 07, 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 Vacation Wages Violation of Labor Code § 227.3

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

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

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Plaintiff was laid off from her employment on March 27, 2023 and given her final check. However, at the time of Plaintiff's lay off, she had accrued one hour of paid time off which was not paid out.

An illustrative example of Defendants' failure to pay to Plaintiff's vacation time is found on Plaintiff's wage statement below:

Absence Plans	
Description	Available
FT PTO / PT Sick	1

Excerpt from Plaintiff's wage statement dated March 27, 2023 for the pay period from March 19, 2022 to April 01, 2023 with Plaintiff's unpaid PTO.

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.

Specifically, based on the regular rate of pay allegations, to the extent aggrieved employees earned meal or rest period premium in the same pay period in which they earned bonuses, commissions, or other forms of compensation, such as the place card or other bonuses, the premiums were paid at the incorrect hourly rate.

Additionally, as a separate basis for meal period penalty liability, Defendants also failed to pay all meal period premiums owed for late, short, or missed or interrupted lunches. This practice includes violations evident on the face of the aggrieved employees' time records and further

extends to managers editing time records to reflect a phantom meal period, evident from time edit reports.

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.

Specifically, based on the regular rate of pay allegations, to the extent aggrieved employees earned meal or rest period premium in the same pay period in which they earned bonuses, commissions, or other forms of compensation, such as the place card or other bonuses, the premiums were paid at the incorrect hourly rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code 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.

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, sick leave, 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. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each pay day, as a result of the violations set forth and explained in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees 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 discussed above, Plaintiff was laid off on March 27, 2023 and was given her final paycheck. Plaintiff has one hour of accrued PTO that has still yet to be paid out by Defendants.

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

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

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

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

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

owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants listed the incorrect name of the employer on their paystub for aggrieved employees in violation of Labor Code section 226(a)(8), as the paystubs list “The Children’s Place, Inc.” when the legal entity registered with the Secretary of State is “TCP – The Children’s Place, Inc.”

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 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,



Nicholas J. Ferraro

Cc Plaintiff Valerie Vasquez