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Superior Court of California,
County of San Diego
07/14/2023 at 03:09:00 PM
Clerk of the Superior Court
By Jimmy Siharath, Deputy Clerk

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

MANUEL FERNANDEZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

VLS ENVIRONMENTAL SOLUTIONS, LLC;
VLS RECOVERY SERVICES, LLC; VLS SAN
DIEGO, LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00021038-CU-OE-CTL

*Assigned to the Hon. Richard S. Whitney
Dept. C-68*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed: May 16, 2023

1 Plaintiff MANUEL FERNANDEZ, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants VLS
4 ENVIRONMENTAL SOLUTIONS, LLC; VLS RECOVERY SERVICES, LLC; VLS SAN DIEGO,
5 LLC; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action for wage and hour violations for the California Labor Code against
8 VLS Environmental Solutions, LLC; VLS Recovery Services, LLC; and VLS San Diego, LLC who
9 together operate as VLS.

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

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

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

17 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Manuel Fernandez

9. Plaintiff is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about 2017 through the present. Plaintiff works as a Warehouse Worker.

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

B. Defendants

11. Defendant VLS Environmental Solutions, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant VLS Recovery Services, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant VLS San Diego, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

17. 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

18. 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.

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

20. 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 are 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.

21. 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

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

23. In addition to earning hourly compensation, Defendants paid Plaintiff and class members other forms of non-discretionary remuneration. Defendants failed to include employees'

1 additional remuneration in the regular rate of pay used to calculate and pay overtime, sick pay, and
2 Labor Code § 226.7 premiums.

3 24. Plaintiff and class members received non-discretionary bonus payments at the
4 beginning of each calendar year.

5 25. Plaintiff and class members also received fringe benefits separate from their base
6 hourly pay.

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

10 27. An illustrative example of this practice appears on Plaintiff's wage statement dated
11 February 24, 2023 for the pay period of February 6, 2023 to February 19, 2023 where Plaintiff earned
12 a moving bonus of \$1,500, which was not calculated into Plaintiff's overtime or double overtime pay
13 for the same pay period. Defendant paid Plaintiff's overtime and double overtime at a multiple of his
14 hourly rate of \$24.06 rather than at the lawful multiple of his regular rate of pay.

15 28. Another illustrative example of this practice appeared on Plaintiff's wage statement
16 dated December 2, 2022 for the pay period of November 14, 2022 to November 27, 2022 where
17 Plaintiff earned a fringe benefit of \$26.18, which was not calculated into Plaintiff's overtime or double
18 overtime pay for the same pay period. Defendant paid Plaintiff's overtime and double overtime at his
19 hourly rate of \$22.91 rather than his regular rate of pay.

20 29. Another illustrative example of this practice appeared on Plaintiff's wage statement
21 dated April 8, 2022 for the pay period of March 21, 2022 to April 3, 2022 where Plaintiff earned a
22 fringe benefit of \$20.60, which was not calculated into Plaintiff's overtime or double overtime pay for
23 the same pay period. Defendant paid Plaintiff's overtime and double overtime at his hourly rate of
24 \$22.91 rather than his regular rate of pay.

25 30. Additionally, Defendants failed to consistently provide compliant first and second meal
26 periods to Plaintiff and class members, in violation of Labor Code §§ 226.7, 512, and § 11 of the
27 applicable IWC Wage Orders. Plaintiff and the class members often experienced late, short, missed,
28

1 and interrupted meal periods due to staffing issues, employees' responsibilities, and the steady flow
2 of work.

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

7 32. An illustrative example of this practice appears on Plaintiff's wage statement dated
8 December 30, 2022 for the pay period of December 12, 2022 to December 25, 2022 where Plaintiff
9 earned a fringe benefit of \$18.49, which was not calculated into Plaintiff's meal premium pay.
10 Defendant paid Plaintiff's meal premium at his straight rate of pay of \$22.92 per hour rather than at
11 his regular rate of pay.

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

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

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

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

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

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **Violation of Labor Code §§ 510 and 1194**

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

10 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
12 wages all overtime hours worked, and which further provide a private right of action for an employer's
13 failure to pay all overtime compensation for overtime hours worked.

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

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

24 **SECOND CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **Violation of Labor Code §§ 226.7 and 512**

27 42. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

48. 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.

49. 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).

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

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

52. 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”].)

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

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

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

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the

1 employee's total hours worked in the full pay periods of the prior 90 days of
2 employment.

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

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

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

12 56. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
13 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
14 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
15 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
16 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
17 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
18 to September 30, 2022, and may be extended thereafter.

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

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

24 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
25 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
26 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.

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

60. 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.

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

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

63. 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.

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

5 77. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

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

24 83. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
2 for each subsequent violation.”

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

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

8 86. On or about May 9, 2023, Plaintiff paid the requisite PAGA filing fee and provided
9 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
10 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
11 violations.

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

15 88. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
16 written PAGA notice from the LWDA.

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

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

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

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

- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

92. 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;

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

6 Dated: July 14, 2023

Ferraro Vega Employment Lawyers, Inc.

8 

9 Nicholas J. Ferraro

10 *Attorneys for Plaintiff Manuel Fernandez*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
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May 9, 2023

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

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

VLS Environmental Solutions, LLC
19500 State Hwy 249, Suite 440
Houston, Texas 77070

VLS San Diego, LLC
19500 State Hwy 249, Suite 440
Houston, Texas 77070

VLS Recovery Services, LLC
19500 State Hwy 249, Suite 440
Houston, Texas 77070

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

VLS ENVIRONMENTAL SOLUTIONS, LLC;
VLS RECOVERY SERVICES, LLC;
VLS SAN DIEGO, LLC

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

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

by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Warehouse Worker from about 2017 through the present. 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 non-discretionary “Bonuses” and other forms of remuneration that Defendants failed to include in the overtime rate when employees worked overtime hours. Defendants paid overtime to Plaintiff and the aggrieved employees at a rate less than 1.5x the regular rate which would have factored in remuneration payments. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned bonuses, or other forms of non-excludable remuneration, such as fringe benefits. Defendants should have (but failed to) pay overtime “at a rate of no less than one and one-half the regular rate of pay for an employee” and “twice the regular rate of pay” for double time hours are required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

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

PERSONAL AND CHECK INFORMATION			EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Manuel Fernandez Acosta					Fringe Benefits			74.0100	1781.24
Soc Sec #: xxx-xx-xxxx Employee ID: 966613					Hourly			293.9700	7010.72
Home Department: 303140 SD- Ops Industrial Svcs					Double Time			15.7500	754.04
Pay Period: 02/06/23 to 02/19/23					Overtime			108.9400	3906.35
Check Date: 02/24/23 Check #: 58383					Bonus		1500.00		1500.00
NET PAY ALLOCATIONS					Holiday			16.0000	366.68
					PTO			16.0000	366.68
DESCRIPTION THIS PERIOD (\$) YTD (\$)					Total Hours			524.6700	
Check Amount 0.00 0.00					Gross Earnings		1500.00		15685.71
Chkg 090 1168.76 8920.46					Total Hrs Worked				
NET PAY 1168.76 8920.46									
			OTHER	Do not increase Net Pay	DESCRIPTION		THIS PERIOD (\$)		YTD (\$)
					Group Term Life				24.40
					PX401 ERMTC		75.00		785.50

Excerpt from Plaintiff's wage statement dated February 24, 2023 for the pay periods of February 6, 2023 to February 19, 2023 with the non-discretionary bonus.

PERSONAL AND CHECK INFORMATION			EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Manuel Fernandez Acosta					Fringe Benefits			74.0100	1781.24
Soc Sec #: xxx-xx-xxxx Employee ID: 966613					Hourly	77.9700	240.75	1876.54	293.9700
Home Department: 303140 SD- Ops Industrial Svcs					Overtime	27.4800	36.1013	992.06	108.9400
Pay Period: 02/06/23 to 02/19/23					Double Time	1.1700	48.1260	56.32	15.7500
Check Date: 02/24/23 Check #: 58382					Holiday				16.0000
NET PAY ALLOCATIONS					PTO				16.0000
DESCRIPTION THIS PERIOD (\$) YTD (\$)					Total Hours	106.6200		524.6700	
Check Amount 0.00 0.00					Gross Earnings		2924.92		14185.71
Chkg 090 1486.07 7751.70					Total Hrs Worked	106.6200			
NET PAY 1486.07 7751.70									
			OTHER	Do not increase Net Pay	DESCRIPTION		THIS PERIOD (\$)		YTD (\$)
					Group Term Life		4.88		24.40
					PX401 ERMTC		146.49		710.50

Excerpt from Plaintiff's wage statement dated February 24, 2023 for the pay periods of February 6, 2023 to February 19, 2023 with the improper OT pay.

Plaintiff's record shows that Plaintiff was paid a bonus of \$1,500 in the same period he worked overtime. Plaintiff's overtime rates were calculated based on 1.5x Plaintiff's hourly rate, but failed to factor in the bonus Plaintiff earned in the amount of \$1,500. As such, Defendants failed to pay overtime at a 1.5x (or 2x, as applicable) multiple of the "regular rate of pay." The failure to pay overtime at the regular rate resulted in an underpayment of overtime wages pursuant to Labor Code § 510's obligation to pay overtime at one and one-half times the regular rate of pay.

Defendants committed the same regular rate of pay violation with respect to cash in lieu of fringe benefits, which were not factored into the respective "regular rate of pay" for overtime wages for Plaintiff and the aggrieved employees, as evident as follows:

PERSONAL AND CHECK INFORMATION			EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Manuel Fernandez Acosta					Fringe Benefits		26.16		231.73
Soc Sec #: xxx-xx-xxxx Employee ID: 966613					Hourly	80.0000	2231.75	1833.40	1773.7700
Home Department: 303140 SD- Ops Industrial Svcs					Meal Premium			3.0000	66.06
Pay Period: 11/14/22 to 11/27/22					Overtime	30.4500	31.7901	1046.76	543.4700
Check Date: 12/02/22 Check #: 54501					Double Time	0.5000	45.6800	22.92	21.9800
NET PAY ALLOCATIONS					Holiday	16.0000	2231.75	366.68	94.0000
DESCRIPTION THIS PERIOD (\$) YTD (\$)					PTO			82.0000	1879.24
Check Amount 0.00 0.00									
Chkg 090 1656.60 42019.39									
NET PAY 1656.60 42019.39									
TIME OFF (Based on Policy Year)									
DESCRIPTION CURR/DUCT AVAILBL									
Covid SPFL 0.00 hrs 40.00 hrs									
DESCRIPTION CURR/DUCT AVAILBL									
Covid SPFL 0.00 hrs 40.00 hrs									
DESCRIPTION CURR/DUCT AVAILBL									

Excerpt from Plaintiff's wage statement dated December 2, 2022 for the pay periods of November 14, 2022 to November 27, 2022 with the improper OT pay.

PERSONAL AND CHECK INFORMATION		EARNINGS					
Manuel Fernandez Acosta		BASIS OF DESCRIPTION		HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec #: XXX-XX-XXXX Employee ID: 966613		PAY					
Home Department: 303140 SD- Ops Industrial Svcs		Fringe Benefits			20.60		205.55
Pay Period: 03/21/22 to 04/03/22		Hourly		80.00	22.9175	1833.40	11715.37
Check Date: 04/08/22 Check #: 45950		Meal Premium				2.00	45.17
NET PAY ALLOCATIONS		Overtime		42.89	34.3763	1474.40	5540.44
		Double Time		0.93	45.8350	42.63	481.13
		Holiday				16.00	356.00
		PTO				8.00	183.34
		Total Hours		123.82		715.02	
		Gross Earnings				3371.03	18527.00
		Total Hrs Worked		123.82			
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	OTHER	DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	

Excerpt from Plaintiff's wage statement dated April 8, 2022 for the pay periods of March 21, 2022 to April 3, 2022 with the improper OT pay.

Plaintiff's record shows that Plaintiff was regularly paid a cash in lieu of "fringe benefit" payments in the same period he worked overtime. Plaintiff's overtime rates were calculated based on 1.5x Plaintiff's base hourly rate, but failed to factor in the fringe benefits payments Plaintiff and other aggrieved employees earned in the same pay periods, respectively. The failure to pay overtime at the regular rate resulted in an underpayment of overtime wages pursuant to Labor Code § 510's obligation to pay overtime at one and one-half times the regular rate of pay.

Defendants committed the same regular rate of pay violations against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage."

Donohue v. AMN Services, LLC (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and aggrieved employees experienced missed, late, short, and interrupted meal periods due to understaffing and to keep up with the high demand of the job. When Plaintiff and other aggrieved employees experienced these missed, late, short, and interrupted meal periods, Defendants failed to pay meal period premiums at the regular rate as required by Labor Code section 226.7.

Defendants underpaid Plaintiff and other aggrieved employees who earned a meal period premium in the same pay period where they earned cash in lieu of fringe benefit payments, bonuses, or other forms of non-excludable remuneration because these premiums were not paid at the “regular rate of compensation” as the premiums paid did not factor in the fringe benefit payments and bonuses, among other forms of remuneration.

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

PERSONAL AND CHECK INFORMATION				EARNINGS			
Manuel Fernandez Acosta				BASIS OF DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS
[REDACTED]				PAY			YTD (\$)
Soc Sec #: XXX-XX-XXXX Employee ID: 966613				Fringe Benefits		18.49	250.22
Home Department: 303140 SD- Ops Industrial Svcs				Hourly	72.0000	229.175	1650.06
Pay Period: 12/12/22 to 12/25/22				Meal Premium	1.0000	229.175	22.92
Check Date: 12/30/22 Check #: 55882				Overtime	33.1000	34.375	1137.86
NET PAY ALLOCATIONS				Double Time	0.9300	45.300	42.63
				Bonus			
				Holiday	8.0000	229.175	183.34
				PTO			82.0000
				Total Hours	115.0300		2701.8800
				Gross Earnings		3055.30	71452.62
				Total Hrs Worked	107.0300		
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)					
Check Amount	0.00	0.00					

Excerpt from Plaintiff’s wage statement dated December 30, 2022 for the pay periods of December 12, 2022 to December 25, 2022 with the improper premium pay.

Plaintiff’s records show that Plaintiff earned a fringe benefit in the amount of \$18.49 in the same period he earned meal premium payments. Defendants failed to pay meal premiums at the lawful rate by electing to pay the base hourly rate rather than at the regular rate of pay. Plaintiff was paid \$22.92 which one hour of straight pay. Defendants failed to pay Plaintiff

his meal period premium at the regular rate of pay. The failure to pay meal period premiums at the regular rate resulted in an underpayment of meal period premium wages pursuant to Labor Code § 226.7's obligation to pay premiums at the "regular rate of compensation," rather than the base hourly rate. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862.

Defendants committed the same regular rate of pay violations against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

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.

As explained above, Plaintiff and other employees experienced interrupted and missed rest periods due to the same reasons they experienced interrupted and missed meal periods. When Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

On information and belief, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such

premiums were not paid at the correct regular rate of compensation to aggrieved employees, which would have factored in bonuses and other forms of compensation. As discussed throughout this correspondence, Defendants had a non-compliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiff alleges the rest period premiums were equally deficient with respect to payments made to the aggrieved employees.

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. This is in relation to the failure to pay paid sick leave at the lawful statutory rate, as addressed above, due to the regular rate violations pled herein.

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.

Due to Defendants' failure 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, 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.

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.

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

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

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope of 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 Manuel Fernandez

Arden Lynn Achenberg
Arden@greatlaw.com