

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

Attorneys for Plaintiff Roberto Mendez

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

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

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

Plaintiff,

vs.

DEPLOYED SERVICES, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00036201-CU-OE-CTL

Hon. Keri Katz
Dept. 74

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Overtime Wages Owed (FLSA, 29 U.S.C. § 201 et seq.)
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
10. Violation of the Private Attorneys General Act (Labor Code §§ 2698 et seq.)

1 Plaintiff ROBERTO MENDEZ, 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 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 DEPLOYED SERVICES, LLC and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action for Deployed Services’ wage and hour
8 violations.

9 2. Defendants underpaid the class members’ wages by failing to include all forms of
10 remuneration, including cash in lieu of benefits payments, into the regular rate of pay calculation for
11 their hourly overtime, sick, and premium wages.

12 3. Defendants also failed to maintain compliant meal and rest period policies and
13 practices, resulting in a failure to pay all wages and premiums owed to the class members at the lawful
14 rate.

15 4. Defendants’ employment policies and practices and payroll administration systems
16 enabled and facilitated these violations on a company-wide basis with respect to the class members.

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. This Court retains jurisdiction over the federal wage claims under the Fair Labor
21 Standards Act, 29 U.S.C. § 216(b), which states collective actions “may be maintained against any
22 employer ... in any Federal or State court of competent jurisdiction.”

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 Roberto Mendez

10. Plaintiff Mendez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about January 2023 to April 2023. Plaintiff worked as a Housekeeping and Laundry Supervisor.

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. Throughout the respective statutory periods, the Defendants were a legal employer of Plaintiff and the class members.

13. Defendant Deployed Services, 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 pursues the requested relief on behalf of the following California Class:

a. All current and former non-exempt hourly employees of Deployed Services [1] who worked in the State of California at any time during the four years (plus 178 day tolling period under Emergency Rule No. 9) preceding the filing of this action through the present date, and [2] who were paid overtime wages and/or Labor Code § 226.7 premiums in the same pay period in which they were also paid cash-in-lieu of benefits (including but not limited to “HEALTH & WELF” payments) (hereinafter, the “California Class Members” or “California Class” and the “California Class Period”).

20. Additionally, with respect to Plaintiff's claim for unpaid meal period premiums, Plaintiff pursues the requested relief on behalf of the following California Meal Period Class:

a. All current and former non-exempt hourly employees of Deployed Services [1] who worked in the State of California at any time during the four years (plus

1 178 day tolling period under Emergency Rule No. 9) preceding the filing of this
2 action through the present date, and [2] whose time records reveal a legal
3 entitlement to an unpaid 30 minute meal period, and [3] whose corresponding
4 wage statement reveals a failure to pay a meal period premium, in any amount,
5 for that workday. (hereinafter, the “California Meal Period Class”).

6 21. Plaintiff is a member of the California Class he seeks to represent because he worked
7 in the State of California within the past four years (including within the past 12 months) for Deployed
8 Services, and because he was paid overtime wages and wages/premiums under Labor Code § 226.7 in
9 pay periods in which he was also paid cash in lieu of benefits.

10 22. Plaintiff estimates that the California Class, including current and former employees
11 during the California Class Period, will exceed one hundred members, though the precise number of
12 individuals in the California should be readily available from Deployed Services’ personnel file
13 records and other personnel and pay records they are required to keep and maintain under state and
14 federal laws.

15 23. Plaintiff seeks to certify subclasses of the California Classes:

16 a. All California Class Members whose employment with Deployed Services
17 terminated at any time during the three years (plus 178 day tolling period under
18 Emergency Rule No. 9) preceding the filing of this action through the present
19 date (hereinafter, the “Waiting Time Subclass”).

20 b. All California Class Members who received a wage statement from Deployed
21 Services at any time during the one-year period preceding the filing of this
22 action through the present date which included a description of payment for
23 paid cash-in-lieu of benefits (including but not limited to “HEALTH & WELF”
24 payments) in the same pay period in which they earned overtime, sick pay, or
25 Labor Code § 226.7 premiums (hereinafter, the “Wage Statement Subclass”).

26 24. The class is ascertainable and shares a well-defined community of interest in this
27 litigation:
28

1 25. **Ascertainability**: The proposed California Class and its subclasses are ascertainable
2 because they can be identified and located using Deployed Services' payroll, employment, and
3 personnel records.

4 26. **Numerosity**: The potential members of the California Class and its subclasses as
5 defined is so numerous that joinder of all members would be infeasible and impractical. The
6 disposition of their claims through this class action will benefit both the parties and this Court. The
7 number of members of the California Class and subclasses is unknown to Plaintiff but is estimated to
8 be more than 100 individuals. The number and identity of members can be readily ascertained using
9 Deployed Services' records.

10 27. **Typicality**: Plaintiff's claims are typical of California Class and its subclasses because
11 all sustained similar damages arising out of Deployed Services' common course of conduct in
12 violation of law, particularly with respect to Deployed Services failure to include all forms of
13 remuneration in the regular rate of pay for purposes of calculating and paying overtime and Labor
14 Code § 226.7 wages.

15 28. **Adequacy**: Plaintiff is an adequate representative of the California Class, will fairly
16 protect the interests of California Class, has no interests antagonistic to California Class Members. He
17 will vigorously pursue this lawsuit. Plaintiff's attorneys are competent, skilled, and experienced in
18 litigating large wage and hour class actions.

19 29. **Superiority**: A class action is superior to other available means for the fair and
20 efficient adjudication of this controversy. Each California Class Member has been damaged, and is
21 entitled to recovery, because of Deployed Services unlawful policies. A class action will allow
22 litigation of claims in the most efficient and economical manner for the parties and judicial system.
23 Plaintiff is unaware of any likely difficulties in managing this action that precludes a class action.

24 30. Although Plaintiff and the California Class Members may have had different job titles,
25 worked in different cities and counties, and received different hourly rates of pay, this action may be
26 properly maintained as a class action because Plaintiff and the California Class were similarly situated:

27 31. Plaintiff and the California Class Members were all hourly, non-exempt employees.
28

32. Plaintiff and the California Class Members were subject to Deployed Services' policies, practices, and directives with respect to overtime pay.

33. Plaintiff and the California Class Members were paid overtime wages and/or premium wages under Labor Code § 226.7.

34. Plaintiff and the California Class Members were also paid cash-in-lieu of benefits, such as the “HEALTH & WELF” payments.

35. Regardless of their job title or location, Deployed Services did not pay Plaintiff and the California Class Members at an overtime rate of at least 1.5x their regular rate of pay for all overtime hours.

36. Regardless of their job title or location, Deployed Services did not pay Plaintiff and the California Class Members premium pay under Labor Code § 226.7 at the lawful regular rate of compensation.

GENERAL ALLEGATIONS

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

38. In addition to earning hourly compensation, Defendants paid Plaintiff and the class members other forms of non-discretionary remuneration, including fringe benefit cash payments. When Defendants paid overtime or double time pay to Plaintiff and the class members, Defendants failed to include employees' additional remuneration into the regular rate of pay used to calculate and pay overtime.

39. For example, in the pay period of March 5, 2023 to March 11, 2023, Plaintiff earned \$153.60 as a cash payment in lieu of benefits. Plaintiff also earned overtime in this period, which was paid at 1.5 times his straight hourly rate, rather than at the regular rate of pay, which would have included the cash payment in the calculation of his overtime rate.

40. Additionally, Defendants failed to pay meal and rest period premiums to Plaintiff and the class members at the regular rate of compensation. Defendants did not consistently pay all meal and rest premiums and, to the extent paid, Defendants improperly excluded all forms of additional

1 remuneration, such as the cash benefits, from the calculation of the premium pay. Instead, Defendants
2 paid these premiums to Plaintiff and the class members at their respective base hourly rates.

3 41. An illustrative example of this violation appears on Plaintiff's wage statement from the
4 period March 19, 2023, to March 25, 2023, reflecting two premiums paid at his base hourly rate of
5 \$22 rather than at the "regular rate," including all earnings and factoring in cash fringe benefits. As a
6 result of Defendants' failure to include all earnings in the premium rate, Defendants underpaid Plaintiff
7 and the class members in those applicable pay periods.

8 42. Likewise, in the pay period of April 2, 2023, to April 8, 2023, Plaintiff suffered two
9 late meal periods on April 7, 2023, and April 8, 2023 on days that Plaintiff worked over six hours.
10 Despite these late meal periods, Defendants did not pay any meal premiums on Plaintiff's
11 corresponding wage statement on April 24, 2023, for the applicable pay period.

12 43. On information and belief, Plaintiff allege the class members were underpaid rest
13 period premiums. To the extent any rest period premiums were paid, they were underpaid as a result
14 of Defendants' policy and practice of not including all forms of remuneration in the calculation of the
15 regular rate of pay at which such rest period premiums must be paid.

16 44. On information and belief, Plaintiff allege the class members were underpaid sick
17 leave. To the extent any sick leave was paid, those wages were underpaid as a result of Defendants'
18 policy and practice of not including all forms of remuneration in the calculation of the regular rate of
19 compensation at which such sick leave must be paid.

20 45. Because of these violations, Defendants failed to provide accurate itemized wage
21 statements to class members that included the accurate gross or net wages earned, as the employees
22 earned overtime pay and premiums, which were not paid at the lawful rate in light of the regular rate
23 violations.

24 46. Likewise, overtime and premium wages were paid at inaccurate hourly wage rates (i.e.
25 the base rate or a multiple of the base rate for overtime instead of the regular rate) which violates the
26 wage statement requirement to include the correct hourly rate in effect each pay period along with the
27 correct number of hours. Therefore, Defendants have provided inaccurate and non-compliant wage
28 statements to the class members.

47. Furthermore, in each pay period in which Defendants paid cash in lieu of fringe benefits, Defendants violated Labor Code § 226(a)(9) by failing to state the hourly rate at which the earnings were paid and the corresponding number of hours at that rate. Instead, Defendants simply listed the gross amount paid without listing rates or hours.

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

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

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

Violation of 29 U.S.C §§ 201 *et seq.*

50. Plaintiff brings the First Cause of Action individually and on behalf of all others similarly situated pursuant to 29 U.S.C. § 216(b) to recover unpaid overtime wages, liquidated damages, and other damages related to Deployed Services' violation of the FLSA.

51. Plaintiff pursues the requested relief on behalf of the following FLSA Collective:

52. All current and former non-exempt hourly employees of Deployed Services [1] who worked in the United States of America at any time during the three years preceding the filing of this action through the present date, and [2] who were paid overtime wages in the same pay period in which they were also paid cash-in-lieu of benefits payments and other forms of non-excludable remuneration (hereinafter, the “FLSA Collective” and the “FLSA Period”).

53. Plaintiff is a member of the FLSA Collective he seeks to represent because he worked in the United States of America within the past three years for Deployed Services and he was paid overtime wages in the same pay period in which he was paid cash in lieu of benefits.

54. Although Plaintiff and the FLSA Collective may have had different job titles, worked in different states or at different locations, and received different hourly rates of pay, this action may be properly maintained as a collective action because Plaintiff and the FLSA Collective were similarly situated as follows:

1 55. Plaintiff and the FLSA Collective were all hourly, non-exempt employees.

2 56. Plaintiff and the FLSA Collective were subject to Deployed Services' policies,
3 practices, and directives with respect to overtime pay.

4 57. Plaintiff and the FLSA Collective were paid overtime wages.

5 58. Plaintiff and the FLSA Collective were paid cash-in-lieu of benefits and differentials
6 and other forms of non-excludable remuneration.

7 59. Regardless of their job title or location, Deployed Services did not pay Plaintiff and the
8 FLSA Collective at an overtime rate of at least 1.5x their regular rate of pay for all overtime hours.

9 60. Plaintiff estimates that the FLSA Collective, including current and former employees
10 during the FLSA Period, will exceed one hundred members, though the precise number of individuals
11 in the FLSA Collective should be readily available from Deployed Services' personnel file records
12 and other personnel and pay records they are required to keep and maintain under state and federal
13 laws.

14 61. The First Cause of Action is properly brought and maintained as an opt-in collective
15 action. 29 U.S.C. 216(b). The FLSA Collective can be provided notice by first class mail and/or email
16 to the last addresses known to their employer.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

21 63. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
23 wages all overtime hours worked, and which further provide a private right of action for an employer's
24 failure to pay all overtime compensation for overtime hours worked.

25 64. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
26 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
27 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
28 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours

1 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
2 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
3 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

4 65. Plaintiff and class members are entitled to recover the full amount of the unpaid
5 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
6 extent permitted by law.

7 **THIRD CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

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

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

11 67. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
12 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
13 meal period premiums in lieu thereof), and which further provide a private right of action for an
14 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
15 regular rate of compensation.

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

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

70. 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.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

72. 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.

73. 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).

74. 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.

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

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

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

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

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

20 79. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
21 of the lawful rates set forth in the statute because Defendants failed to include in their sick leave
22 calculation the additional remuneration received by Plaintiff and class members.

23 80. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
24 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
25 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code
26 sections 246, 248.1, 248.2, and 248 et seq.

27 81. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
28 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to

1 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
2 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
3 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
4 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
5 to September 30, 2022, and may be extended thereafter.

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

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

11 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
12 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
13 the employee actually works overtime in that workweek.

14 (II) Calculated by dividing the covered employee's total wages, not including
15 overtime premium pay, by the employee's total hours worked in the full pay periods
16 of the prior 90 days of employment.

17 (III) The state minimum wage.

18 (IV) The local minimum wage to which the covered employee is entitled.

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

21 85. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
22 Leave in the manner described above because Defendants failed to include in their sick leave
23 calculation the additional remuneration received by class members.

24 86. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
25 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

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

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

8 95. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
9 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
10 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 226(e).

13 **EIGHTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

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

16 96. All outside paragraphs of this Complaint are incorporated into this section.

17 97. This cause of action is brought by a waiting time subclass pursuant to Labor Code
18 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
19 employment, and which further provide a private right of action to recover statutory waiting time
20 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
21 wages.

22 98. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
23 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
24 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
25 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
26 Code sections 201 through 203 and the IWC Wage Orders.

27 99. Plaintiff and class members are entitled to recover a waiting time penalty for a period
28 of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

5 101. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in the State of California in violation of California Business and Professions Code § 17200
7 by committing the foregoing wage and hour violations alleged throughout this Complaint.

8 102. Defendants' dependance on these unfair and/or unlawful business practices deprived
9 Plaintiff and continue to deprive other class members of compensation to which they are legally
10 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
11 Defendants over competitors who have been and/or are currently employing workers in compliance
12 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
13 business acts and practices in violation of Business and Professions Code section 17200 et seq.

14 103. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
15 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
16 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
17 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

18 104. Plaintiff does not have an adequate remedy at law for past or future violations, to the
19 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
20 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
21 violations do not provide a private right of action.

22 105. Plaintiff and class members are entitled to injunctive relief against Defendants,
23 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
24 an ownership interest and to prevent future damage and the public interest under Business and
25 Professions Code § 17200 et seq. Plaintiff and class members are further entitled to recover interest,
26 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
27 § 1021.5.

1 **TENTH 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)**

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

6 107. 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 a. 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
11 PAGA notice through date of trial.

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

14 109. 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.”])

18 110. 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. “

24 111. 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.”

3 112. 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.”

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

8 114. On or about June 15, 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.

12 115. 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”).

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

17 117. 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.

20 118. 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.

24 119. 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. *Untimely Payment of Wages Upon Separation of Employment.* Violation of Labor Code §§ 201, 202, 203, 256.
- g. *Non-Compliant Wage Statements.* Violation of Labor Code §§ 226, 226.3.
- h. *Failure to Maintain Accurate Records.* Violation of Labor Code § 1174; IWC Wage Orders.

120. 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. Designating the named plaintiff ROBERTO MENDEZ as class representative of Class Members and designating Plaintiff's counsel of record as Class Counsel.
- b. Deployed Services be ordered to pay, and judgment entered for, all unpaid overtime wages for Plaintiff and the FLSA Collective, according to proof, pursuant to 29 U.S.C. § 216(b) for Deployed Services' violation of 29 U.S.C. § 207.
- c. Deployed Services be ordered to pay, and judgment entered for, an equal amount of unpaid overtime compensation as liquidated damages to Plaintiff and the FLSA Collective, according to proof, pursuant to 29 U.S.C. § 216(b) for Deployed Services' violation of 29 U.S.C. § 207.
- d. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

- e. Deployed Services be ordered to pay, and judgment be entered for, additional liquidated damages and and/or penalties to the California Class.
- f. Deployed Services be ordered to pay, and judgment entered for, all unpaid overtime wages to Plaintiff and the California Class, according to proof, pursuant to Labor Code § 1194 for Deployed Services' violation of Labor Code § 510.
- g. Deployed Services be ordered to pay, and judgment entered for, all unpaid premium wages to Plaintiff and the California Class, according to proof, pursuant to Labor Code § 226.7 for Deployed Services' violation of Labor Code § 226.7.
- h. Deployed Services be ordered to pay, and judgment entered for, Labor Code § 210 statutory penalties to Plaintiff and the California Class, according to proof.
- i. Deployed Services be ordered to pay, and judgment entered for, Labor Code § 226 penalties to Plaintiff and the Wage Statement Subclass, according to proof.
- j. Deployed Services be ordered to pay, and judgment entered for, Labor Code § 203 penalties to Plaintiff and the Waiting Time Subclass, according to proof.
- k. Deployed Services be found to have engaged in unfair competition in violation of Business and Professions Code § 17200 and be ordered to pay restitution to Plaintiff, and each California Class Member, due to Deployed Services' unlawful and unfair competition, including disgorgement of wrongfully obtained profits, and wrongfully withheld wages, according to proof, and interest, under Business and Professions Code §§ 17203 and 17204.
- l. Deployed Services be enjoined from further acts of unfair competition and specifically from failing to pay California Class Members overtime wages.
- m. Deployed Services be ordered to file with the Court and to provide Plaintiff's counsel a list of all names and current (or best known) addresses and emails of all Class Members and for facilitated notice under 29 USC § 216(b).
- n. For an award of a reasonable service award to the named plaintiff ROBERTO MENDEZ for the time, effort, and risk of protecting the interests of other Class Members.

- 1 o. For an award of attorneys' fees and costs pursuant to statute, including, but not limited
2 to, 29 U.S.C. § 216(b), Labor Code §§ 218.5, 226, 1194, California Code of Civil
3 Procedure § 1021.5.
- 4 p. For this action to be maintained as a representative action under the PAGA;
- 5 q. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as
6 if the action were brought by the State of California or the California Division of Labor
7 Enforcement;
- 8 r. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 9 s. For an award of prejudgment interest and post judgment interest;
- 10 t. For any other relief the court deems proper.

11 Dated: December 13, 2023

Ferraro Vega Employment Lawyers, Inc.

13 

14 Nicholas J. Ferraro

Attorneys for Plaintiff Roberto Mendez

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

June 15, 2023

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

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

Deployed Services, LLC
164 McPike Rd.
Rome, New York 13441

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

DEPLOYED SERVICES, 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. Plaintiff maintains standing to pursue

these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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 Housekeeping and Laundry Supervisor from about January 2023 to April 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 at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. This was due to Defendants’ policy and practice of failing to include fringe benefit cash payments to aggrieved employees like Plaintiffs in the “regular rate of pay” for purposes of overtime calculation. *See, e.g., Flores v. City of San Gabriel* (9th Cir. 1996) 83 F. 3d 292, 296 (holding cash payments made directly to employees were not excepted from the regular rate under the Health Insurance Exception because such payments were not made to a third party).

An illustrative example of this regular rate of pay violation appears on Plaintiff Mendez’s wage statement for the pay period of 3/5/2023 to 3/11/2023 (Pay Date: 3/17/2023):

Deployed Services, LLC	Period Beginning Date 3/5/2023	Pay Date 3/17/2023	Co. A1B	Clock	Home Dept 3155HK	Home Cost Number HK3155
Roberto Mendez 4370 Tremont Street Apt E San Diego, CA 92102	Period Ending Date 3/11/2023	WGPS Advance Pay Date	File # 126081	Number 00112376		Worked In Cost Number HK3155
Gross Pay						\$ 883.43
Regular	Rate: 22.2000		Hours: 30.25			\$ 671.55
Overtime	Rate: 33.3000		Hours: 1.75			\$ 58.28
Health & Welf (field 3)						\$ 153.60
Total Hours Worked: 32						
Basis of Pay: HOURLY						

As evident from the above example, Plaintiff Mendez earned \$153.50 in taxable income, denoted on the wage statement as “Health & Welf.” Plaintiff Mendez’s hourly base rate was \$22. Defendants paid him an overtime rate of \$33 (1.5 x \$22/hr.), which resulted in an underpayment of overtime. Defendants failed to factor in additional forms of remuneration, like the Health & Welf. benefit of \$153.50, into the regular rate of pay calculation for purposes of Plaintiff’s overtime rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 246 requires employers to provide paid sick leave to their 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.”

Plaintiff is informed, believes, and alleges that Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. To the extent aggrieved employees earned sick pay in the same pay period they earned other forms of non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek,” as the regular rate should have included fringe benefits for the reasons aforementioned.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders,

including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants violated California's meal period requirements in two distinct ways.

First, in violation of Labor Code 226.7, Defendants did not consistently pay meal period premiums for missed, late, short, or interrupted meal periods. Due to employee responsibilities, and the steady flow of business, Plaintiff and aggrieved employees were not always provided their 30-minute, duty-free meal period before their fifth hour of work on shifts over six hours.

Fri	04/07	01:50 PM	-	07:30 PM	5:30	3155HK	2857
	04/07	08:00 PM	-	11:30 PM	3:30	3155HK	2857
Sat	04/08	02:43 PM	-	07:50 PM	5:15	3155HK	2857
	04/08	08:36 PM	-	11:45 PM	3:00	3155HK	2857

As seen above on Plaintiff's time records for 4/7/2023 and 4/8/2023, Plaintiff was not able to take a meal period until after his fifth hour of work on shifts over 6 hours. Then, as demonstrated by the corresponding wage statement below for pay period 4/2/2023 to 4/8/2023 (Pay Date 4/14/2023), Defendants did not pay Plaintiff the meal premiums he was due for the late meal periods.

Deployed Services, LLC	Period Beginning Date 4/2/2023	Pay Date 4/14/2023	Co. A1B	Clock	Home Dept 3155HK	Home Cost Number HK3155
Roberto Mendez 4370 Tremont Street Apt E San Diego, CA 92102	Period Ending Date 4/8/2023	WGPS Advance Pay Date	File # 126081	Number 00152269		Worked In Cost Number HK3155
Gross Pay						\$ 1,149.38
Regular	Rate: 22.2000			Hours: 39.00		\$ 865.80
Overtime	Rate: 33.3000			Hours: 2.75		\$ 91.58
Health & Welf (field 3)						\$ 192.00
Total Hours Worked: 41.75						

Second, when Defendants *did* pay meal period premiums, Defendants did not pay the premiums at the lawful “regular rate” of compensation in violation of Labor Code 226.7, which models the “regular rate” calculation for overtime pay as held in *Ferra v. Loews Hollywood Hotel*. However, instead of including all forms of remuneration (i.e., cash benefits) in the regular rate for purposes of meal period premiums, Defendants excluded the cash benefits and paid Plaintiff and the aggrieved employees at their respective base hourly rate.

An illustrative example of this violation appears on Plaintiff Mendez’s wage statement below for the pay period of 3/19/2023 to 3/25/2023 (Pay Date 3/31/2023), reflecting two meal premiums paid at the base rate of \$22 rather than at the regular rate of compensation inclusive of all earnings and cash benefits.

Deployed Services, LLC	Period Beginning Date 3/19/2023	Pay Date 3/31/2023	Co. A1B	Clock	Home Dept 3155HK	Home Cost Number HK3155
Roberto Mendez 4370 Tremont Street Apt E San Diego, CA 92102	Period Ending Date 3/25/2023	WGPS Advance Pay Date	File # 126081	Number 00132368		Worked In Cost Number HK3155
Gross Pay						\$ 1,240.95
Regular	Rate: 22.2000			Hours: 40.00		\$ 888.00
Overtime	Rate: 33.3000			Hours: 3.50		\$ 116.55
Health & Welf (field 3)						\$ 192.00
PaidLunch Awd (field 3)	Rate: 22.2000			Hours: 2.00		\$ 44.40
Total Hours Worked: 45.5						

Because Defendants routinely failed to include all applicable earnings in the premium rate, Defendants underpaid plaintiffs and the aggrieved employees in those pay periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Plaintiff is informed, believes, and alleges that the same policies and practices regarding meal periods and meal premiums occurred with respect to rest periods and rest premiums. Defendants did not always authorize and permit Plaintiff and the aggrieved employees to take all of their rest periods. Furthermore, Defendants engaged in the practice of depriving Plaintiff and aggrieved employees of rest period premiums. To the extent aggrieved employees earned rest period premiums in the same pay period they earned other forms of non-excludable remuneration, those wages were underpaid due to the regular rate violations addressed above.

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, sick leave 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 wages, and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Specifically, Defendants failed to include all forms of remuneration in the regular rate of pay/compensation, as noted above, resulting in an underpayment of wages each payday, in violation of the forgoing sections of the Labor Code.

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. Specifically, Defendants did not pay the required “regular rate of pay,” inclusive of fringe benefits, to Plaintiff and the aggrieved employees for overtime, sick leave wages, meal premiums, or rest premiums, resulting in underpayment. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages, sick leave 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, sick leave wages, and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Defendants further violated 226(a)(9) by not listing the applicable rates for cash benefit wages in periods Plaintiff and the aggrieved employees earned the benefits, such as the “Health & Welf.” Category as well underpaid premiums.

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,

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

Nicholas J. Ferraro

Cc Plaintiff Roberto Mendez

Victoria Morehead
victoria.morehead@deployedservices.com