

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 Plaintiffs Phuong Tran and Loan Nguyen

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Superior Court of California,
County of San Diego

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

PHUONG TRAN and LOAN NGUYEN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

JOHNSON MATTHEY, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00029095-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiffs PHUONG TRAN and LOAN NGUYEN, individually and on behalf of all others
2 similarly situated and the State of California under the Private Attorneys General Act (“Plaintiffs”)
3 brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against
4 Defendants JOHNSON MATTHEY, INC. and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure section 382 for
8 Defendants’ violations of the California Labor Code and Business and Professions Code.

9 2. Defendants underpaid the class members’ wages by failing to include all forms of
10 remuneration, including bonuses and shift differentials, into the regular rate of pay calculation (or
11 other appropriate lawful method) for overtime, sick pay, and premiums.

12 3. Defendants also underpaid the class members’ wages by failing to pay at least the
13 applicable wage for all hours worked, despite Defendants requiring class members to undergo
14 mandatory work activities off the clock.

15 4. Defendants’ employment policies, 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. 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 Phuong Tran

9. Plaintiff Tran is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2021 to May 2023. Plaintiff worked as a Bench Tech.

B. Plaintiff Loan Nguyen

10. Plaintiff Nguyen is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2022 to April 2023. Plaintiff worked as a Production Operator.

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.”])

C. Defendants

12. Defendant Johnson Matthey, Inc. is a corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

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

b. Typicality: Plaintiffs' 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 Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.

- 1 c. Adequacy: Plaintiffs are an adequate class representative; will take all
2 necessary steps to protect the class members' interests adequately and fairly;
3 have no interest antagonistic to other class members; and are represented by
4 attorneys who have substantial experience prosecuting, defending, resolving,
5 and litigating wage and hour class, collective, and representative actions in
6 California state and federal courts.
- 7 d. Superiority: A class action is superior to other means for adjudicating this
8 dispute. Individual joinder is impractical. Class treatment will allow for
9 common issues to be resolved in a single forum, simultaneously, and without
10 duplication of effort and expense.
- 11 e. Public Policy Considerations: Certification of this lawsuit as a class action
12 advances the State of California's strong public interest in ensuring its
13 approximately millions of employed residents are properly paid the wages they
14 earned for the hours they worked. Class actions provide a mechanism for
15 enforcement of labor laws and allow for vindication of employee rights by
16 unnamed class members.

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

21 **GENERAL ALLEGATIONS**

22 21. Plaintiffs and class members worked for Defendants and were compensated on an
23 hourly basis as nonexempt employees. In addition to earning hourly compensation, Defendants paid
24 Plaintiffs and the class members multiple forms of non-discretionary remuneration, including bonuses
25 and shift differentials and other forms of additional pay. When Defendants paid these additional
26 earnings to Plaintiffs and the class members, Defendants failed to include those amounts in the
27 statutory rates due for overtime, sick pay, and premiums.

1 22. For example, in the pay period March 18, 2023, to March 31, 2023, Plaintiff Tran
2 earned \$119.43 in shift differential pay in addition to Plaintiff Tran's base hourly rate. Plaintiff Tran
3 also earned overtime in this period, which was paid only at 1.5x Plaintiff Tran's *base* hourly rate rather
4 than the regular rate of pay, which would have included the shift differentials.

5 23. Likewise, in the pay period March 8, 2023, to March 17, 2023, Plaintiff Nguyen earned
6 a \$500 bonus in addition to Plaintiff Nguyen's base hourly rate. Plaintiff Nguyen also earned overtime
7 in this period, which was paid only at 1.5x Plaintiff Nguyen's base hourly rate rather than the regular
8 rate of pay, which would have included the non-discretionary bonus.

9 24. Additionally, Defendants failed to pay sick pay or meal or rest period premiums at the
10 lawful rate of pay, based on the abovementioned regular rate violations which occurred throughout the
11 class period.

12 25. Further, Defendants required Plaintiffs and class members to undergo mandatory
13 security and bag checks every shift, while Plaintiffs and class members were clocked out, resulting in
14 unpaid wages for some hours worked in violation of California law. This practice deprived Plaintiffs
15 and other class members of overtime at the lawful rate as well as minimum wage for all hours worked.

16 26. Because of the aforementioned violations, Defendants failed to provide accurate
17 itemized wage statements that included the accurate gross or net wages. Defendants failed to provide
18 applicable rates and hours worked for *all* pay rates on the wage statements. Likewise, sick pay and
19 overtime were paid at inaccurate hourly wage rates (*i.e.* the base rate instead of the regular rate or
20 other permissible statutory rate), which violates the wage statement requirement to include the correct
21 hourly rate in effect each pay period along with the correct number of hours. Therefore, Defendants
22 have provided inaccurate and non-compliant wage statements to class members.

23 27. Wage statements were further invalid to the extent the final paystub only listed a lump
24 sum for vacation wage or PTO payouts, rather than the correct rate at which the PTO was paid and the
25 corresponding number of hours or units at that rate. Additionally, final PTO or vacation wages were
26 not paid at the lawful regular rate of pay in effect.

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

1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

4 **(All Claims Alleged by Plaintiffs and Class Members Against All Defendants)**

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

6 30. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
8 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
9 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
10 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
11 liquidated damages).

12 31. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and class
13 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
14 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
15 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
16 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
17 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
18 Code § 1194.2.

19 32. Defendants’ unlawful acts and omissions deprived Plaintiffs and class members of
20 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and class
21 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
22 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
23 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

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

27 33. All outside paragraphs of this Complaint are incorporated into this section.
28

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

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

38. 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.

39. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiffs 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).

40. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs 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).

41. Plaintiffs 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

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 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.

44. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiffs 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).

45. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs 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.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

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

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

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

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

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

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

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

24 49. Defendants failed to pay Plaintiffs and class members their paid sick leave wages at
25 one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave
26 calculation the additional remuneration received by Plaintiffs and class members.

27 50. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
28 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19

Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

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

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

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

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

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

(III) The state minimum wage.

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

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

55. 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 class members.

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

SIXTH CAUSE OF ACTION

UNPAID VACATION WAGES

Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198

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

58. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be timely paid all vested vacation wages at their final rate of pay upon separation of employment, and which further provide a private right of action for an employer's timely failure to pay all vacation compensation upon termination.

59. Defendant offered Plaintiffs and class members an employment contract or policy providing for the accrual of vacation and/or paid time off. Plaintiffs and class members accrued vacation and/or PTO pursuant to the contract or policy.

60. Upon separation of Plaintiffs' and class members' employment, Defendants willfully failed in their affirmative obligation to timely pay Plaintiffs and class members all accrued but unused vacation at their final rate during their employment with Defendants, in violation of Labor Code sections 201(a), 202(a), and 227.3.

61. Plaintiffs and class members are entitled to recover the full amount of the accrued vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

SEVENTH 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

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

14 **EIGHTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

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

18 67. This cause of action is brought by a wage statement subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

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

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

70. As a result, Plaintiffs 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).

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

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

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

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

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

78. Plaintiffs are a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as individuals and on behalf of others similarly situated, seek full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

ELEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

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

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

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

4 83. Plaintiffs reserve the right to amend, supplement, or add to this description of the
5 aggrieved employees, according to proof.

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

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

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

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

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

27 89. On or about July 7, 2023, Plaintiffs paid the requisite PAGA filing fees and provided
28 written notices (by online electronic filing with the LWDA and by certified mail to Defendants) of

Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

90. A true and correct copy of Plaintiffs’ written PAGA notices, entitled “Notice of Labor Code Violations” is attached hereto as Exhibit 1 and Exhibit 2 incorporated by reference as though fully set forth herein (the “PAGA notices”).

91. To date, neither Plaintiffs nor Plaintiffs’ counsel have received responses to Plaintiffs’ written PAGA notices from the LWDA.

92. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither Plaintiffs nor Plaintiffs’ counsel have received written notices by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

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

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

95. Plaintiffs seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notices (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

Plaintiffs pray for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiffs as the class representatives;
- c. For appointment of above-captioned counsel for Plaintiffs 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 Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;

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

5
6 Dated: September 11, 2023

Ferraro Vega Employment Lawyers, Inc.

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8 

Nicholas J. Ferraro

Attorneys for Plaintiffs Phuong Tran and Loan Nguyen

EXHIBIT 1

Plaintiff Phuong Tran's 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

July 7, 2023

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

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

Johnson Matthey, Inc.
435 Devon Park Dr.
Wayne, Pennsylvania 19087

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

JOHNSON MATTHEY, INC.

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. 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 Bench Technician from about March 2021 to May 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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” 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 California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. When Plaintiff and the aggrieved employees ended each shift, they were subject to security and bag checks after clock-out. Plaintiff and the aggrieved employees were never compensated for this time, despite Defendants requiring them to clock out before undergoing the mandatory security and bag check. This occurred every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid wages across all aggrieved employees’ tenure.

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), 1197.1 (\$100/\$250), 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 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. Plaintiff and the aggrieved employees earned multiple forms of non-discretionary remuneration outside of their base hourly rate, including bonuses and shift differentials. However, when Plaintiff and the aggrieved employees simultaneously earned extra remuneration, like bonuses or shift differentials, and overtime wages in the same pay period, Defendants based the overtime rate on only Plaintiff’s base hourly rate, rather than the lawful regular rate of pay. Illustrative examples of Defendants’ unlawful overtime calculations are below:

Earnings Statement

Period Beginning: 03/18/2023
Period Ending: 03/31/2023
Pay Date: 04/07/2023

PHUONG TRAN

Filing Status: Single/Married filing separately
Exemptions/Allowances: Federal: Standard Withholding Table

Earnings	rate	hours	this period	year to date
Regular	23.1000	72.00	1,863.20	
Overtime	34.8500	20.93	725.22	5,954.59
Pto	23.1000	8.00	184.80	739.20
Shift 5%			119.43	879.84
70			33.75	236.25
Holiday				554.40
Refbon				750.00
Gross Pay			\$2,726.40	20,756.68

Net Check \$0.00

* Excluded from federal taxable wages

Your federal taxable wages this period are \$2,366.12

Other Benefits and

Plaintiff’s wage statement from 4/7/2023 showing a shift differential of 5% added on top of Plaintiff’s base wages, but Plaintiff’s overtime rate (\$34.65) is calculated using only her base hourly rate of \$23.10.

Earnings Statement

Period Beginning: 07/22/2022
Period Ending: 07/22/2022
Pay Date: 07/22/2022

PHUONG TRAN

Filing Status: Single/Married filing separately
Exemptions/Allowances: Federal: Standard Withholding Table

Earnings	rate	hours	this period	year to date
Bonus			4,177.00	4,177.00
Overtime				4,078.20
Cafe Refund				75.00
Float Holiday				608.16
Holiday				615.48
Mp				19.01
Pto				152.04
Refbon				1,500.00
Shift 5%				1,403.49
70				33.75
Gross Pay			\$4,177.00	32,965.08

Other this period year to date

Check Deposit -720.00

Net Check \$0.00

Your federal taxable wages this period are \$4,177.00

Other Benefits and Information this period total to date

Group Term Life 0.00 44.84

Plaintiff's wage statement from 7/22/2022 showing a bonus of \$4,177 paid to Plaintiff, however in the corresponding wage statement below, Plaintiff's overtime rate again only uses her base hourly rate.

Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY INC.
435 DEVON PARK DRIVE STE 600
WAYNE, PA 19087 PHONE: 610-971-3007

Earnings Statement
Period Beginning: 07/09/2022
Period Ending: 07/22/2022
Pay Date: 07/29/2022

PHUONG TRAN

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Earnings	rate	hours	this period	year to date
Regular	19.9172	80.00	1,593.38	
Overtime	29.8758	29.00	866.40	5,100.27
Overtime			155.87	
Shift 5%			110.44	1,513.93
70			33.75	67.50
Bonus				4,177.00
Cafe Refund				75.00
Float Holiday				608.18
Holiday				615.46
Mp				19.01
Pto				152.04
Refbon				1,500.00
Gross Pay			\$2,759.64	35,714.72

Net Pay	\$1,736.63
Check Deposit	-1,018.63
Check Deposit	-720.00
Net Check	\$0.00

* Excluded from federal taxable wages
Your federal taxable wages this period are
\$2,448.37

Other Benefits and Information	this period	total to date
Group Term Life	2.50	48.34

Plaintiff's wage statement from the same pay period as the bonus paid 7/22/22 with an overtime rate factoring in only Plaintiff's base rate (\$19.91 x 1.5) rather than the regular rate of pay inclusive of bonus remuneration.

Due to Defendants' failure to correctly calculate the regular rate of pay for overtime, Plaintiff and the aggrieved employees were underpaid overtime wages in each and every pay period that the employees simultaneously earned shift differentials, bonuses, or other non-excludable forms of remuneration and overtime wages.

Moreover, and additionally, to the extent aggrieved employees would have exceeded the daily or weekly overtime thresholds but artificially did not on account of Defendants' failure to pay for time spent in security checks, Defendants underpaid overtime wages to aggrieved employees in those pay periods, resulting in a separate and distinct form of overtime violation.

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

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice

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

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

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

Defendants violated California’s paid sick leave laws with respect to the aggrieved employees by failing to pay sick leave at the regular rate of compensation in violation of Labor Code sections 248.6 and 248.7. When Plaintiff or the aggrieved employees utilized their sick leave, Defendants underpaid sick pay by only paying the base hourly rate, exclusive of shift differentials, bonuses, and other forms of non-discretionary remuneration. An illustrative example of Defendants’ underpayment is below:

Earnings Statement					ADP		
Johnson Matthey Inspiring science, enhancing life JOHNSON MATTHEY INC. 435 DEVON PARK DRIVE STE 600 WAYNE, PA 19087 PHONE: 610-971-3007					Period Beginning: 12/13/2022 Period Ending: 12/23/2022 Pay Date: 12/30/2022		
Filing Status: Single/Married filing separately Exemptions/Allowances: Federal: Standard Withholding Table					PHUONG TRAN 		
Earnings	rate	hours	this period	year to date	Other	this period	year to date
Regular	23.1000	40.00	924.00		Say Thanks	-65.00	65.00
Overtime	34.6500	15.48	536.38	15,909.97	Vision	-3.00*	78.00
California Sick	23.1000	40.00	924.00	924.00	401K	-203.28*	4,783.22
Gross Up			21.67	21.67			
Say Thanks			65.00	65.00	Net Pay	\$1,523.80	
Shift 5%			73.02	3,037.32	Check Deposit	-803.80	
70			33.75	270.00	Check Deposit	-720.00	

Plaintiff's wage statement from 12/30/2022 showing sick pay paid at Plaintiff's base rate of \$23.10, despite Plaintiff earning several other types of bonus remuneration including shift differentials and bonuses in this pay period.

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

Unpaid Vacation Wages
Violation of Labor Code § 227.3

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

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

On information and belief, Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. When Defendants terminated Plaintiff and other aggrieved employees, Defendants failed to provide a final wage statement. Instead, Defendants directly deposited an unlabeled lump sum, with no corresponding accounting of which wages the sum included. Plaintiff believes and alleges that aggrieved employees were not paid out all of their acquired vacation wages upon termination.

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.” *Donobue 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.

On information and belief, when Plaintiff or the aggrieved employees’ meal periods were late, short, missed, and/or interrupted, Defendants did not pay the aggrieved employees their due meal premiums. To the extent any meal period premiums were paid, the premiums were not paid at the lawful rate of pay but rather underpaid at a deflated rate, exclusive of shift differentials, like the unlawful overtime and sick leave calculations above. To the extent any premiums were paid, Defendants failed to pay them at the “regular rate of compensation” inclusive of all forms of remuneration, such as shift differentials and bonuses, based on the payroll policies and practices alleged in the overtime section concerning undercalculation of the “regular rate.”

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or

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

Due to employee job responsibilities, short staffing, and the steady flow of business, the aggrieved employees were not always able to take all their rest periods. On information and belief, when the aggrieved employees' rest periods were late, short, missed, and/or interrupted, Defendants did not pay the aggrieved employees their due rest period premiums. To the extent any rest period premiums were paid, the premiums were not paid at the lawful rate of pay but rather underpaid at a deflated rate, exclusive of shift differentials, like the unlawful overtime and sick leave calculations 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 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). Specifically, Defendants failed to include all forms

of non-discretionary income, including shift differentials and bonuses, into overtime, sick leave, and premium wage rates. Additionally, Defendants failed to compensate Plaintiff and the aggrieved employees for *all* hours worked, including pre and post shift requirements.

Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As 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 failed to include all forms of non-discretionary income, including shift differentials and bonuses, into overtime, sick leave, and premium wage rates. Additionally, Defendants failed to compensate Plaintiff and the aggrieved employees for *all* hours worked, including pre and post shift requirements.

Further, when Plaintiff and the aggrieved employees received their final direct deposits upon separation of employment, Defendants maintained a policy and practice of not providing a final wage statement alongside the deposit. Moreover, Plaintiff and the aggrieved employees lost access to online records of their wage statements immediately upon termination. Therefore, when their employment relationship with Defendants ended, Plaintiff and the aggrieved employees had no way to verify that all wages and leftover PTO were correctly paid out.

Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” 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. Additionally, as seen on Plaintiff’s wage statements below, Defendants regularly listed wage categories, including overtime, without corresponding hours or rates in further violation of Labor Code section 226(a)(9).

CO FILE DEPT CLOCK VCHR NO
CDJ 013143 082552 0000100046 1

JM Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY MEDICAL DEVICE COMPONENTS
435 DEVON PARK DRIVE STE 000
WAYNE, PA 19087

Earnings Statement 

Period Beginning: 02/18/2023
Period Ending: 03/03/2023
Pay Date: 03/10/2023

PHUONG TRAN

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Earnings	rate	hours	this period	year to date
Regular	23.1000	56.00	1,293.60	
Overtime	34.6500	29.48	1,021.48	4,492.02
Pto	23.1000	24.00	554.40	554.40
Shift 5% 70			115.76 33.76	631.14 188.75
Holiday				554.40
Gross Pay			\$3,018.99	14,531.91

Net Check **\$0.00**

* Excluded from federal taxable wages
Your federal taxable wages this period are \$2,858.71

Plaintiff's wage statement from 3/10/2023 showing earnings in the pay period for shift differentials and a bonus category, with no corresponding hourly rate or hours worked in those wage categories.

CO FILE DEPT CLOCK VCHR NO
FE4 013143 032581 0000260213 1

JM Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY INC.
435 DEVON PARK DRIVE STE 000
WAYNE, PA 19087 PHONE: 010-971-3007

Earnings Statement 

Period Beginning: 06/18/2022
Period Ending: 06/27/2022
Pay Date: 07/01/2022

PHUONG TRAN

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Earnings	rate	hours	this period	year to date
Regular	19.0050	80.00	1,520.40	
Overtime			76.00	2,628.56
Shift 5%			107.14	1,281.62
Cafe Refund				75.00
Float Holiday				808.18
Holiday				458.12
Mp				19.01
Pto				152.04
Reibon				1,500.00
Gross Pay			\$1,703.54	25,400.10

Net Check **\$0.00**

* Excluded from federal taxable wages
Your federal taxable wages this period are \$1,400.30

Other Benefits and Information

	this period	total to date
Group Term Life	3.18	41.34
Pto Balance	155.33	

Plaintiff's wage statement from 7/1/2022 showing overtime and shift differential categories with no corresponding hourly rate or hours worked for those wage categories.

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 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

REJ

Cc Plaintiff Phuong Tran

Luis E. Lorenzana, Counsel for Defendants
Littler Mendelson, P.C.
llorenzana@littler.com

EXHIBIT 2

Plaintiff Loan Nguyen's 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

July 7, 2023

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

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

Johnson Matthey, Inc.
435 Devon Park Dr.
Wayne, Pennsylvania 19087

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

JOHNSON MATTHEY, INC.

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. 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 Production Operator from about March 2022 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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” 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 California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. When Plaintiff and the aggrieved employees ended each shift, they were subject to security and bag checks after clock-out. Plaintiff and the aggrieved employees were never compensated for this time, despite Defendants requiring them to clock out before undergoing the mandatory security and bag check. This occurred every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid wages across all aggrieved employees’ tenure.

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), 1197.1 (\$100/\$250), 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 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. Plaintiff and the aggrieved employees earned multiple forms of non-discretionary remuneration outside of their base hourly rate, including bonuses and shift differentials. However, when Plaintiff and the aggrieved employees simultaneously earned extra remuneration, like bonuses or shift differentials, and overtime wages in the same pay period, Defendants based the overtime rate on only Plaintiff’s base hourly rate, rather than the lawful regular rate of pay. Illustrative examples of Defendants’ unlawful overtime calculations are below:

CO FILE DEPT CLOCK WORK NO
CDJ 013257 082559 0000140241 1

JM Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY MEDICAL DEVICE COMPONENTS LLC
435 DEVON PARK DRIVE STE 600
WAYNE, PA 19087

Earnings Statement **ADP**
Period Beginning: 03/18/2023
Period Ending: 03/31/2023
Pay Date: 04/07/2023

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

LOAN NGUYEN

Earnings	rate	hours	this period	year to date
Regular	18.5100	80.00	1,480.80	
Overtime	27.7650	15.33	425.64	2,298.38
Shift 5%			95.33	562.70
70			33.75	236.25
Bonus				500.00
Gross Up				1.30
Holiday				444.24
Pto				962.52
Refbon				750.00
Say Thanks				3.90
Gross Pay			\$2,035.52	14,714.80

Net Check \$0.00

* Excluded from federal taxable wages
Your federal taxable wages this period are
\$1,889.29

Other Benefits and Information

	this period	total to date
Fit Hol Bal	8.00	
Group Term Life	2.98	20.86
Pto Balance	33.33	

Plaintiff’s wage statement from 4/7/2023 showing a shift differential of 5% added on top of Plaintiff’s base wages, but Plaintiff’s overtime rate (\$27.76) is calculated using only her base hourly rate of \$18.51.

CO FILE DEPT CLOCK VOIS NO
CDJ 013257 082559 0000124238 1

JM Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY MEDICAL DEVICE COMPONENTS
435 DEVON PARK DRIVE STE 600
WAYNE, PA 19087

Earnings Statement **ADP**

Period Beginning: 03/08/2023
Period Ending: 03/17/2023
Pay Date: 03/24/2023

Filing Status: Married filing jointly
Exemptions/Allowances: Federal: Standard Withholding Table

LOAN NGUYEN

Earnings	rate	hours	this period	year to date
Bonus			500.00	500.00
Overtime				1,438.22
Gross Up				1.30
Holiday				444.24
Pto				666.36
Refbon				750.00
Say Thanks				3.90
Shift 5%				386.41
70				168.75
Gross Pay			\$500.00	10,649.25

Net Check \$0.00

Your federal taxable wages this period are \$500.00

Other Benefits and Information

	this period	total to date
Group Term Life		14.90

Important Notes
YOUR COMPANY'S PHONE NUMBER IS 610-971-3000

Plaintiff's wage statement from 3/24/2023 showing a bonus of \$500 paid to Plaintiff, however, in the corresponding wage statement below, Plaintiff's overtime rate again only uses her base hourly rate.

CO FILE DEPT CLOCK VOIS NO
CDJ 013257 082559 0000124239 2

JM Johnson Matthey
Inspiring science, enhancing life
JOHNSON MATTHEY MEDICAL DEVICE COMPONENTS
435 DEVON PARK DRIVE STE 600
WAYNE, PA 19087

Earnings Statement **ADP**

Period Beginning: 03/08/2023
Period Ending: 03/17/2023
Pay Date: 03/24/2023

Filing Status: Married filing jointly
Exemptions/Allowances: Federal: Standard Withholding Table

LOAN NGUYEN

Earnings	rate	hours	this period	year to date
Regular	18.5100	64.00	1,184.64	
Overtime	27.7650	15.65	434.52	1,872.74
Pto	18.5100	16.00	296.16	962.52
Shift 5%				467.37
70				202.50
Bonus			500.00	
Gross Up				1.30
Holiday				444.24
Refbon				750.00
Say Thanks				3.90
Gross Pay			\$2,030.03	12,679.28

Net Check \$0.00

* Excluded from federal taxable wages

Your federal taxable wages this period are \$1,883.80

Other Benefits and Information

	this period	total to date
Fit Hol Bal	8.00	
Group Term Life	2.98	17.88

Plaintiff's wage statement from the same pay period as the bonus paid 3/24/2023 with an overtime rate factoring in only Plaintiff's base rate (\$18.51 x 1.5) rather than the regular rate of pay inclusive of bonus remuneration.

Due to Defendants' failure to correctly calculate the regular rate of pay for overtime, Plaintiff and the aggrieved employees were underpaid overtime wages in each and every pay period that the employees simultaneously earned shift differentials, bonuses, or other non-excludable forms of remuneration and overtime wages.

Moreover, and additionally, to the extent aggrieved employees would have exceeded the daily or weekly overtime thresholds but artificially did not on account of Defendants' failure to pay for time spent in security checks, Defendants underpaid overtime wages to aggrieved employees in those pay periods, resulting in a separate and distinct form of overtime violation.

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

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

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

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

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

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

Defendants violated California’s paid sick leave laws with respect to the aggrieved employees by failing to pay sick leave at the regular rate of compensation in violation of Labor Code sections 248.6 and 248.7. When Plaintiff or the aggrieved employees utilized their sick leave, Defendants underpaid sick pay by only paying the base hourly rate, exclusive of shift differentials, bonuses, and other forms of non-discretionary remuneration. An illustrative example of Defendants’ underpayment is below:

Earnings Statement					ADP	
Johnson Matthey Inspiring science, enhancing life JOHNSON MATTHEY INC. 435 DEVON PARK DRIVE STE 600 WAYNE, PA 19087 PHONE: 610-971-3007					Period Beginning: 10/29/2022 Period Ending: 11/11/2022 Pay Date: 11/18/2022	
Filing Status: Married filing jointly Exemptions/Allowances: Federal: Standard Withholding Table					LOAN NGUYEN 	
Earnings	rate	hours	this period	year to date		
Regular	18.5100	28.47	526.98	5,043.80	Your federal taxable wages this period are \$1,508.97	
Overtime	27.7650	.65	18.05	814.44		
California Sick	18.5100	44.00	814.44	1,308.19		
Pto	18.5100	8.00	148.08	1,227.04		
Shift 5%			27.25	337.50		
70			33.75	136.00		
Float Holiday				425.11		
Holiday				30,044.48		
Gross Pay			\$1,568.55			
Other Benefits and Information					this period	total to date
Fit Hol Bal					8.00	
Group Term Life					2.98	37.36
Pto Balance					25.67	
Totl Hrs Worked					29.12	
Fit Balance						8.00

Plaintiff's wage statement from 11/18/2022 showing sick pay paid at Plaintiff's base rate of \$18.51, despite Plaintiff earning several other types of bonus remuneration including shift differentials and bonuses in this pay period.

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

Unpaid Vacation Wages Violation of Labor Code § 227.3

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

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

On information and belief, Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. When Defendants terminated Plaintiff and other aggrieved employees, Defendants failed to provide a final wage statement. Instead, Defendants directly deposited an unlabeled lump sum, with no corresponding accounting of which wages the sum included. Plaintiff believes and alleges that aggrieved employees were not paid out all of their acquired vacation wages upon termination.

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.

On information and belief, when Plaintiff or the aggrieved employees' meal periods were late, short, missed, and/or interrupted, Defendants did not pay the aggrieved employees their due meal premiums. To the extent any meal period premiums were paid, the premiums were not paid at the lawful rate of pay but rather underpaid at a deflated rate, exclusive of shift differentials, like the unlawful overtime and sick leave calculations above. To the extent any premiums were paid, Defendants failed to pay them at the "regular rate of compensation" inclusive of all forms of remuneration, such as shift differentials and bonuses, based on the

payroll policies and practices alleged in the overtime section concerning undercalculation of the “regular rate.”

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

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

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

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

Due to employee job responsibilities, short staffing, and the steady flow of business, the aggrieved employees were not always able to take all their rest periods. On information and belief, when the aggrieved employees’ rest periods were late, short, missed, and/or interrupted, Defendants did not pay the aggrieved employees their due rest period premiums. To the extent any rest period premiums were paid, the premiums were not paid at the lawful rate of pay but rather underpaid at a deflated rate, exclusive of shift differentials, like the unlawful overtime and sick leave calculations 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 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). Specifically, Defendants failed to include all forms of non-discretionary income, including shift differentials and bonuses, into overtime, sick leave, and premium wage rates. Additionally, Defendants failed to compensate Plaintiff and the aggrieved employees for *all* hours worked, including pre and post shift requirements.

Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As 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 failed to include all forms of non-discretionary income, including shift differentials and bonuses, into overtime, sick leave, and premium wage rates. Additionally, Defendants failed to compensate Plaintiff and the aggrieved employees for *all* hours worked, including pre and post shift requirements.

Further, when Plaintiff and the aggrieved employees received their final direct deposits upon separation of employment, Defendants maintained a policy and practice of not providing a final wage statement alongside the deposit. Moreover, Plaintiff and the aggrieved employees lost access to online records of their wage statements immediately upon termination. Therefore, when their employment relationship with Defendants ended, Plaintiff and the aggrieved employees had no way to verify that all wages and leftover PTO were correctly paid out.

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

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

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

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

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

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours

worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Additionally, as seen on Plaintiff's wage statements below, Defendants regularly listed wage categories, including overtime, without corresponding hours or rates in further violation of Labor Code section 226(a)(9).

The image shows a wage statement from Johnson Matthey Inc. for the employee LOAN NGUYEN. The statement is dated 07/29/2022. It includes a table of earnings with columns for rate, hours, this period, and year to date. The earnings are categorized as Regular, Overtime, Pto, Shift 5%, and Float Holiday. The Shift 5% and Float Holiday categories show earnings for this period but no corresponding hours or rates. The total gross pay is \$2,010.48.

Earnings	rate	hours	this period	year to date
Regular	17.6290	74.00	1,304.55	
Overtime	26.4435	18.05	477.31	2,215.71
Pto	17.6290	6.00	105.77	530.77
Shift 5%			89.10	642.56
70			33.75	67.50
Float Holiday				136.00
Holiday				277.03
Gross Pay			\$2,010.48	14,578.22

Other Benefits and Information:

	this period	total to date
Group Term Life	2.54	13.96
Pto Balance	18.33	
Totl Hrs Worked	92.05	

Important Notes: YOUR COMPANY'S PHONE NUMBER IS 610-971-3000

Plaintiff's wage statement from 7/29/2022 showing earnings in the pay period for shift differentials and a bonus category, with no corresponding hourly rate or hours worked in those wage categories.

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 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,

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

Nicholas J. Ferraro

REJ

Cc Plaintiff Loan Nguyen

Luis E. Lorenzana, Counsel for Defendants
Littler Mendelson, P.C.
llorenzana@littler.com