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FILED
Superior Court of California
County of Los Angeles

10/27/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

Attorneys for Plaintiffs
ISABEL SILVA, ALEJANDRO GARCIA, JANAI VELASCO,
and MONICA CANO, each as individuals and on behalf of all others similarly situated.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

ISABEL SILVA, an individual and on behalf of
all others similarly-situated; ALEJANDRO
GARCIA, an individual and on behalf of all
others similarly-situated, JANAI VELASCO, an
individual and on behalf of all others similarly-
situated, and MONICA CANO an individual
and on behalf of all others similarly-situated.

Plaintiffs,

v.

CROSS COUNTRY STAFFING, INC., a
corporation; CROSS COUNTRY
HEALTHCARE, INC., a corporation;
WORKFORCE SOLUTIONS GROUP, INC., a
corporation; and DOES 1 to 100, inclusive.

Defendants.

CASE NO.: 23STCV19513
[Assigned for all purposes to the
Hon. Carolyn B. Kuhl, Dept 12 -
SSC)

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF**

1. **Failure to Pay All Wages Due in Violation of Cal. Labor Code §§ Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198**
2. **Meal Period Violations (Cal. Lab. Code §§ 512, 226.7)**
3. **Rest Period Violations (Cal. Lab. Code §§ 226.7)**
4. **Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802)**
5. **Failure to Provide Accurate Itemized Statements in Violation of Cal. Labor Code § 226(a)-(g)**
6. **Waiting Time Penalties (Cal. Lab. Code §§ 201-203)**

7. Unfair Competition in Violation
of Cal. Business & Professions
Code 17200, et seq.

8. Violation of PAGA, Labor Code
§2699 et seq.

[DEMAND FOR TRIAL BY JURY]

Complaint filed: August 15, 2023
Trial: TBD

1. COMES NOW, Plaintiff ISABEL SILVA, (“SILVA”), Plaintiff ALEJANDRO GARCIA (“GARCIA”), JANAI VELASCO (“VELASCO”), and MONICA CANO (“CANO”) each as individuals and on behalf of all others similarly-situated (collectively referred to as “Plaintiffs”) and brings this action against Defendant CROSS COUNTRY STAFFING, INC., a corporation (“Defendant CROSS COUNTRY STAFFING”); Defendant CROSS COUNTRY HEALTHCARE, INC., a corporation (“Defendant CROSS COUNTRY HEALTHCARE”); Defendant WORKFORCE SOLUTIONS GROUP, INC. (“Defendant WORKFORCE SOLUTIONS GROUP”), a corporation (referred to collectively as “Defendants”) and DOES 1 to 100, and alleges on information and belief (except those allegations relating to Plaintiffs themselves, which is asserted on personal knowledge), as follows:

PARTIES TO THE ACTION

2. Plaintiff SILVA is, and was at all relevant times, (a) a resident of the County of Los Angeles, State of California; and (b) employed by one or more of the Defendants and DOES 1 to 100 at one of their locations in the County of Los Angeles, State of California within the three years preceding the filing of the original complaint.

3. Plaintiff GARCIA is, and was at all relevant times, (a) a resident of the County of Los Angeles, State of California; and (b) employed by one or more of the Defendants and DOES 1 to 100 at one of their locations in the County of Los Angeles, State of California within the three years preceding the filing of the original complaint.

4. Plaintiff VELASCO is, and was at all relevant times, (a) a resident of the County of Los Angeles, State of California; and (b) employed by one or more of the Defendants and DOES 1 to

100 at one of their locations in the County of Los Angeles, State of California within the three years preceding the filing of the original complaint.

5. Plaintiff CANO is, and was at all relevant times, (a) a resident of the County of Los Angeles, State of California; and (b) employed by one or more of the Defendants and DOES 1 to 100 at one of their locations in the County of Los Angeles, State of California within the three years preceding the filing of the original complaint.

6. Defendant CROSS COUNTRY STAFFING is a corporation organized under the laws of the State of Delaware. Defendant CROSS COUNTRY STAFFING, conducted business and employed individuals in the State of California and in the County of Los Angeles, including, but not limited to, at locations where one or more of locations where the Plaintiffs worked within the three years preceding the filing of the original complaint. Defendant CROSS COUNTRY STAFFING conducted business using its own name and/or under fictitious business names including, but not limited to, "CROSS COUNTRY" and "CROSS COUNTRY HEALTHCARE".

7. Defendant CROSS COUNTRY HEALTHCARE is a corporation organized under the laws of the State of Delaware. Defendant CROSS COUNTRY HEALTHCARE, conducted business and employed individuals in the State of California and in the County of Los Angeles, including, but not limited to, at locations where one or more of the Plaintiffs worked within the three years preceding the filing of the original complaint. Defendant CROSS COUNTRY HEALTHCARE conducted business using its own name and/or under fictitious business names including, but not limited to, "CROSS COUNTRY" and "CROSS COUNTRY HEALTHCARE".

8. Defendant WORKFORCE SOLUTIONS GROUP is a corporation organized under the laws of the State of California. Defendant WORKFORCE SOLUTIONS GROUP, conducted business and employed individuals in the State of California and in the County of Los Angeles, including, but not limited to, locations where one or more of the Plaintiffs worked within the three years preceding the filing of the original complaint.

9. The true names and capacities of Defendants DOES 1 to 100 are unknown to Plaintiffs who will amend the operative complaint to allege such names and capacities as soon as they are

ascertained. Each Defendant designated herein as DOE is in some manner legally responsible for the unlawful acts and damages alleged herein.

GENERAL ALLEGATIONS

Plaintiffs' Employment With Defendants and DOES 1 to 100

10. Within the four years preceding the filing of the original complaint, Defendants and DOES 1 to 100 operated healthcare staffing centers in the State of California including, but not limited to, within the County of Los Angeles.

11. Within the three years preceding the filing of the original complaint, each of the Plaintiffs was employed by one or more of the Defendants and DOES 1 to 100, in the County of Los Angeles, State of California.

12. Plaintiff SILVA's employment with one or more of the Defendants and DOES 1 to 100 occurred in the County of Los Angeles, State of California and began in or about October 2022 and terminated on or about August 11, 2023.

13. Plaintiff GARCIA's employment with one or more of the Defendants and DOES 1 to 100 occurred in the County of Los Angeles, State of California and began in or about October 2020 and continues through the present. Plaintiff GARCIA is informed and believes, and thereon alleges, that Defendant WORKFORCE SOLUTIONS GROUP and DOES 1 to 100 was the employer of Plaintiff GARCIA and similarly situated individuals on and before June 7, 2021.

14. Plaintiff VELASCO's employment with one or more of the Defendants and DOES 1 to 100 occurred in the County of Los Angeles, State of California and began in or about October 2018 and terminated in or about May 2023. Plaintiff VELASCO is informed and believes, and thereon alleges, that Defendant WORKFORCE SOLUTIONS GROUP and DOES 1 to 100 was the employer of Plaintiff VELASCO and similarly situated individuals on and before June 7, 2021.

15. Plaintiff CANO's employment with one or more of the Defendants and DOES 1 to 100 occurred in the County of Los Angeles, State of California and began in or about 2011 and terminated on or about April 6, 2021. Plaintiff CANO is informed and believes, and thereon alleges, that Defendant WORKFORCE SOLUTIONS GROUP and DOES 1 to 100 was the employer of Plaintiff CANO and similarly situated individuals on and before June 7, 2021.

16. During their employment with Defendants and DOES 1 to 100, Plaintiffs, and each of them, and similarly situated employees, were required to regularly work weekday on-call shifts (approximately 7:00 p.m. to 7:00 a.m.) and weekend on-call shifts (approximately 7:00 p.m. on Friday through 7:00 a.m. on Monday) (referred to collectively as the “on-call” shifts or “on-call” time). During the on-call shifts, Defendants and DOES 1 to 100 required Plaintiffs, and each of them, and similarly-situated employees, to perform various job duties including, but not limited to: (a) conduct a “passover” at the start of their on-call shift with person(s) closing each of Defendants and DOES 1 to 100’s business offices where they would be briefed on information and events related to the business office and operations; (b) check all incoming business voicemails forwarded to them during the on-call shifts; (c) return and respond to all voicemails during the on-call shift concerning call-offs, home care worker job injuries, patient falls, emergent situations, and other similar events within 15 minutes or be subject to disciplinary action including, but not limited to, termination; and (d) brief the person opening the office each morning, and after the weekend on Monday, on all events and occurrences during on-call shift.

17. During their employment with Defendants and DOES 1 to 100, Plaintiffs, and each of them, and similarly situated employees, would receive a fixed, lump sum payment for working the entire on-call shift during all the weekdays (a single payment of \$75 (or similar fixed amount) for working on-call Monday through Thursday 7 p.m. to 7.a.m.) and/or weekend (a single payment of \$150 (or similar fixed amount) for working on-call from 7:00 p.m. on Friday through 7:00 a.m. on Monday (referred to as “On Call Bonus”).

18. During their employment with Defendants and DOES 1 to 100, Plaintiffs, and each of them, and similarly-situated employees, were under the control of Defendants and DOES 1 to 100 at all times during the on-call time due to restrictions placed on them by Defendants and DOES 1 to 100 and the nature of the work, including, but not limited to, the frequency of calls, Defendants and DOES 1 to 100’s time limit for response; the difficulty trading on-call responsibilities with another employee; and the inability to reasonably engage in personal activities during on-call time.

Defendants and DOES 1 to 100's Illegal Policies, Procedures, and Practices

19. At all relevant times, Defendants and DOES 1 to 100's employment of Plaintiffs and similarly situated California-based employees was governed by California Wage Order, Industrial Welfare Commission ("IWC") Wage Order No. 4-2001 ("WAGE ORDER 4"), including but not limited to Sections 3, 8, 9 and 12; the Cal. Code of Regulations (CCR) § 11040, the Cal. Labor Code §§201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802.

20. Despite these legal obligations, and as described below, and at all relevant times, Plaintiffs are informed and believe, and based thereon allege, that Defendants and DOES 1 to 100 created, implemented, and continue to utilize illegal rules, policies, procedures and practices including, but not limited to, ones pertaining to compensation, overtime pay, meal and rest periods, paid sick leave, business expense reimbursement, and itemized wage statements---all which violated wage and hour laws (including those set forth in the Cal. Labor Code) and the rights of Plaintiffs and similarly-situated employees.

Unpaid Wages Violations

21. At all relevant times, Defendants and DOES 1 to 100 were legally-required to pay Plaintiffs and similarly-situated employees for all the time they were under the Defendants and DOES 1 to 100's control, including time they were suffered or permitted to work, including, but not limited to, Cal. Labor Code § 204, WAGE ORDER 4, *Morillion vs. Royal Packing*, (2000) 22 Cal. 4th 575.

22. At all relevant times, Defendants and/or DOES 1 to 100 were obligated to pay Plaintiffs and similarly-situated California-based employees and each of them, their "regular rate" of pay for all time worked, one and one-half (1 1/2) times their "regular rate" of pay for all time worked in excess of 8 hours per workday and for the first eight hours of work on the seventh consecutive day of work in a workweek, and two (2) times their "regular rate" of pay for all time worked in excess of 12 hours per workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek. Additionally, Defendants and DOES 1 to 100 were obligated to pay

1 Plaintiff and all similarly-situated employees one and one-half (1 1/2) times their “regular rate” of
2 pay for all hours worked in excess of 40 hours per workweek.

3 23. At all relevant times, Defendants and DOES 1 to 100 were obligated pursuant to Cal.
4 Labor Code § 246 to pay Plaintiffs and similarly situated California-based employees wages for
5 paid sick time calculated in the same manner as the “regular rate” of pay for the workweek in
6 which the employee uses paid sick time or by dividing the employee’s total wages, not including
7 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
8 days of employment (referred to as “PAID SICK TIME”).

9 24. Plaintiffs and similarly-situated employees are informed and believe, and thereon allege,
10 that Defendants and DOES 1 to 100 failed to meet all the above-mentioned legal obligations owed
11 to Plaintiffs and similarly-situated employees because they did not properly pay them all earned
12 wages due based on their illegal uniform policies, procedures and practices including, but not
13 limited to:

14 (a) Failing to include all required earned non-discretionary income within the hourly
15 “regular rate” including, but not limited to, non-discretionary bonus, incentive pay, On Call
16 Bonus, commissions, etc., when calculating overtime pay. *Marin v. Costco Wholesale Corp.*, 169
17 Cal.App.4th 804, 807 (2008) (holding that bonus must be included in overtime rate calculation
18 under California law) and 5 CFR § 551.514(a) (“When an employee earns a nondiscretionary
19 cash award or bonus. . . the bonus must be taken into account in determining overtime pay for the
20 period of time during which the bonus was earned.”)

21 (b) Failing to include required earned non-discretionary income within the hourly
22 “regular rate” including, but not limited to non-discretionary bonus, incentive pay, On Call
23 Bonus, commissions, etc., when calculating PAID SICK TIME for California-based employees
24 (Cal. Labor Code § 246, et al) or, alternatively, by not dividing the employee’s total wages, not
25 including overtime premium pay, by the employee’s total hours worked in the full pay periods of
26 the prior 90 days of employment.

27 (c) Failing to compensate employees in any manner, or by failing to pay the correct
28 and full minimum wages, regular rate, and/or overtime wages due, for all hours worked

including, but not limited to, all regular hours, overtime hours, “pre-shift” work, “post-shift” work, “on-call” time”, “stand by time” and/or other “off-the-clock” work.

Meal And Rest Period Violations

25. At all relevant times, Labor Code sections 226.7, 512, and WAGE ORDER 4 required Defendants and/or DOES 1 to 100 provide Plaintiffs and similarly-situated California-based employees with a thirty (30) minute uninterrupted, duty-free meal period within the first five (5) hours of work and a second one when they work more than ten (10) hours the same workday.

Brinker Rest. Corp. v. Superior Court (2012) 53 Cal. 4th 1004.

26. At all relevant times, WAGE ORDER 4, including Section 12, required Defendants and/or DOES 1 to 100 to provide to provide Plaintiffs and similarly-situated California-based employees with a paid ten (10) minute rest period for every four (4) hours worked, or "major fraction" thereof.

27. Plaintiffs and similarly-situated employees are informed and believe, and thereon allege, that Defendants and/or DOES 1 to 100 failed to meet the above-mentioned legal obligations owed to Plaintiffs and similarly-situated California-based employees because they:

(a) Failed to compensate employees for missed meal and rest periods at the “regular rate” of pay inclusive of all required earned non-discretionary income (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021) (the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, had to account for not only hourly wages but also other nondiscretionary payments)

(b) Failed to provide complete, timely uninterrupted, duty-free meal periods and rest periods.

Unpaid Business Expenses

28. At all relevant times, Defendants and/or DOES 1 to 100’s were legally-required to indemnify Plaintiffs and similarly-situated California-based employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Cal. Labor Code § 2802.

29. Plaintiffs and similarly-situated California-based employees are informed and believe, and thereon allege, that Defendants and/or DOES 1 to 100 failed to meet the above-mentioned legal obligations due to their policies, practices, and procedures including, but not limited to, failing to reimburse employees for required use of personal cell/smartphone devices at work, personal use of equipment and supplies, internet usage, and home office, etc. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1140 (2017) (Labor Code section 2802 requires employers to reimburse employees for mandated use of personal phones to perform work)

CLASS ACTION ALLEGATIONS

30. Plaintiffs and each of them brings this action individually and on behalf of all persons similarly-situated. Such a representative action is necessary to prevent and remedy the deceptive, unlawful, and unfair practices alleged herein.

CLASS DEFINITION

31. This action is brought and may be properly maintained as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs bring this action on behalf of herself and all current and former employees of Defendants and/or DOES 1 to 100 who worked for Defendants and/or DOES 1 to 100 in the State of California at any time in the four years preceding the filing of the original complaint (plus any applicable additional statutory tolling period under Emergency Rule 9) (referred to herein as “**CLASS MEMBERS**”)

32. Plaintiffs, and each of them, are informed and believe, and thereon allege, that **CLASS MEMBERS** and each of them, were subjected to one or more illegal wage-and-hour policies and practices during their employment with Defendants and/or DOES 1 to 100 that gave rise to one or more of the claims alleged, and those **CLASS MEMBERS** could fall within one or more subclasses including, but not limited to:

(a) **UNPAID WAGES SUBCLASS.** All persons who were employed by Defendants and/or DOES 1 to 100, by any of them or jointly, in the State of California at any time in the three years preceding the filing of the original complaint (plus any applicable additional statutory tolling period under Emergency Rule 9) who were not paid all wages earned as required by applicable law including, but not limited to, WAGE ORDER 4 § 3 and Cal. Labor Code §§ 204,

246, 510, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 due to illegal policies or practices of Defendants and/or DOES 1 to 100 including, but not limited to: (1) failing to include all required earned non-discretionary income within the hourly “regular rate” including, but not limited to, non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. when calculating and paying overtime wages; (2) failing to include required earned non-discretionary income within the hourly “regular rate” including, but not limited to, non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. when calculating and paying PAID SICK TIME for California-based employees (Cal. Labor Code § 246, et al) or, alternatively, by not calculating and paying the PAID SICK TIME 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 of employment; and (3) failing to compensate employees in any manner, or by failing to pay the full and correct minimum wages, regular rate, and/or overtime wages due, for all hours worked including, but not limited to, regular hours, overtime hours, “pre-shift” work, “post-shift” work, “on-call” time”, “stand by time” and/or other “off-the-clock” work.

(b) **MEAL PERIOD SUBCLASS.** All persons who were employed by Defendants and/or DOES 1 to 100, by any of them or jointly, in the State of California at any time in the three years preceding the filing of the original complaint (plus any applicable additional statutory tolling period under Emergency Rule 9) who did not receive all uninterrupted, duty-free meal periods in compliance with California law and/or who were not paid one hour of “regular rate” pay inclusive of all earned non-discretionary income including, but not limited to, non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. for any legally-compliant, uninterrupted, duty-free meal period that was not provided.

(c) **REST PERIOD SUBCLASS.** All persons who were employed by Defendants and/or DOES 1 to 100, by any of them or jointly, in the State of California at any time in the three years preceding the filing of the original complaint who did not receive all uninterrupted, duty-free rest periods in compliance with California law and/or who were not paid one hour of “regular rate” pay inclusive of all earned non-discretionary income including, but not limited to,

1 non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. for any legally-
2 compliant, uninterrupted, duty-free meal period that was not provided.

3 (c) **UNPAID BUSINESS EXPENSES SUBCLASS.** All persons who were
4 employed by Defendants and/or DOES 1 to 100, by any of them or jointly, in the State of
5 California at any time in the three years preceding the filing of the original complaint who
6 incurred business expenses in the performance of their job duties for Defendants and/or DOES 1
7 to 100 but weren't fully reimbursed for the expense.

8 (d) **PAID SICK LEAVE SUBCLASS.** All persons who were employed by
9 Defendants and/or DOES 1 to 100, by any of them or jointly, in the State of California at any
10 time in the three years preceding the filing of the original complaint who were not paid all wages
11 earned for PAID SICK TIME as required by WAGE ORDER 4 § 3 and Cal. Labor Code § 246
12 for PAID SICK TIME due to illegal policies or practices of Defendants and/or DOES 1 to 100
13 including, but not limited to: failing to include required earned non-discretionary income within
14 the hourly "regular rate" (e.g., non-discretionary bonus, incentive pay, On Call Bonus,
15 commissions, etc.) when calculating and paying PAID SICK TIME for California-based
16 employees (Cal. Labor Code § 246, et al) or, alternatively, by not calculating and paying the
17 PAID SICK TIME by dividing the employee's total wages, not including overtime premium pay,
18 by the employee's total hours worked in the full pay periods of the prior 90 days of employment

19 (e) **WAGE STATEMENT SUBCLASS.** All CLASS MEMBERS including, but not
20 limited to, persons within the UNPAID WAGES SUBCLASS, the MEAL PERIOD SUBCLASS,
21 the REST PERIOD SUBCLASS, the PAID SICK LEAVE SUBCLASS and/or other California-
22 based employees that received an itemized wage statement that was not in full compliance with
23 Cal. Labor Code §226(a).

24 (f) **WAITING TIME PENALTIES CLASS.** All CLASS MEMBERS including, but
25 not limited to, persons within the UNPAID WAGES SUBCLASS, the MEAL PERIOD
26 SUBCLASS, the REST PERIOD SUBCLASS, and/or the PAID SICK LEAVE SUBCLASS who
27 did not receive all wages due at the time of his or her termination as required by Cal. Labor Code
28 §§ 201-203.

1 33. The CLASS MEMBERS are so numerous that joinder of all members is impracticable.
2 While the exact number of CLASS MEMBERS are unknown to Plaintiffs at this time and can
3 only be ascertained through discovery, Plaintiffs believe that there are at least one hundred (100)
4 or more putative CLASS MEMBERS.

5 34. There is a well-defined community of interest among the members of the proposed class.
6 Plaintiff, like all other CLASS MEMBERS, was denied: paid meal and rest periods, proper
7 wages, earned paid sick time, reimbursement for business expenses incurred, and accurate
8 itemized wage statements to which they were entitled to under applicable law. The facts
9 underlying the misconduct of Defendants and/or DOES 1 to 100, and each of them, are common
10 to all CLASS MEMBERS and represent a common practice of wrongful conduct resulting in
11 damages to all CLASS MEMBERS.

12 35. There are numerous questions of law and fact common to Plaintiffs and CLASS
13 MEMBERS and those questions predominate over any questions that may affect individual
14 members of the class. The common questions of law and fact include (but aren't limited to) the
15 following:

16 (a) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
17 violated WAGE ORDER 4, CCR § 11040, Cal. Labor Code §§ 204, 246 558, 1194, 1197 and the
18 FLSA by failing to pay CLASS MEMBERS correctly and fully for all time they were under the
19 Defendants' control, including time they were suffered or permitted to work.

20 (b) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
21 violated Cal. Labor Code §§ 226.7 and 512, WAGE ORDER 4 and CCR § 11040 by failing to
22 provide California-based CLASS MEMBERS, or properly compensate them for, required meal
23 and rest periods.

24 (c) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
25 violated by failing to pay California-based CLASS MEMBERS for accrued, vested paid sick
26 time required by Cal. Labor Code § 246.

1 (d) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
2 violated Cal. Labor Code § 2802 by not fully reimbursing California-based CLASS MEMBERS
3 for business expenses incurred in the performance of their job.

4 (f) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
5 violated Cal. Labor Code §226 by failing to provide California-based CLASS MEMBERS with
6 itemized wage statements in full compliance with Cal. Labor Code §226.

7 (g) Whether Defendants and/or DOES 1 to 100, and each of them and/or jointly,
8 violated Cal. Labor Code §§ 201-203 by failing to pay California-based CLASS MEMBERS all
9 wages earned at the time of the termination of employment with Defendants and/or DOES 1 to
10 100, and each of them

11 36. Plaintiffs' claims are typical of the claims of the other CLASS MEMBERS. Plaintiffs and
12 CLASS MEMBERS have both sustained economic damage arising out of the common course of
13 conduct as alleged herein.

14 37. Plaintiffs will fairly and adequately represent and protect the interests of the putative
15 class. Plaintiffs have retained counsel with substantial experience involving employment class
16 actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf
17 of the putative class and have the financial resources necessary to do so. Neither Plaintiffs nor
18 their counsel have any interest adverse to those of the putative class. A class action is superior to
19 other available methods for the fair and efficient adjudication of this controversy since individual
20 joinder of all members of the class is impracticable. Further, as the damages suffered by each
21 individual member of the class may be relatively small, the expense and burden of individual
22 litigation would make it difficult or impossible for individual members of the class to redress the
23 wrongs done to them. The cost to the court system of such individual adjudication would be
24 substantial. Individualized litigation would also present the potential for inconsistent or
25 contradictory judgments and would magnify the delay and expense to all parties and the court
26 system in multiple trials of identical factual issues. By contrast, the conduct of this action as a
27 class action presents fewer management difficulties, conserves the resources of the parties and
28 the court system and protects the rights of each class member.

FIRST CAUSE OF ACTION

Failure to Pay All Wages Due in Violation of

Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198

(By Plaintiffs And CLASS MEMBERS Against Defendants and DOES 1 to 100)

38. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of the First Amended Complaint as if fully set forth herein.

39. At all times relevant hereto, California law, including WAGE ORDER 4 and CCR § 11002 were in full force and binding on Defendants and DOES 1 to 100 and required that Plaintiffs and CLASS MEMBERS, and each of them:

(a) Be paid for all time they were under the Defendants and DOES 1 to 100's control, including time were suffered or permitted to work.

(b) Shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless each employee receives one and one-half (1 1/2) times his or her "regular rate" of pay.

(c) Shall not be employed more than twelve (12) hours in any workday or more than eight (8) hours on the seventh (7th) consecutive workday in any workweek unless each employee receives double his or her "regular rate" pay.

40. Despite these legal requirements, Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and CLASS MEMBERS, and each of them, worked for Defendants including time worked less than eight (8) hours per day, time worked over eight (8) hours per day and over forty (40) hours per week but Defendants and DOES 1 to 100 willfully and intentionally refused, and continue to refuse, to pay Plaintiffs and CLASS MEMBERS the legally required regular pay and overtime compensation. Defendants and DOES 1 to 100 failed to do so, and continue to do so, due to illegal policies or practices of Defendants and/or DOES 1 to 100 including, but not limited to:

(a) failing to include all required earned non-discretionary income within the hourly "regular rate" including, but not limited to, non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. when calculating and paying overtime wages.

(b) failing to include required earned non-discretionary income within the hourly “regular rate” including, but not limited to, non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc. when calculating and paying PAID SICK TIME for California-based employees (Cal. Labor Code § 246, et al) or, alternatively, by not calculating and paying the PAID SICK TIME 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 of employment; and

(c) failing to compensate employees in any manner, or by failing to pay the correct minimum wages, regular rate, and/or overtime wages, for all hours worked, including, but not limited to, regular hours, overtime hours, “pre-shift” work, “post-shift” work, “on-call” time”, “stand by time” and/or other “off-the-clock” work, all scheduled on-call time.

41. Defendants and DOES 1 to 100's conduct described herein violates Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and therefore, pursuant to Labor Code § 1194(a), Plaintiffs and the putative UNPAID WAGE CLASS, and each of them, are entitled to recover all unpaid wages (including overtime compensation) plus interest, attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

Meal Period Violations (Cal. Lab. Code §§ 512, 226.7)

(By Plaintiffs and CLASS MEMBERS Against Defendants and DOES 1 to 100)

42. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of the First Amended Complaint as if fully set forth herein.

43. At all relevant times, Labor Code §§ 226.7, 512, and WAGE ORDER 4 required Defendants and/or DOES 1 to 100 provide Plaintiffs and similarly-situated California-based employees with a thirty (30) minute uninterrupted, duty-free meal period within the first five (5) hours of work and a second one if they work more than ten (10) hours the same workday.

44. During their employment of Plaintiffs and CLASS MEMBERS, Defendants and DOES 1 to 100, and each of them and/or jointly, failed to provide Plaintiffs and CLASS MEMBERS with

legally-compliant meal periods, or failed to properly pay for those missed or non-compliant meal periods at the employee's "regular rate", that they were entitled to under California law.

45. Pursuant to Labor Code § 226.7, the conduct of Defendants and DOES 1 to 100, and each of them, alleged herein entitles Plaintiffs and the CLASS MEMBERS to payment of one (1) additional hour of wages at the "regular rate" for each day a legally-compliant meal period was not provided to each of them.

46. As a proximate result of Defendants and DOES 1 to 100's conduct as alleged herein, Plaintiffs and CLASS MEMBERS have been denied earned compensation for MEAL periods, and have thereby sustained, and continue to sustain, damages in a sum according to proof.

47. As a proximate result of the conduct of Defendants and DOES 1 to 100 as alleged herein, Plaintiffs and CLASS MEMBERS have incurred, and continue to incur, substantial costs of suit and attorneys' fees in a sum to be proven.

THIRD CAUSE OF ACTION

Rest Period Violations (Cal. Lab. Code §§ 512, 226.7)

(By Plaintiffs and CLASS MEMBERS Against Defendants and DOES 1 to 100)

48. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of the First Amended Complaint as if fully set forth herein.

49. At all times relevant hereto, WAGE ORDER 4, including Section 12, and CCR § 11100 were in full force and binding on Defendants and DOES 1 to 100. The specified wage order and regulation required Defendants and DOES 1 to 100, and each of them, to provide Plaintiffs and CLASS MEMBERS with a paid ten (10) minute rest period for every four hours worked, or "major fraction" thereof.

50. During their employment of Plaintiffs and CLASS MEMBERS, Defendants and DOES 1 to 100, and each of them and/or jointly, failed to provide Plaintiff and the putative CLASS MEMBERS with legally-compliant rest periods, or failed to properly pay for those missed or non-compliant rest periods, that they were entitled to under California law.

51. Pursuant to Labor Code § 226.7, the conduct of Defendants and DOES 1 to 100, and each of them, alleged herein entitles Plaintiffs and CLASS MEMBERS to payment of one (1)

1 additional hour of wages at the “regular rate” for each day a legally-compliant rest period was not
2 provided to each of them.

3 52. As a proximate result of Defendants and DOES 1 to 100’s conduct as alleged herein,
4 Plaintiffs and CLASS MEMBERS have been denied earned compensation for rest periods, and
5 have thereby sustained, and continue to sustain, damages in a sum according to proof.

6 53. As a proximate result of the conduct of Defendants and DOES 1 to 100 as alleged herein,
7 Plaintiffs and CLASS MEMBERS have incurred, and continue to incur, substantial costs of suit
8 and attorneys’ fees in a sum to be proven.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802)**

11 ***(By Plaintiffs and CLASS MEMBERS Against Defendants and DOES 1 to 100)***

12 54. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all
13 preceding paragraphs of the First Amended Complaint as if fully set forth herein.

14 55. At all relevant times, Cal. Labor Code § 2802 was applicable to Defendants and DOES 1
15 to 100 and required them to reimburse employees for all business expenses.

16 56. Defendants and DOES 1 to 100 violated Labor Code § 2802 by failing to fully reimburse
17 Plaintiffs and CLASS MEMBERS for all business expenses incurred including, but not limited
18 to, required use of personal cell/smartphone devices at work, personal use of equipment and
19 supplies, internet usage, and home office, etc..

20 57. Accordingly, Defendants and DOES 1 to 100's conduct described herein violates Labor
21 Code § 2802 and therefore, Plaintiff and the putative UNPAID BUSINESS EXPENSES CLASS,
22 and each of them, are entitled to the payment for all business expenses incurred including, but not
23 limited to, cost of owning, and using, their required use of personal cell/smartphone devices at
24 work, personal use of equipment and supplies, internet usage, and home office, etc., plus interest
25 thereon, attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Statements

in Violation of Cal. Labor Code § 226(a)-(g)

(By Plaintiffs and CLASS MEMBERS Against Defendants and DOES 1 to 100)

58. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this First Amended Complaint as if fully set forth herein.

59. Labor Code §226(a) sets forth reporting requirements for employers when they pay wages, as follows: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

60. Defendants and DOES 1 to 100, and as a result of their illegal policies, procedures, and practices described above, failed to comply with these requirements as they did not provide

1 itemized statements to Plaintiffs and CLASS MEMBERS showing (1) gross wages earned, (2)
2 total hours worked by the employee, except for any employee whose compensation is solely
3 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
4 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
5 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
6 deductions, provided that all deductions made on written orders of the employee may be
7 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
8 which the employee is paid, (7) the name of the employee and his or her social security number,
9 except that by January 1, 2008, only the last four digits of his or her social security number or an
10 employee identification number other than a social security number may be shown on the
11 itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

14 61. Plaintiffs and CLASS MEMBERS, and each of them, were injured by these failures
15 because, among other things, the failure to record the name and address of the legal entity that is
16 the employer, and accurately record the hourly and state the full and correct amount(s) of all
17 wages earned, hindered Plaintiff CLASS MEMBERS from determining the true identity of the
18 employer and the full and correct amounts of wages actually earned and owed to them.

19 62. As a proximate result of Defendants and DOES 1 to 100'S conduct as alleged herein,
20 Plaintiffs and CLASS MEMBERS, and each of them, request recovery of Labor Code §226(e)
21 penalties according to proof, as well as interest, attorney's fees and costs pursuant to Labor Code
22 §226(e), in a sum as provided by the Labor Code and/or other statutes.

23 **SIXTH CAUSE OF ACTION**

24 **Waiting Time Penalties (Cal. Lab. Code §§ 201-203)**

25 ***(By Plaintiffs and CLASS MEMBERS Against Defendants and DOES 1 to 100)***

26 63. Plaintiffs and CLASS MEMBERS hereby incorporate by reference and realleges all
27 preceding paragraphs of this First Amended Complaint as if fully set forth herein.
28

64. Cal. Labor Code § 201 requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Cal. Labor Code § 202 requires an employer to promptly pay compensation due and owing to an employee within no more than seventy-two (72) hours of that employee's termination of employment by resignation, and at the time of termination if an employee is involuntarily terminated.

65. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation in a prompt and timely manner as required pursuant to Cal. Labor Code § 201 and § 202 respectively, said employer is liable to said employee for a waiting time wage continuation as described herein.

66. The willful failure of Defendants and DOES 1 to 100 and each of them, to pay Plaintiffs and CLASS MEMBERS---whose employment with Defendants and DOES 1 to 100 has terminated----all the wages due and owing them as described within this First Amended Complaint constitutes violations of Labor Code §§ 201 and 203. Accordingly, Plaintiffs and CLASS MEMBERS are entitled to a waiting time wage continuation pursuant to Labor Code §203, which provides that an employee's wages will continue as a waiting time wage continuation up to thirty (30) days from the time the wages were due.

67. Accordingly, Plaintiffs and CLASS MEMBERS seek waiting time wage continuation for the allocable time period prior to filing the Original complaint, plus costs, interest, disbursements and attorneys' fees pursuant to California law, including but not limited to Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

(By Plaintiffs On Behalf Of California-Based CLASS MEMBERS And The General Public Against All Defendants and DOES 1 to 100)

68. Plaintiffs hereby incorporate by reference and realleges all preceding paragraphs of this First Amended Complaint as if fully set forth herein.

69. Plaintiffs, individually and on behalf of the general public, brings this claim pursuant to Business & Professions Code section 17200, et seq. which prohibits unlawful and unfair business practices. The conduct of each and all Defendants and DOES 1 to 100 as alleged in this First

1 Amended Complaint has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs,
2 CLASS MEMBERS employed by Defendants and DOES 1 to 100 in California, and the general
3 public. Plaintiffs seeks to enforce important rights affecting the public interest within the
4 meaning of California Code of Civil Procedure section 1021.5.

5 70. Each of the Plaintiffs are a "person" within the meaning of Business & Professions Code
6 section 17204, and therefore they have standing to bring this cause of action for injunctive relief,
7 restitution, and other appropriate equitable relief.

8 71. Wage and hour laws express fundamental public policies. Providing employees with
9 proper wages, meal and rest periods, paid sick time, and business expense reimbursement
10 constitute fundamental public policy of the State of California. Cal. Labor Code §90.5(a)
11 articulates the public policies of this State of California are to vigorously enforce minimum labor
12 standards, to ensure that employees are not required or permitted to work under substandard and
13 unlawful conditions, and to protect law abiding employers and their employees from competitors
14 who lower their costs by failing to comply with minimum labor standards.

15 72. Through the conduct alleged in this First Amended Complaint, Defendants and DOES 1
16 to 100, and each of them, have acted contrary to these public policies, have violated specific
17 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
18 in violation of Business & Profession Code section 17200, et seq., depriving Plaintiff, California-
19 based CLASS MEMBERS and all interested persons, of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 73. Defendants and DOES 1 to 100, by engaging in the conduct described in this First
22 Amended Complaint either knew, or in the exercise of reasonable care should have known, that
23 the conduct was unlawful. Accordingly, Defendants and DOES 1 to 100, and each of them,
24 violated section 17200, et. seq., of the Bus. & Prof. Code.

25 74. As a proximate result of the Defendants and DOES 1 to 100 unlawful conduct, and each
26 of them, Plaintiff and CLASS MEMBERS have been damaged in a sum as may be proven.

27 75. Pursuant to the Business & Professions Code, this Court should make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the use or

employment, by Defendants and DOES 1 to 100, its agents or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including, but not limited to, restitution to Plaintiffs and CLASS MEMBERS.

EIGHTH CAUSE OF ACTION

Violation of PAGA (Labor Code § 2699, et seq.)

(By Plaintiff SILVA and GARCIA On Behalf Of CLASS MEMBERS And All Aggrieved Employees Against Defendants and/or DOES 1-100)

76. Plaintiffs SILVA and GARCIA and CLASS MEMBERS hereby incorporate by reference and reallege all preceding paragraphs of this First Amended Complaint as if fully set forth herein.

77. California Labor Code section 2699 et. seq. provides employees with a private right of action to remedy an employer's failure to comply with Labor Code sections designated in Labor Code section 2699.5 including, but not limited to, Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001—all of which Defendants and/or DOES 1-100 violated as set forth above in this pleading and within Plaintiffs SILVA and GARCIA and CLASS MEMBERS's notice(s) to the LWDA/Defendants and/or DOES 1-100, which is attached hereto as Exhibit 1 and incorporated by reference.

78. Plaintiffs SILVA and GARCIA, on behalf of themselves and Aggrieved Employees, bring this representative action against Defendants and DOES 1-100 to recover wages and penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, et seq.

79. Based on the above allegations incorporated by reference, Defendants and/or DOES 1-100 violated Labor Code sections §§ 201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001.

80. As a result of the acts alleged above, Plaintiffs SILVA and GARCIA, on behalf of themselves and Aggrieved Employees, seeks penalties under Labor Code section 2699 because of Defendants and DOES 1-100's violations of Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204,

204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001.

81. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation, Plaintiffs SILVA and GARCIA and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100.00 for the initial violation per employee per pay period; and

\$200.00 for each subsequent violation per employee per pay period.

82. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants and/or DOES 1-100's violations of the California Labor Code.

83. Defendants and/or DOES 1-100 failed to provide Plaintiffs SILVA and GARCIA and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226(a). Plaintiffs SILVA and GARCIA seek separate PAGA penalties for Defendants and/or DOES 1-100'S violations of Labor Code section 226(a) and (e). *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiff's derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant summary judgment on Plaintiff's claim for PAGA penalties based on violation of section 226(a)."]. For violations of Labor Code section 226(a), Plaintiffs SILVA and GARCIA seek the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226." Accordingly,

1 through PAGA and to the extent permitted by law Plaintiffs SILVA and GARCIA and Aggrieved
2 Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek
3 default PAGA penalties for each of Defendants and/or DOES 1-100's numerous violations of
4 Labor Code section 226(a).

5 84. Labor Code section 210 provides that "[i]n addition to, an entirely independent and apart
6 from, any other penalty provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or
8 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
11 result of the faulty compensation policies and practices, Plaintiffs SILVA and GARCIA and
12 Aggrieved Employees are also entitled to recover penalties under Labor Code section 210
13 through PAGA.

14 85. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated
15 damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed, one
16 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
17 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two
18 hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
19 employee is underpaid regardless of whether the initial violation is intentionally committed."
20 Accordingly, through PAGA and to the extent permitted by law, Plaintiffs SILVA and GARCIA
21 and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

22 86. On or about August 15, 2023, and in compliance with California Labor Code
23 §2699.3(1)(A) and §2699.3(B), Plaintiffs SILVA and GARCIA, on behalf of themselves, the
24 CLASS MEMBERS and all aggrieved employees, gave written notice by online filing with the
25 LWDA (including a filing fee of seventy-five dollars (\$75.00) and by certified mail to the
26 Defendants of the specific Labor Code provisions to have been violated, including the facts and
27 theories to support the alleged violations. The matter was assigned LWDA Case Number
28 LWDA-CM-975340-23.

87. Whereas the LWDA did not give notice to Plaintiffs SILVA or GARCIA, or their attorneys, of its intent to investigate the alleged violation set forth in Plaintiff SILVA or GARCIA's notice, and more than 65 calendar days have passed since the Notice was filed, the Plaintiffs now commence a civil action pursuant to Labor Code § 2699 pursuant to Labor Code § 2699.3(2)(A)(1).

88. Plaintiffs SILVA and GARCIA, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one-year period before Plaintiffs SILVA and GARCIA filed notice with the LWDA of their intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

89. Plaintiffs SILVA and GARCIA were compelled to retain the services of counsel to file this action to protect their interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants and/or DOES 1-100. Plaintiffs SILVA and GARCIA have thereby incurred attorneys' fees and costs, which they are entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and CLASS MEMBERS pray for judgment against Defendants and DOES 1 to 100 jointly and severally as follows:

1. For unpaid wages.
2. For restitution of all monies due Plaintiffs and CLASS MEMBERS, for the unlawful business practices of Defendants and DOES 1 to 100.
3. For injunctive relief enjoining Defendants and DOES 1 to 100's unlawful practices and unfair business practices within the meaning of Business & Professions Code § 17200, et seq.
4. For declaratory relief declaring Defendants and DOES 1 to 100 unlawfully: failed to properly pay all earned wages including overtime and sick pay; failed to properly compensate and/or provide meal and rest periods; failed to reimburse business expenses, failed to transfer

monetary tips left for its employees, failed to provide accurate itemized wages statements; and, a declaration of the amounts of damages, penalties, equitable relief, costs, and attorneys' fees to which Plaintiffs and CLASS MEMBERS are entitled;

5. For damages/compensation pursuant to Labor Code §§ 204, 226.7, and 1194.

6. For liquidated damages pursuant to Labor Code § 1194.2.

7. For interest accrued to date, for interest pursuant to Labor Code § 218.6, and prejudgment and post judgment interest.

8. For all applicable costs of suit and expenses including, but not limited to, those available pursuant to Labor Code §§ 226 and 1194; Code of Civil Procedure ("CCP") § 1021.5.

9. For all applicable attorney's fees including, but not limited to, those available pursuant to Labor Code §§ 226, 1194, 2699 (the Private Attorney General Act), and CCP § 1021.5.

10. For equitable restitution of all sums by which Defendants and DOES 1 to 100 were unjustly enriched with a constructive trust placed thereon to enforce said restitution.

11. For all applicable statutory penalties including, but not limited to, those available pursuant to Labor Code §§ 201-203, 204, 210, 226(e), 226.3, 226.7, 227.3, 512, 558.1, and 2699, et seq (the Private Attorney General Act).

12. Such other and further relief as this Court may deem proper and just.

DATE: October 27, 2023

LAW OFFICE OF DONALD POTTER

By



Donald Potter

Attorney for Plaintiffs ISABEL SILVA and
ALEJANDRO GARCIA, individuals and on behalf
of all others similarly-situated

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and similarly-situated employees, hereby demands a jury trial on all matters triable to a jury.

DATE: October 27, 2023

LAW OFFICE OF DONALD POTTER

By



Donald Potter
Attorney for Plaintiffs ISABEL SILVA,
ALEJANDRO GARCIA, JANAI VELASCO, and
MONICA CANO, each as individuals and on behalf
of all others similarly situated.

EXHIBIT 1



LAW OFFICE OF
DONALD POTTER

August 15, 2023

Email address: dp@donpotterlaw.com

SENT VIA CERTIFIED MAIL

Cross Country Staffing, Inc.
6551 Park of Commerce Blvd
Boca Raton, FL 33487

Workforce Solutions Group, Inc.
65 Enterprise, Suite 460
Aliso Viejo, CA 92656

Cross Country Healthcare, Inc.
6551 Park of Commerce Blvd
Boca Raton, FL 33487

California Labor and Workforce
Development Agency
*Submitted Electronically with Filing
Fee*

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE

To the LWDA and Company Representative(s):

This letter serves as written notice under Labor Code section 2699.3 on behalf of ISABEL SILVA and ALEJANDRO GARCIA (“Plaintiffs”) and all other “aggrieved employees” of the following “Defendant(s)”:

**CROSS COUNTRY STAFFING, INC.
CROSS COUNTRY HEALTHCARE, INC.
WORKFORCE SOLUTIONS GROUP, 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 Plaintiffs. 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, Plaintiffs intend to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiffs 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. Plaintiffs attempt to identify the non-compliant policies and practices affecting the aggrieved employees

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so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiffs' counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

BACKGROUND

Defendants employed Plaintiffs during the PAGA Period in the position of Staffing Coordinator at one of Defendants' locations in Commerce, California in the 1 year preceding the date of this Notice. Plaintiff Silva's employment terminated on or about August 11, 2023. During their employment Plaintiffs 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, Plaintiffs inform the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiffs 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").

Plaintiffs reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiffs 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.

During their employment with Defendants, Plaintiffs, and each of them, and "aggrieved employees", were required to regularly work weekday on-call shifts (approximately 7:00 p.m. to 7:00 a.m.) and weekend on-call shifts (approximately 7:00 p.m. on Friday through 7:00 a.m. on Monday) (referred to collectively as the "on-call" shifts). During the on-call shifts, Defendants required Plaintiffs, and each of them, and "aggrieved employees", to: (a) conduct a "passover" at the start of their on-call shift with person(s) closing each of Defendants' business offices where they would be briefed on information and events related to the business office and operations; (b) check all incoming business voicemails forwarded to them during the on-call shifts; (c) return and respond to all voicemails during the on-call shift concerning call-offs, home care worker job injuries, patient falls, emergent situations, and other similar events within 15 minutes or be subject to disciplinary action including, but not limited to, termination; and (d) brief the person opening the office each morning, and after the weekend on Monday, on all events and occurrences during on-call shift.

During their employment with Defendants, Plaintiffs would receive a fixed, lump sum payment for working the entire on-call shift during all the weekdays (a single payment of \$75 (or similar fixed amount) for working on-call Monday through Thursday 7 p.m. to 7 a.m.) and/or weekend

(a single payment of \$150 (or similar fixed amount) for working on-call from 7:00 p.m. on Friday through 7:00 a.m. on Monday (referred to as “On Call Bonus”).

During their employment with Defendants, Plaintiffs, and each of them, and “aggrieved employees”, were under the control of Defendants at all times during the on-call time due to undue restrictions placed on them by Defendants and nature of the work, including, but not limited to, the frequency of calls, Defendants’ fixed time limit for response; the difficulty trading on-call responsibilities with another employee; and the inability to reasonably engage in personal activities during on-call periods.

PAGA CLAIMS

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiffs and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. *First*, as stated in the “Unpaid Hours Worked” section below, Defendants engaged in an unlawful policy and practice of requiring Plaintiffs and other aggrieved employees to work pre-shift, post-shift, on-call shifts, during meal and rest periods, and other off-the-clock work without any compensation---or without legally-compliant compensation---including, but not limited to, working all scheduled on-call time due to the nature of the work on restrictions imposed; conducting a “passover” at the start of their on-call shift with person(s) closing each of Defendants’ business offices where they would be briefed on information and events related to the business office and operations; checking all incoming business voicemails forwarded to them during the on-call shifts; returning and responding to all voicemails during the on-call shift; and briefing the person(s) opening each office each morning, and after the weekend on Monday, on all events and occurrences during on-call shift..

Second, Defendants failed to pay overtime and double time at the “regular rate of pay” because they didn’t include all required earned non-discretionary income within the hourly “regular rate” (e.g., non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc.) when calculating overtime pay. *Marin v. Costco Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that bonus must be included in overtime rate calculation under California law) and 5 CFR § 551.514(a) (“When an employee earns a nondiscretionary cash award or bonus. . . the bonus must be taken into account in determining overtime pay for the period of time during which the bonus was earned.”)

As a result, Plaintiffs 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 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.

On information and belief, Defendants had a policy or practice of having Plaintiffs and the aggrieved employees worked pre-shift, post-shift, during meal and rest periods, on-call shifts and other off-the-clock work without compensation. As such, Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

As a result, Plaintiffs 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 Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7***

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees. Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, Defendants paid paid sick leave at the base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering the paid sick leave underpaid.

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

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

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees. Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant meal periods, As a matter of policy and practice Defendants failed to pay Plaintiffs and other aggrieved employees meal premiums *First*, Plaintiffs and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demand of the job and as a result of high turnover and understaffing. Nonetheless, Defendants had a policy and practice of avoiding and failing to pay meal premiums to Plaintiffs and, on information and belief, other aggrieved employees. Additionally, Plaintiffs and other aggrieved employees were not paid one full meal period premium when they experienced late, missed, short or interrupted meal periods.

As discussed in the sections above, Defendants had an unlawful policy and practice of requiring Plaintiffs and aggrieved employees to work through which deprived employees of being paid their owed meal period premiums.

Second, to the extent that Defendants paid meal period premiums, Defendant failed to pay Plaintiffs and other aggrieved employees a meal period premium at the "regular rate of

compensation” because premiums paid did not factor in all required earned non-discretionary income within the hourly “regular rate” (e.g., non-discretionary bonus, incentive pay, On Call Bonus, commissions, etc.) and instead, paid Plaintiffs and aggrieved employees at their base hourly rate.

Plaintiffs worked more than 6 hours and even up to 9 hours, without a compliant meal break. When Plaintiffs and aggrieved employees experienced these missed, late, short, and interrupted meal periods, Defendants failed to pay meal period premiums at the regular rate as required by Labor Code section 226.7.

As a result, Plaintiffs 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 Plaintiffs 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.

On information and belief, Defendants had a policy and practice of not paying rest period premiums to employees who were not authorized to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation to the aggrieved employees, which would have factored in commissions and other forms of compensation. As discussed throughout this correspondence, Defendants had a noncompliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiffs alleges that rest period premiums were equally deficient with respect to payments made to the aggrieved employees. On information and belief, Plaintiffs alleges Defendants did not communicate a lawful rest period policy to the aggrieved employees and instead required them to work their shifts without regard for California’s rest period obligations.

As a result, Plaintiffs 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 Business Expenses/Unlawful Deductions
Violation of Labor Code § 2802***

At all relevant times, Defendants were legally-required to identify Plaintiffss and the aggrieved employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Cal. Labor Code § 2802.

Plaintiffs is informed and believes, and thereon alleges, that Defendants failed to meet the above-mentioned legal obligations because the work required for required use of personal cell/smartphone devices at work, personal use of equipment and supplies, internet usage, and home office, etc. but Defendants failed to fully reimburse them for those expenses. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1140 (2017) (Labor Code section 2802 requires employers to reimburse employees for mandated use of personal phones to perform work)

***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 Plaintiffs and the aggrieved employees. Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210

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

***Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256***

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment. Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiffs 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, including failing to list the accurate overtime rate using the proper regular rate of pay hourly rate multiple. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiffs and other aggrieved employees worked due to Defendants policy and practice of requiring employees to work off-the-clock during uncompensated meal periods.

Plaintiffs 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 cause confusion among Plaintiffs 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, Plaintiffs 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 Plaintiffs 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, Plaintiffs 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.

***Failure to Provide Proper Days of Rest
Violation of Labor Code § 551, 552, 558; IWC Wage Orders***

Defendants violated Labor Code sections 551 (Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven) and 552 (No employer of labor shall cause his employees to work more than six days in seven) by requiring Plaintiffs and aggrieved

employees to work seven or more consecutive days (including on-call shifts) without a rest day. As a result, Plaintiffs 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 558 (\$50/\$100) plus wages recovered pursuant to this section and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

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

CONCLUSION

If the LWDA does not pursue enforcement, Plaintiffs 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 Plaintiffs' counsel with any questions regarding this letter or the forthcoming lawsuit.

LAW OFFICE OF DONALD POTTER



Donald Potter
California State Bar No. 192735

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the instant action. My business address is Law Office of Donald Potter, 155 North Lake Avenue, Suite 800, Pasadena, California 91101.

On October 27, 2023, I served the interested parties on the service list, and in the manner stated below, with the following document(s) described as:

FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

SERVICE LIST

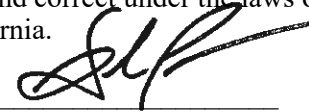
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**(BY ELECTRONIC MAIL/
CASEANYWHERE)** Pursuant to Cal. Code of
Civ. Procedure Section 1010.6(e), and
California Rules of Court, Rule 2.251(a), I
caused said document(s) to be transmitted to
the email address(es) of the persons listed in
the service list

I declare, under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed October 27, 2023 at Pasadena, California.



Donald Potter