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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By N. Lopez , Deputy Clerk

Attorneys for Plaintiff DANIELA DAMJANOSKI, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DANIELA DAMJANOSKI, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff

v.

ABBOTT LABORATORIES, an Illinois
Corporation and DOES 1-10, inclusive,

Defendants

CASE NO. 24CU003190C

COMPLAINT FOR:

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***
6. **FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.***

COMES NOW Plaintiff DANIELA DAMJANOSKI ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for her complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the county of San Diego, state of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant ABBOTT LABORATORIES, was and is an Illinois Corporation doing business throughout the state, including the county of San Diego, state of California. (Referred to herein as "Defendant" or "ABBOTT")
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants are responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
3 defendants. Wherever it is alleged herein that any act or omission was done or committed by
4 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
5 allege that the same act or omission was also done and committed by each and every defendant
6 named as a DOE, both separately and in concert with the named Defendant or Defendants.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
9 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
10 legal entities which were licensed to do and/or were doing business in the county of San Diego,
11 state of California at all times relevant to the subject matter of this action.

12 **FACTUAL BACKGROUND**

- 13 7. On or about May 27, 2013, Plaintiff commenced working for Defendant. Plaintiff's
14 employment with Defendant lasted through July 13, 2023. Throughout her employment with
15 Defendant, Plaintiff has performed her job in a capable and competent manner and was
16 commended for doing so.
- 17 8. Throughout the term of her employment, Plaintiff and all other aggrieved employees were, and
18 currently are, denied the benefits and protections of the Labor Code due to Defendant's
19 institutionalized pay practices, standard as to all of Defendant's California-based employees.
- 20 9. On August 2, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to the
21 California Labor & Workforce Development Agency ("LWDA"). A copy of the letter was
22 mailed to Defendant, via USPS Certified Mail. The letter contained the specific provisions of
23 the California Labor Code and Business and Professions Code violated by Defendant, as well
24 as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and
25 correct copy of this letter.)
- 26 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer
27 to respond, has concluded.

28 //

REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Plaintiffs are proceeding in a representative capacity under PAGA only. Plaintiff is not seeking individual relief. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendants' standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendant failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendant failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.
12. Plaintiff brings this action on the grounds that she and other current and former aggrieved employees of Defendant were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed Four-Thousand (4,000) members.
13. The approximately Four-Thousand (4,000) aggrieved employees are comprised of Defendant's current or former California-based employees.
14. A portion of the Labor Code violations experienced by Plaintiff and other current and former aggrieved employees, were caused by ABBOTT's improper categorization of Plaintiff (and other aggrieved employees), as "exempt" employees. For example, as these employees were designated as "exempt" by ABBOTT, they did not receive proper Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided any legal

1 Meal or Rest Periods. However, all of the Labor Code violations were also experienced by
2 ABBOTT employees, regardless of whether they were designated as “exempt” or not. Further,
3 Plaintiff has standing to represent *all* employees (including those designated by ABBOTT as
4 “nonexempt”) because she was: (1) employed by ABBOTT, and (2) experienced at least one
5 of the Labor Code violations set forth in the LWDA notice. See *Huff v. Securitas Security*
6 *Services USA, Inc.*, (2018) 23 Cal.App.5th 745.

7 15. The questions of law and fact common to all aggrieved employees arising from Defendant’s
8 actions include, among others, the following:

- 9 a. Whether Defendant failed to pay its employees the proper straight-time, overtime, and
10 double time wages due and owing to them;
- 11 b. Whether Defendant failed to pay its employees all compensation due and owing at
12 termination of employment;
- 13 c. Whether Defendant failed to provide its employees with statutorily-compliant Meal
14 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
15 226.7, in that Defendant’s written policies are not compliant with California law, and
16 Defendant does not allow its employees duty-free Meal and/or Rest Periods on
17 occasion;
- 18 d. Whether Defendant failed to properly provide Meal and Rest Period Premiums in
19 accordance with law;
- 20 e. Whether Defendant failed to properly calculate and pay its employees overtime
21 compensation or Meal and Rest Period Premiums in accordance with law by failing to
22 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and
23 other non-discretionary compensation; and
- 24 f. Whether Defendant failed to properly reimburse its employees for necessary business
25 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
26 Labor Code section 2802.

27 16. At all times mentioned herein, Defendant was subject to the Labor Codes and Industrial
28 Welfare Commission Wage Orders of the State of California, including, but not limited to,

California Labor Code section 2698 *et seq.*

17. At all times mentioned herein, Defendant is and were “employers” as that term is used within the relevant sections of the California Labor Code.

18. Plaintiff has exhausted her administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute.

19. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendant’s standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 as though fully set forth herein.

21. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendant violated this section by establishing working conditions below the standard of the applicable Wage Order.

22. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

23. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).

- 1 24. California law requires employers to provide nonexempt employees with a 10-minute Rest
2 Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11040
3 (11).
- 4 25. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage
5 Order must pay the employee one additional hour of pay at the employee’s regular rate of pay
6 for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal.
7 Code Regs. § 11040 (11), (12).
- 8 26. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period
9 policies.
- 10 27. For example, Defendant does not possess a legal Meal Period policy or legal Rest Period
11 policy, and makes no attempt to ensure that its employees are either timely or wholly provided
12 Meal Periods or Rest Periods.
- 13 28. Defendant would also pressure employees to either skip, or cut short, Meal Periods and Rest
14 Periods, based on customer needs.
- 15 29. In addition, Defendant had notice of Plaintiff working outside of her scheduled and/or reported
16 hours, as well as within her Meal and Rest Periods, but failed to provide any compensation for
17 this work-time.
- 18 30. Defendant willfully failed and refused to pay Plaintiff and all other aggrieved employees one
19 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
20 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 4 § (11),
21 (12).
- 22 31. Any payments made by Defendant for non-compliant Meal Periods were not paid at the
23 employee’s regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
24 Orders. Instead, these payments were made at an employee’s base rate and did not include the
25 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
26 example, non-discretionary compensation, and other employee benefits.
- 27 32. As a direct result of Defendant’s failure to comply with the foregoing provisions of the Labor
28 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be

1 proven at trial.

2 33. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
3 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
4 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
5 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
6 Prayer For Relief.

7 34. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
8 pursuant to Labor Code sections 2699(a) for each of these employees.

9 35. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
10 section 2699(g)(1).

11 **SECOND CAUSE OF ACTION**
12 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
13 **Representative Action**
14 **(By Plaintiff against Defendants and DOES 1 through 10)**

15 36. Plaintiff hereby incorporates by reference paragraphs 1 through 35 as though fully set forth
16 herein.

17 37. Defendant failed to pay its employees all compensation due in violation of, among other
18 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
19 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
20 App.4th 314, 323. These violations were caused by and through Defendant's failure to
21 maintain accurate Time Records (as required by California law), to the detriment of the
22 employees. For example, although Defendants would receive "to-the-minute" start and end
23 times (from their employees' mandated timekeeping practices), Defendant would thereafter
24 alter - and deduct time from - the Time Records, prior to payment of compensation to the
25 employees. Additionally, the right to receive the proper minimum wage compensation was
26 impacted by Defendant knowingly failing to consider other work performed by the employees,
27 including all time employees were under Defendant's control. These actions, and instructions,
28 caused the employees to lose compensation, including proper minimum wage compensation
and overtime compensation.

1 38. As a result of Defendant's failure to comply with the provisions of the Labor Code, Plaintiff
2 and all other aggrieved employees have been damaged in an amount to be proven at trial.

3 39. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
4 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
5 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
6 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
7 Prayer For Relief.

8 40. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
9 pursuant to Labor Code sections 2699(a) for each of these employees.

10 41. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
11 section 2699(g)(1).

12 **THIRD CAUSE OF ACTION**
13 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
14 **Representative Action**
(By Plaintiff against Defendants and DOES 1 through 10)

15 42. Plaintiff hereby incorporates by reference paragraphs 1 through 41 as though fully set forth
16 herein.

17 43. Defendant failed to pay Plaintiff and all other aggrieved employees all compensation, including
18 overtime compensation, due in violation of, among other statutes, Labor Code section 510.
19 These violations occurred due to Defendant's illegal policies, referenced above, whereby
20 employees experienced monetary under-compensation. The systematic failure to provide
21 proper overtime compensation is a violation of California law.

22 44. Additionally, Defendant also failed to provide the actual Overtime Rate of Pay by ignoring
23 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
24 shift differentials, various forms of bonus and/or incentive pay, and the value of employee
25 benefits and employee discounts, in violation of Labor Code section 510.

26 45. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor
27 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
28 proved at trial.

1 46. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
2 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
3 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
4 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
5 Prayer For Relief.

6 47. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
7 pursuant to Labor Code sections 2699(a) for each of these employees.

8 48. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
9 section 2699(g)(1).

10 **FOURTH CAUSE OF ACTION**
11 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
12 **Representative Action**
13 **(By Plaintiff against Defendants and DOES 1 through 10)**

14 49. Plaintiff hereby incorporates by reference paragraphs 1 through 48 as though fully set forth
15 herein.

16 50. Defendant failed to provide Plaintiff and all other aggrieved employees with accurate itemized
17 wage statements in violation of, among other statutes, Labor Code section 226. These
18 violations include, but are not limited to, Defendant's failure to accurately identify all
19 applicable regular and overtime(including double-time) rates of pay in violation of section
20 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
21 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate," in violation of
23 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
24 in violation of Labor Code section 226(a)(2). For example, Defendant had notice of employees
25 working outside of their scheduled and/or reported hours, as well as within Meal and Rest
26 Periods, but did not provide compensation.

27 51. Further, the Defendant's wage statement listings are confusing and employees cannot readily
28 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
example, Defendant is apparently using a time calculating system other than "minutes", but

without explanation to the employees within the wage statement.

52. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

53. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

54. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code sections 2699(a) for each of these employees.

55. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

56. Plaintiff hereby incorporates by reference paragraphs 1 through 55 as though fully set forth herein.

57. Defendant failed to reimburse their employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendant's standard policies which require its employees to incur mileage, purchase work supplies, and to use their own cell phones for work-related purposes, without reimbursement.

58. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

59. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,

1 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
2 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 60. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
5 pursuant to Labor Code sections 2699(a) for each of these employees.

6 61. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **SIXTH CAUSE OF ACTION**
9 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 as though fully set forth
13 herein.

14 63. Defendant failed to provide Plaintiff and other aggrieved employees with all wages earned and
15 unpaid at termination in violation of, among other statutes, Labor Code sections 201 through
16 203. These violations resulted from, among other unlawful actions, Defendant's willful failure
17 to provide accurate and complete compensation to aggrieved employees under Labor Code
18 sections 226.7, 510, 512, 1197, and 2802, as set forth above.

19 64. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor
20 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
21 proven at trial.

22 65. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
23 behalf of herself and all other aggrieved employees by and through Labor Code section 2699.3,
24 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
25 penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
26 Prayer For Relief.

27 66. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant
28 pursuant to Labor Code sections 2699(a) for each of these employees.

67. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

- 4 1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section
5 2699(g)(1);
- 6 2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
- 7 3. For such other relief as the Court deems just and proper.
- 8

9 Dated: July 26, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

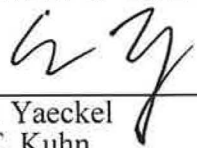
10 
11 _____
12 Eric K. Yaeckel
13 Ryan T. Kuhn
14 Katherine D. Kitlowski
15 Attorneys for Plaintiff DANIELA DAMJANOSKI, in a
16 Representative capacity only, and on behalf of other
17 members of the general public similarly situated
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Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

August 2, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Daniela Damjanoski v. Abbott Laboratories
Our File No.: 7368

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Abbott Laboratories. (hereinafter "Abbott"), in the above referenced matter. This "written notice" is filed on behalf of Ms. Damjanoski, and all current and former non-exempt employees employed by Abbott. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Abbott are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197.1 and 2802, as well as IWC Wage Order 4, or any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 *et seq.*

Facts and theories supporting the allegations: Ms. Damjanoski was employed as an exempt employee for Abbott from approximately May 27, 2013 through July 13, 2023.

PLEASE NOTE: Some of the Labor Code violations experienced by Ms. Damjanoski (and others similarly situated), were caused by Abbott's categorization of Ms. Damjanoski (and others), as "exempt" employees. For example, as these employees were designated as "exempt" by Abbott, they did not receive Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided legal Meal or Rest Periods. Moreover, Ms. Damjanoski is aware that there were numerous employees at Abbott who performed very similar job duties to her, and *did* receive overtime compensation.

Regardless of the “exempt” designation from Abbott, Ms. Damjanoski has standing to represent *all* employees (including those designated by Abbott as “nonexempt”) because she was: (1) employed by Abbott, and (2) experienced at least one of the Labor Code violations set forth in this letter. See *Huff v. Securitas Security Services USA, Inc.*, (2018) 23 Cal.App.5th 745.

Throughout the term of Ms. Damjanoski’s employment, Abbott required Ms. Damjanoski and all other employees to experience actions illegal under the California Labor Code, including the following:

Failure to Provide Compliant Expense Reimbursement Payments

- Abbott failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Damjanoski, and all other employees, including expenses for cell-phone costs and mileage.

Minimum Wage and Overtime Violations

- Abbott failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 4, or any other applicable wage orders. This illegal action is due, in part, to Abbott’s policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Abbott would instruct Ms. Damjanoski to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Abbott would often require Ms. Damjanoski to work extended hours (beyond scheduled hours), without compensation.
- Additionally, among other issues, Abbott has notice of Ms. Damjanoski, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Further, Abbott failed to properly calculate and pay overtime at the actual overtime rate of pay, as Abbott ignores certain compensation when calculating the Regular Rate of Pay. More specifically, Abbott failed to properly calculate the legal Overtime Rate of Pay, by (among other issues) failing to consider certain non-discretionary forms of compensation (including, but not limited to bonuses and/or other non-discretionary compensation).

Failure to Provide Compliant Meal Periods

- Abbott failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage

Order 4, or any other applicable wage orders. For example, Abbott does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day.

- Abbott would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and clients at all times. Abbott has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.) Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Abbott failed to pay Meal Period Premiums at the proper rate, as Abbott fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.
- Abbott required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Abbott would interrupt, or cut short, its employees’ Meal Periods and require them to return to work. Abbott was frequently understaffed, this would result in Ms. Damjanoski being required to respond to supervisors and clients about work related matters during her Meal Periods.
- Abbott illegally retained control over its employees during Meal Periods. For example, Abbott required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Abbott failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, Abbott does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Abbott makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Abbott would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors and clients at all times. Abbott has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Abbott would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Abbott required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Abbott would interrupt, or cut short, its employees’ Rest Periods and require them to return to work.
- Finally, Abbott illegally retained control over its employees during Rest Periods. For example, Abbott required its employees to “remain on the premises” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Abbott violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Damjanoski, and other employees were not compensated for all hours worked (due in part to Abbott’s requirement that employees list only *scheduled* work-times, not actual work-times:)
- Abbott violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.
- Abbott violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Abbott (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or

Rest Period penalties when due. Further, on the rare occasions in which Abbott would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Abbott violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the name and address of the legal entity that is the employer.
- Abbott violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Abbott does not explain how its system describes "time worked" on the Wage Statement itself. As such, Plaintiffs cannot "readily ascertain" what these figures mean. This is because Abbott is apparently using a time-calculating system other than "minutes," but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* ".75") are meant to represent. Without an explanation for how these figures were arrived at, employees cannot "readily ascertain" their total hours worked. Therefore, Abbott failed to provide an accurate showing of the "total hours worked" by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Willful Failure to Provide All Compensation to Ex-Employees

- Abbott failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Abbott failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, Abbott is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Eric K Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

CT CORPORATION SYSTEM

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