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Superior Court of California,
County of San Diego
10/10/2023 at 04:13:00 PM
Clerk of the Superior Court
By Tanisha Moore, Deputy Clerk

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

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

Plaintiffs,

vs.

SIMON MANAGEMENT ASSOCIATES, LLC
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00036919-CU-OE-CTL

Hon. James A. Mangione
Dept. 75

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff RAUL GONZALEZ, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 SIMON MANAGEMENT ASSOCIATES, LLC and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

9 2. Defendants underpaid the class members’ wages by failing to accurately record
10 overtime hours and failing to pay premiums for deficient meal and rest periods.

11 3. Defendants also failed to reimburse the class members for necessary expenses the class
12 members incurred in furtherance of their job duties.

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

15 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Raul Gonzalez

9. Plaintiff Gonzalez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2023, to Present. Plaintiff works as a Senior Maintenance Worker.

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

B. Defendants

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

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

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

14. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

CLASS ALLEGATIONS

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

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

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

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

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

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys

1 who have substantial experience prosecuting, defending, resolving, and
2 litigating wage and hour class, collective, and representative actions in
3 California state and federal courts.

4 d. Superiority: A class action is superior to other means for adjudicating this
5 dispute. Individual joinder is impractical. Class treatment will allow for
6 common issues to be resolved in a single forum, simultaneously, and without
7 duplication of effort and expense.

8 e. Public Policy Considerations: Certification of this lawsuit as a class action
9 advances the State of California's strong public interest in ensuring its
10 approximately millions of employed residents are properly paid the wages they
11 earned for the hours they worked. Class actions provide a mechanism for
12 enforcement of labor laws and allow for vindication of employee rights by
13 unnamed class members.

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

18 **GENERAL ALLEGATIONS**

19 20. Plaintiff and class members worked for Defendants and were compensated on an hourly
20 basis as nonexempt employees. Defendants were required to pay Plaintiff and other class members
21 according to the protections set forth in the California Labor Code.

22 21. Defendants maintained a policy and practice of underpaying overtime when class
23 members worked holiday shifts and overtime in the same pay periods. Defendants paid all hourly
24 employees a premium of 1.5 the employees' base hourly rate for holidays worked. However, when
25 class members earned overtime and working holiday premiums in the same pay periods, Defendants
26 excluded the holiday from the class members' eligible overtime hours that workweek.

27 22. For example, in the workweek July 1, 2023, to July 7, 2023, Plaintiff worked 49.68
28 hours, including 8 hours Plaintiff worked on the holiday, July 4, 2023. However, Defendants only paid

1 Plaintiff approximately 1.68 hours of overtime for that workweek, excluding the holiday entirely.
2 Plaintiff should have received 9.68 hours of overtime that week, but, instead, Defendants did not pay
3 Plaintiff his due overtime wages for 8 of those hours. This violation appears to have occurred in those
4 pay periods with holiday pay and overtime.

5 23. Further, Defendants failed to accurately compensate, and account for all class
6 members' hours worked. Plaintiff and class members needed to communicate with, and respond to,
7 supervisors and coworkers regarding job duties, scheduling, maintenance assignments, and task
8 progress outside of working hours. Plaintiff and class members were not able to clock in for these
9 required communications, resulting in unpaid, off-the-clock work.

10 24. Defendants also failed to provide or authorize compliant meal and rest periods. In fact,
11 Defendants maintained a policy and practice of requiring Plaintiff and class members to finish their
12 work assignments regardless of due meal or rest periods throughout the shift. Defendants also expected
13 Plaintiff and class members to immediately respond to all work assignments, even if the assignment
14 call interrupted or shortened the class members' meal or rest period. When Plaintiff and class members
15 suffered these deficient meal or rest periods, Defendants did not pay class members their due
16 premiums.

17 25. For example, in the workweek June 24, 2023, to June 30, 2023, Plaintiff suffered three
18 deficient meal periods. On June 24, 2023, Plaintiff was unable to take his first meal period until 6.55
19 hours into his shift. Likewise, on June 27, 2023, Plaintiff's first meal period was 5.03 hours into his
20 shift. Finally, on June 28, 2023, Plaintiff's first meal period was 5.5 hours into his shift. Defendants
21 did not pay Plaintiff meal period premiums for these three deficient meal periods. This practice
22 occurred with respect to other class members as well.

23 26. Defendants also failed to provide class members with second meal periods for shifts
24 over ten hours.

25 27. For example, on June 30, 2023, Plaintiff's timesheet shows that he worked 12.5 hours
26 with only one meal break taken 5 hours into his shift. Defendants did not pay Plaintiff or other class
27 members premiums for missed non-compliant meal periods.

28. Defendants also failed to reimburse Plaintiff and class members for personal expenses the class members incurred in furtherance of job responsibilities. Defendants regularly required Plaintiff and class members to communicate using the employees' personal cell phones regarding work-related matters. Although Defendants expected class members to promptly answer and communicate with coworkers and supervisors when called, Defendants did not reimburse Plaintiff or class members for cell-phone data usage.

29. Likewise, Plaintiff and class members occasionally needed to supply their own tools to complete work assignments. Defendants did not reimburse Plaintiff or class members for the use of personal equipment.

30. Because of these violations, Defendants failed to provide accurate itemized wage statements to class members that included the accurate gross or net wages earned, as the employees earned overtime and premium wages which were not paid. Therefore, Defendants have provided inaccurate and non-compliant wage statements to class members.

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

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

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

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

34. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections

1 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
2 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
3 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
4 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
5 Code § 1194.2.

6 35. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
7 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
8 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
9 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
10 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

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

14 36. All outside paragraphs of this Complaint are incorporated into this section.

15 37. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
16 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
17 wages all overtime hours worked, and which further provide a private right of action for an employer’s
18 failure to pay all overtime compensation for overtime hours worked.

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

26 39. Plaintiff and class members are entitled to recover the full amount of the unpaid
27 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
28 extent permitted by law.

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1 46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
3 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
4 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
5 regular rate of compensation.

6 47. Defendants willfully failed in their affirmative obligation to consistently authorize and
7 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
8 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
9 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
10 applicable orders).

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

15 **FIFTH CAUSE OF ACTION**

16 **UNTIMELY PAYMENT OF WAGES**

17 **Violation of Labor Code §§ 204, 210, 218**

18 49. All outside paragraphs of this Complaint are incorporated into this section.

19 50. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
21 period, and which further provide a private right of action for an employer's failure to comply with
22 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
23 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

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

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

5 59. This cause of action is brought by a waiting time subclass pursuant to Labor Code
6 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
7 employment, and which further provide a private right of action to recover statutory waiting time
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
9 wages.

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **Violation of Labor Code § 2802**

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

21 63. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a
22 reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them
23 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

24 64. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
25 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
26 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
27 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
28 Code section 2802.

1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

1 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

8 79. On or about **August 1, 2023**, Plaintiff paid the requisite PAGA filing fee and provided
9 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
10 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
11 violations.

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

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

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

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

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

- 27 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
28 1197, 1198; IWC Wage Orders.

- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

85. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

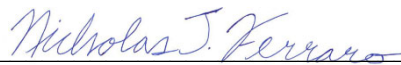
Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;

- 1 h. For disgorgement of all amounts wrongfully obtained;
2 i. For this action to be maintained as a representative action under the PAGA;
3 j. For Plaintiff and counsel of record to be provided with all enforcement capability as if
4 the action were brought by the State of California or the California Division of Labor
5 Enforcement;
6 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
7 l. For restitution and injunctive relief;
8 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
9 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
10 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
11 n. For such other relief the Court deems just and proper.

12
13 Dated: October 10, 2023

Ferraro Vega Employment Lawyers, Inc.

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15 Nicholas J. Ferraro

16 Attorneys for Plaintiff Raul Gonzalez
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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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619-350-6855 fax
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August 1, 2023

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

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

Simon Management Associates, LLC
225 Washington Street
Indianapolis, Indiana 46204

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **RAUL GONZALEZ** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

SIMON MANAGEMENT ASSOCIATES, LLC

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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

- BACKGROUND -

Defendants have employed Plaintiff during the PAGA Period in the position of Senior Maintenance Worker from about March 2023 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

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

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

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Throughout his employment, Plaintiff received work-related calls from his maintenance team and supervisors regarding maintenance assignments, task progress, and scheduling issues. Plaintiff answered these calls and spent time off-clock addressing work-related issues, resulting in unrecorded and unpaid work. Plaintiff believes and alleges that other aggrieved employees were similarly required to answer and complete work-related communications, unpaid, after hours and during meal periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an

employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. When Plaintiff and the aggrieved employees earned working holiday pay¹ and overtime in the same periods, Defendants underpaid overtime by excluding the working holiday hours from the aggrieved employees’ workweek totals and eligible overtime hours. For example, in the pay period **June 24, 2023, to July 7, 2023**, Plaintiff worked over **93 hours**, including 8 hours on the July 4, 2023, holiday. However, although Defendants paid Plaintiff his working holiday premium pay for those 8 hours, Defendants excluded those 8 hours from the hours worked that week for purposes of overtime calculation. As seen below on Plaintiff’s timesheets, during the workweek of July 1, 2023, to July 7, 2023, Plaintiff worked a total of **49.68 hours**.²

DATE	REG HOURS	OT
7/1/2023	8.05	
7/2/2023	8.05	
7/3/2023	9.45	
7/4/2023	8.00	
7/5/2023	8.05	
7/6/2023	8.05	
7/7/2023	8.13	
TOTAL	49.68	
RATE		
AMOUNT		
EARNINGS		
DEDUCTIONS		
BALANCE		
EXEMPTIONS		
MED & SS (FICA)		
FEDERAL TAX		
INSURANCE		
CITY/STATE TAX		
UNEMPLOYMENT		
DISABILITY		
DUES		
GARNISHMENTS		
MISC.		

Plaintiff’s timesheet from 7/1/2023 to 7/7/2023.

¹ On page 50 of Defendants’ Employee Handbook, Defendants’ policy for hourly employees states that when the employees worked holidays, they were entitled to 1.5x their regular pay, regardless of overtime earned that week.

² July 1, 2023 (In 6:00 AM, out 2:33 PM, less 0.5hr lunch) TOTAL 8.05 hrs.; July 3, 2023 (In 6:00 AM, out 3:57 PM, less 0.5hr lunch) TOTAL 9.45 hrs.; July 4, 2023 (In 6:00 AM, out 2:30 PM, less 0.5hr lunch) TOTAL 8.00 hrs.; July 5, 2023 (In 6:00 AM, out 2:30 PM, less 0.5hr lunch) TOTAL 8.00 hrs.; July 6, 2023 (In 6:00 AM, out 2:32 PM, less 0.5hr lunch) TOTAL 8.05 hrs.; July 7, 2023 (In 6:00 AM, out 2:38 PM, less 0.5hr lunch) TOTAL 8.13 hrs. Altogether, total hours for 7/1/2023-7/7/2023 = 49.68 hrs.

However, as seen on the paystub below, with the worked holiday hours unlawfully excluded from that hourly total, Plaintiff only earned about 1.7 hours in overtime for that workweek, rather than the 9.68 he was entitled to.

Paystub Information					
Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	
Raul Gonzalez	309182	06/24/2023	07/07/2023	07/14/2023	
Current and YTD Totals					
Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	3,293.25	167.05	527.97	0.00	
YTD	27,207.00	480.34	4,368.05	0.00	
Earnings					
Description	Dates	Hours	Rate	Amount	YTD
Basic Life	06/24/2023 - 07/07/2023	0.00	0.00	0.54	
Double Time	06/24/2023 - 07/07/2023	0.50	60.00	30.00	
Holiday	06/24/2023 - 07/07/2023	8.00	30.00	240.00	
Holiday Worked	06/24/2023 - 07/07/2023	8.00	45.00	360.00	
Overtime	06/24/2023 - 07/07/2023	5.85	45.00	263.25	
Regular Hours	06/24/2023 - 07/07/2023	80.00	30.00	2,400.00	
Total:				3,293.79	

Plaintiff's wage statement for the pay period 6/24/2023 to 7/7/2023, including the 44.65 hours worked from 6/24/2023 to 6/30/2023 (40 regular, 4.15 overtime, 0.5 double-time). The wage statement shows only 5.85 hrs. of overtime across the entire pay period.

Plaintiff believes and alleges that Defendants maintain a policy and practice of underpaying wages when employees work holiday shifts and earn overtime in the same pay periods. Due to this practice, Plaintiff and the aggrieved employees experienced unpaid overtime wages.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section

226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to the urgency of maintenance assignments, short staffing, and employee job responsibilities, Plaintiff and the aggrieved employees often suffered short, late, interrupted and/or missed meal periods which are evident from employee time records. When Plaintiff or the aggrieved employees deployed out to a site to perform an assignment, Defendants’ policy was to keep the employees on site, completing the assignment, regardless of meal period timing, until the employees fully executed the maintenance request. Further, Defendants required Plaintiff and aggrieved employees to constantly monitor the phones for maintenance assignment intake, regardless of the employees’ meal period status. If a call came in for an urgent maintenance request during a meal period, Defendants expected Plaintiff and other aggrieved employees to attend to the call and assignment immediately, resulting in deficient meal periods.

An example of Plaintiff’s deficient meal periods is below on his timesheets for the week of June 24, 2023, to June 30, 2023. The timesheet shows that on June 24th, Plaintiff took his first meal period 6.55 hours into his shift. Likewise, on June 27th, Plaintiff took his first meal period 5.03 hours into his shift. Finally, on June 28th, Plaintiff took his first meal period 5.5 hours into his shift.

NAME Raul Gonzalez Jr

	IN	DATE	REG HOURS	OT
1st DAY	OUT	1		
	IN	2		
	OUT	3		
	IN	4		
2nd DAY	OUT	5		
	IN	6		
	OUT	7		
	IN			
3rd DAY	OUT		TOTAL	
	IN		RATE	
	OUT		AMOUNT	
	IN		EARNINGS	

24 JUN 5:57AM
24 JUN 12:32PM
24 JUN 1:02PM
24 JUN 2:33PM
27 JUN 5:55AM
27 JUN 11:00AM
27 JUN 11:30AM
27 JUN 2:31PM
28 JUN 6:00AM
28 JUN 11:30AM
28 JUN 12:00PM
28 JUN 2:30PM

Likewise, when Plaintiff and the aggrieved employees worked shifts longer than 10 hours, Defendants did not provide a second, uninterrupted, 30-minute meal period in violation of Labor Code section 512. An example of Defendants' deficient second-meal period policy is below.

IN	FEDERAL TAX	30 JUN 6:00AM	12.5
OUT	INSURANCE	30 JUN 11:00AM	
IN	CITY/STATE TAX	30 JUN 11:30AM	
OUT	UNEMPLOYMENT	30 JUN 7:00PM	

Plaintiff's timesheet showing he worked 12.5 hours with only one meal period at 11:00 AM to 11:30 AM on 6/30/2023.

Further, when Plaintiff and the aggrieved employees suffered these deficient first and/or second meal periods, Defendants did not provide Plaintiff or the aggrieved employees with their due meal period premiums.

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

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

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

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

Due to the same reasons stated above for meal periods, Plaintiff and the aggrieved employees often suffered short, late, interrupted and/or missed rest periods. Further, when Plaintiff and the aggrieved employees suffered these deficient rest periods, Defendants did not provide Plaintiff or the aggrieved employees with their due rest period premiums.

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

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil

penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

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

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Specifically, Plaintiff and the aggrieved employees who earned working holiday hours and overtime in the same pay periods did not receive an accurate accounting of hours worked for those pay periods, resulting in incorrect wage statements. Additionally, in violation of Labor Code section 226(a)(2), Defendants failed to list all hours worked on employee wage statements.

Finally, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3

(\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” See, e.g., *Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Throughout his employment, Plaintiff received work-related calls on his personal cell phone from his maintenance team and supervisors regarding maintenance assignments, task progress, and scheduling issues. Although Plaintiff was expected to pick up the phone and promptly communicate with Defendants when called, Defendants did not reimburse Plaintiff for any cell-phone data usage. Additionally, Plaintiff and aggrieved employees occasionally needed to supply some of their own tools to complete work assignments. Defendants never reimbursed Plaintiff or the aggrieved employees for the use of the employees’ personal supplies or tools.

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

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

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

Nicholas J. Ferraro

REJ

Cc Plaintiff Raul Gonzalez

Chad M. Roberts, Director of Payroll, Human Resources
Chad.roberts@simon.com