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

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

Plaintiffs,

vs.

GOSECURE INC. and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00051368-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ANDREW CHOI, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants GOSECURE INC. and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action brought under the California Private Attorneys General
7 Act (Labor Code sections 2968 *et seq.*)

8 2. Defendants underpaid the aggrieved employees by failing to pay minimum and
9 overtime wages for all hours worked, specifically for on-call and standby time. Defendants instead
10 paid a lump sum of \$300 for each on-call week worked (totaling approximately \$3.57 per hour),
11 resulting in underpaid minimum wage and corresponding overtime.

12 3. In the event, the on-call pay was properly excluded from hours worked, Defendants
13 failed to include the lump sum into the regular rate calculation for overtime, sick, and premium wages.

14 4. Moreover, as identified in the PAGA notice, Defendants failed to maintain lawful meal
15 and rest period policies and practices, resulting in underpaid wages and premiums for those non-
16 compliant periods.

17 5. Defendants failed to reimburse aggrieved employees for necessary expenses incurred
18 in furtherance of the aggrieved employees’ job duties.

19 6. Defendants’ employment policies, practices, and payroll administration systems
20 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
21 employees.

22 **JURISDICTION & VENUE**

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

25 8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
26 the Superior Court.

27 9. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

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

6 **PARTIES**

7 **A. Plaintiff Andrew Choi**

8 11. Plaintiff Choi is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about October 2017, to October 2023. Plaintiff worked as
10 a Technical Support Engineer.

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

15 **B. Defendants**

16 13. Defendant GoSecure Inc. is a Delaware corporation that maintains operations and
17 conducts business throughout the State of California, including in this county.

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

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

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

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

9 **GENERAL ALLEGATIONS**

10 18. Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked,
11 resulting in unpaid minimum wages.

12 19. Specifically, Plaintiff and the aggrieved employees were not paid the minimum wage
13 for all hours worked including on-call or standby time. Defendants required Plaintiff and the aggrieved
14 employees to engage in approximately one week of on-call support each month, requiring them to
15 work their regularly scheduled 40-hour workweek then be on-call from 5pm to 5am. During the on-
16 call period, Plaintiff and the aggrieved employees were expected to stay in their remote workspace,
17 keep connected to stable internet that allowed immediate access to Defendants' VPN, and answer all
18 calls and report to work within one hour of being called to duty.

19 20. Plaintiff and the aggrieved employees earned a lump sum of \$300 for the on-call time.
20 An on-call week consisted of 12 hours of standby time, 7 days a week, for a total of 84 on-call hours.
21 This breaks down to a wage of about \$3.57 per hours for on-call hours worked, significantly less than
22 the applicable minimum wage of \$16.30 in San Diego County. Plaintiff and the aggrieved employees
23 remained under Defendants' direction, control, and restraint, but did not pay the aggrieved employees
24 at least the applicable minimum wage for all hours worked. Instead, the \$300 payment was not likely
25 credited to minimum wage, but instead a flat non-discretionary amount for being on-call.

26 21. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the
27 lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

1 22. To the extent Plaintiff and the aggrieved employees' on-call time counts as hours
2 worked, Defendants improperly excluded on-call time from overtime hours each pay period. Despite
3 being engaged for a 21-hour period after their scheduled 40-hour workweek, Defendants did not pay
4 either overtime or double-time for hours worked in excess of 8 and 12 hours.

5 23. To the extent Plaintiff and the aggrieved employees' on-call time was properly
6 excluded from hours worked for the purposes of overtime Defendants still underpaid overtime by
7 excluding some forms of non-discretionary income, like the on-call compensation, from the regular
8 rate of pay. As discussed, Plaintiff and the aggrieved employees earned a non-discretionary lump sum
9 payment of \$300 each time they were on-call for a week. Defendants failed to include this payment
10 into the regular rate of pay as overtime was paid at 1.5x the employees' base hourly rate instead of
11 1.5x the employees' regular rate (inclusive of all non-discretionary income). An illustrative example
12 is shown on Plaintiff's wage statement for the pay period March 16, 2023, to March 31, 2023.

13 24. Defendants failed to comply with California's paid sick leave laws with respect to the
14 aggrieved employees.

15 25. To the extent Plaintiff and aggrieved employees' on-call time does not count as "hours
16 worked," Defendants underpaid sick leave by not factoring some forms of non-discretionary income,
17 like the on-call compensation, into the lawful rates for paid sick leave. Instead, Defendants paid sick
18 leave at a depreciated rate, using only the aggrieved employees' base hourly rate.

19 26. Plaintiff and the aggrieved employees suffered late, short, interrupted, and/or missed
20 meal periods. When Plaintiff and the aggrieved employees experienced these non-compliant meal
21 periods, Defendants failed to pay meal period premiums. To the extent Defendants paid any meal
22 period premiums and the on-call time does not count as hours worked, Defendants underpaid the
23 aggrieved employees' meal period premium wages due to the regular rate miscalculation explained
24 above.

25 27. Similarly, Plaintiff and the aggrieved employees were not authorized or otherwise able
26 to take their rest periods. When Plaintiff and the aggrieved employees suffered these deficient rest
27 periods, Defendants failed to pay their applicable rest period premiums. To the extent Defendants
28 paid any rest period premiums and the on-call time does not count as hours worked, Defendants

1 underpaid the aggrieved employees' meal period premium wages due to the regular rate miscalculation
2 explained above.

3 28. Defendants failed to reimburse Plaintiff and the aggrieved employees necessarily
4 incurred for work-related tasks. Defendants transitioned Plaintiff and the aggrieved employees to
5 remote positions at the start of the COVID-19 pandemic and eventually ceased all in-office operations
6 permanently. Defendants failed to reimburse Plaintiff and the aggrieved employees for several
7 expenses accompanying remote work, such as personal cell phone data for hotspot usage and
8 internet/electricity utilization. As a result, Defendants' in-office closure required Plaintiff and the
9 aggrieved employees to incur these expenses to complete their job duties, however failed to reimburse
10 the aggrieved employees for these necessary expenses.

11 29. Because of these violations, Defendants failed to provide accurate, itemized wage
12 statements to employees that included the accurate gross or net wages earned, as the employees earned
13 overtime, sick leave, and premiums which were not paid at the lawful rate due to the regular rate
14 violations.

15 30. These violations create derivative liability for failure to pay all wages owed each
16 payday or upon separation of employment, as a result of the regular rate underpayments.

17 **FIRST CAUSE OF ACTION**

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

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

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

21 31. All outside paragraphs of this Complaint are incorporated into this section.

22 32. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
23 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
24 codified as Labor Code section 2698 *et seq.*:

- 25 a. All current and former non-exempt employees who worked for Defendants in
26 California at any time from one year prior to the postmark date of the initial
27 PAGA notice through date of trial.
28

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

34. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to this cause of 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.”])

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

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

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

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

39. On or about **September 14, 2023**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

1 40. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
2 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
3 forth herein (the "PAGA notice").

4 41. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

6 42. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
7 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
8 providing a description of any actions taken to cure the alleged violations.

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

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

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
22 1198; IWC Wage Orders.
- 23 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
24 1198; IWC Wage Orders.
- 25 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
26 §§ 204, 204b, 210.
- 27 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
28 Labor Code §§ 201, 202, 203, 256.

- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

45. 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 recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
- j. For such other relief the Court deems just and proper.

Dated: November 27, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Andrew Choi

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 14, 2023

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

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

GoSecure Inc.
13220 Evening Creek Drive, S. Ste. 107
San Diego, California 92128

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

GOSECURE INC.

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Technical Support Engineer from about October 2017 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.

Further, employee on-call or standby time must be compensated even if the employee does nothing but wait for something to happen. *Armour & Co. v. Wantock* (1944) 323 U.S. 126. “Refraining from other activities often is a factor of instant readiness to serve, and idleness plays a part in all employment in a stand-by capacity.” *Id.* On-call time under significant employer control is compensable as “hours worked,” and therefore subject to minimum wage laws.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendants required Plaintiff and other aggrieved employees to engage in approximately one full week of on-call support work each month. During these on-call weeks, Plaintiff and other aggrieved employees would work their regularly scheduled 40-hour workweek, then from 5pm to 5am, seven days a week, Plaintiff and the aggrieved employees were on-call. During the on-call period, Plaintiff and other aggrieved employees were expected to stay at their remote workspace, keep connected to stable Wi-Fi that allowed immediate access to Defendants’ VPN, and to answer all calls and report to work within one hour of being called to duty.

When Plaintiff and aggrieved employees had an on-call workweek, they received only a lump sum of \$300 for the on-call time apart from regular workweek wages, as seen in the wage statement below. An on-call week consisted of 12 hours of standby time, 7 days a week, for a total of 84 on-call hours. Considering the on-call compensation provided to Plaintiff and aggrieved employees was \$300 for the entire week, this breaks down to a wage of about \$3.57 per hour for on-call hours worked, significantly less than the applicable minimum wage of \$16.30 in San Diego County. Defendants required Plaintiff and other aggrieved employees to work on-call hours under the employer’s direction, control, and restraint, but did not pay the aggrieved employees at least the applicable minimum wage for all hours worked. However, the \$300 weekly pay was not likely credited to minimum wage but instead a flat rate non-discretionary amount for being on call.

Earnings	rate	hours	this period	year to date	
Regular	31.2493	84.00	2,624.94	42,112.03	
Overtime	46.8739	2.00	93.75	1,657.18	
LTDGROSSUP			9.23	166.14	
Ocworkot	31.2493	4.00	187.50	1,208.65	
On Call			300.00	3,600.00	
P.T.O.	31.2493	4.00	125.00	5,222.96	
Holiday				1,723.02	
Ocworkrg				361.53	
Gross Pay			\$3,340.42	56,051.51	
					Net Pay \$2,124.13
					Checking 1 -2,124.13
					Net Check \$0.00
					* Excluded from federal taxable wages
					Your federal taxable wages this period are \$3,117.40

Plaintiff's wage statement from an on-call pay period from September 16, 2022, to September 30, 2022, reflecting a single sum payment of \$300 to account for 84 hours of on-call work.

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. To the extent Plaintiff and aggrieved employees' on-call time counts as hours worked, Defendants improperly excluded on-call time from Plaintiff and aggrieved employees' overtime-eligible hours each pay period. When working an on-call workweek, Plaintiff and aggrieved employees

worked a full 8-hour shift, then remained working on-call from 5pm to 5am, for an additional 12 hours. Despite this 21-hour engagement period, Defendants did not pay either overtime or double-time for hours worked in excess of 8 and 12, respectively. When Defendants did pay overtime for on-call periods, Defendants only paid overtime for the aggrieved employees' on-duty spurts, despite the employees' on-call engagement for several hours outside of this reporting time.

To the extent that Plaintiff and the aggrieved employees' on-call time does not count as hours worked for purposes of overtime, Defendants still underpaid overtime by excluding some forms of non-discretionary income, like the on-call compensation, from the regular rate of pay.

Additionally, Plaintiff and other aggrieved employees earned a non-discretionary lump sum payment of \$300 for working on-call weeks. When Defendants calculated overtime for Plaintiff or aggrieved employees, Defendants only paid overtime wages at 1.5x the employees' base hourly rate, instead of the regular rate of pay inclusive of all non-discretionary income. An example of Defendants' overtime underpayment is below.

Earnings	rate	hours	this period	year to date
Regular	31.2493	92.00	2,874.94	15,499.66
Overtime	46.8739	4.00	187.50	421.87
LTDGROSSUP			9.23	55.38
On Call			300.00	1,200.00
P.T.O.	31.2493	4.00	125.00	374.99
Holiday				749.97
Gross Pay			\$3,496.67	18,301.87

Plaintiff's wage statement showing a \$300 lump sum payment for working overtime during the pay period of March 16, 2023, to March 31, 2023. However, Defendants only paid Plaintiff's overtime at 1.5x his base hourly rate of \$31.25 instead of the regular rate of pay.

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

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. To the extent Plaintiff and aggrieved employees’ on-call time does not count as “hours worked,” Defendants underpaid sick leave by not factoring some forms of non-discretionary income, like the on-call compensation, into the lawful rates for paid sick leave. Instead, Defendants paid sick leave at a depreciated rate, using only the aggrieved employees’ base hourly rate.

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

Unpaid 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.

To the extent that Plaintiff and the aggrieved employees' on-call time does not count as hours worked, Defendants underpaid the aggrieved employees' meal period premium wages due to the regular rate miscalculation explained above. Because of the urgency and complexity of some job duties, Plaintiff believes and alleges that some aggrieved employees suffered late, short, interrupted and/or missed meal periods. When aggrieved employees suffered these deficient meal periods, Plaintiff further believes and alleges that Defendants did not pay aggrieved employees their due meal period premiums. To the extent paid, Defendants underpaid these premiums by failing to factor all forms of non-discretionary income, such as the on-call compensation, into the regular rate of pay.

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.

To the extent that Plaintiff and the aggrieved employees' on-call time does not count as hours worked, Defendants underpaid the aggrieved employees' rest period premium wages due to the regular rate miscalculation explained above. Because of the urgency and complexity of some job duties, Plaintiff believes and alleges that some aggrieved employees suffered late, short, interrupted and/or missed rest periods. When aggrieved employees suffered these deficient rest periods, Plaintiff further believes and alleges that Defendants did not pay aggrieved employees their due rest period premiums. To the extent paid, Defendants underpaid these premiums by failing to factor all forms of non-discretionary income, such as the on-call compensation, into the regular rate of pay.

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 properly compensate Plaintiff and aggrieved employees for on-call time. Alternatively, Defendants failed to factor all forms of non-discretionary income into payment for overtime, sick leave, and premium wages. 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.

On information and belief, Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to properly compensate Plaintiff and aggrieved employees for on-call time. Alternatively, Defendants failed to factor all forms of non-discretionary income into payment for overtime, sick leave, and premium wages. Plaintiff further believes and alleges that Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

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

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees, including payment of overtime and premiums at the lawful hourly rates. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Further, to the extent the on-call time counts as hours worked, Defendants further violated section 226(a)(9) by failing to list the hours and rate for each on-call payment.

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. Defendants transitioned Plaintiff and other aggrieved employees to remote positions at the start of the COVID-19 pandemic. Eventually, Defendants ceased in-office operations permanently, leaving Plaintiff and aggrieved employees to continue with remote work. However, Defendants failed to reimburse Plaintiff and aggrieved employees for several expenses accompanying remote work, such as personal cell phone data for hotspot usage, and internet/electricity utilization. Defendants’ in-office closure required Plaintiff and aggrieved employees to incur these expenses to complete their job duties, but Defendants did not reimburse the aggrieved employees for these necessary expenses.

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 of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

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

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Plaintiff Andrew Choi

Rafael G. Nendel-Flores, Counsel for Defendants
mendelflores@clarkhill.com