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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ONORAY JR. DAVIS and MERCEDES MORRIS, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

ALLSAFE SERVICES, INC.; AEGION ENERGY SERVICES, LLC; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00054447-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

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

Plaintiffs ONORAY JR. DAVIS and MERCEDES MORRIS, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiffs") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants ALLSAFE SERVICES, INC.; AEGION ENERGY SERVICES, LLC; and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action brought under the California Private Attorneys General Act (Labor Code sections 2698 *et seq*.)

2. Defendants underpaid Plaintiffs' and the aggrieved employees' regular and overtime hours due to an unlawful auto-deduct meal period policy and failure to pay for non-productive time.

3. Defendants underpaid Plaintiffs' and the aggrieved employees' wages by failing to include all forms of remuneration into the regular rate of pay calculation for overtime, sick, and premium wages.

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

JURISDICTION & VENUE

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

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

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

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

PARTIES

A. Plaintiffs

9. Plaintiff Davis is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about April 2022 to Present. Plaintiff worked as a Permit Writer.

10. Plaintiff Morris is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2022 to Present. Plaintiff worked as a Permit Writer and Safety Coordinator.

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

B. Defendants

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

13. Defendant Aegion Energy Services, LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

17. 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.

GENERAL ALLEGATIONS

18. Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

19. First, Defendants improperly required Plaintiffs to complete off-the-clock, unpaid mandatory training (e.g., Refinery Safety Overview Training, Principles of Petroleum Training, Safety as it Pertains to Crafts Training, and Aegion Energy Services, Safety, Audiogram, Marathon Martinez Refinery Training). Altogether this added up to at least four days of unpaid onboarding, training, and testing.

20. Second, Defendants maintained an unlawful policy and practice of auto-deducting 30-minute meal periods from Plaintiffs and aggrieved employees' timesheets even though Plaintiffs and aggrieved employees often had to work through their meal periods, resulting in unpaid hours worked.

21. Third, in addition to the automatic meal period deductions, when Plaintiffs and aggrieved employees would badge themselves out of the project site to go to lunch or to take breaks, Defendants further subtracted time they spent "badged out" of the premises from the employees' total work hours those days. This policy unlawfully resulted in failure to pay for non-productive time including rest periods.

22. Defendants additionally failed to pay Plaintiffs and the aggrieved employees for all overtime hours.

23. First, to the extent that Plaintiffs' and the aggrieved employees' off-the-clock work resulted in unrecorded overtime hours, this resulted in unpaid overtime wages.

24. Second, Defendants failed to pay all overtime and double time hours worked at the regular rate of pay.

25. For example, Plaintiffs earned per diem wages to supplement their move to California. Defendants adjusted their per diem payments based directly on hours worked each pay period, adjusting for less per diem when the employees worked fewer hours or took PTO. This periodic adjustment to the per diem rate renders these payments more akin to "compensation for hours worked" rather than expense reimbursement. *See Clarke v. AMN Services, LLC*, 987 F.3d 848, 858 (9th. Cir. 2021) (holding where per diem payment deducts according to hours worked and occurs without regard to if expenses were actually incurred in a given pay period, the per diem is compensation for hours worked and factors into regular rate of pay).

26. Defendants should have factored this additional per diem compensation into the regular rate of pay for overtime wages. Instead, Defendants only paid Plaintiffs and aggrieved employees 1.5x their base hourly rate (for overtime) or 2x their base hourly rate (for double time), resulting in underpayment of overtime and double time wages.

27. Likewise, Plaintiffs believe and allege that Defendants similarly underpaid sick leave at only the aggrieved employees' base hourly rate instead of the regular rate of pay inclusive of all non-discretionary income.

28. Due to permitting responsibilities, job duties, and short staffing, Plaintiffs and the aggrieved employees suffered several missed, late, short, and/or interrupted meal periods.

29. For example, as Permit Writers, Plaintiffs were required to do a "mid-shift update" on all the permits issued at the beginning of her shift. This was a daily, time sensitive procedure that occurred in the morning until all work permits issued were updated, and the procedure needed to be completed by the time contractors were finished with lunch. If there were any issues in the permitting process, a Permit Writer was required to go out to a worksite to address the issue, as they were the only positions with the authority to do so. These procedures often prevented Plaintiffs and aggrieved employees from timely taking their due meal periods in full.

30. Defendants further auto-deducted a 30-minute period from Plaintiffs and aggrieved employees' time records every shift.

31. When Plaintiffs and the aggrieved employees experienced these non-compliant meal periods, Defendants failed to pay all due meal period premiums.

32. To the extent Defendants paid Plaintiffs and aggrieved employees any meal period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from the regular rate of pay.

33. For the same reasons as stated above for meal periods, Plaintiffs and aggrieved employees suffered deficient rest periods.

34. Additionally, as discussed in the minimum wage section above, if Plaintiffs or the aggrieved employees left the project site to take their rest periods, Defendants treated this time as "clocked-out" and did not compensate Plaintiffs and aggrieved employees for this paid non-productive time.

35. When Plaintiffs and the aggrieved employees experienced these non-compliant meal periods, Defendants failed to pay all due rest period premiums.

36. To the extent Defendants paid Plaintiffs and aggrieved employees any meal period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from the regular rate of pay.

37. Defendants violated Labor Code section 432.5 with respect to Plaintiffs and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

38. Defendants required Plaintiffs and aggrieved employees to sign a non-competition agreement, detailing that Plaintiffs and aggrieved employees are prohibited from affiliation or employment with any competing business within a restricted territory during employment and for an 18-month period thereafter. This is an unlawful employment condition and restraint on Plaintiffs' and aggrieved employees' professions.

39. Additionally, in violation of Labor Code section 226(a)(9), Defendants failed to consistently state all applicable hourly rates and hours worked for some wage categories.

40. 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.

41. Further, Defendants violated Labor Code section 226(a)(2) by failing to include the total hours worked each pay period on Plaintiffs and the aggrieved employees' wage statements.

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

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

46. 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."])

47. 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. "

48. 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."

49. 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."

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

51. On or about **October 20, 2023**, Plaintiffs each 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.

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

53. To date, neither Plaintiffs nor Plaintiffs' counsel has received a response to Plaintiff's written PAGA notices from the LWDA.

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

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

56. As set forth in the PAGA notices attached as Exhibit 1 and Exhibit 2 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

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

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

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

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

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

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

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

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

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

j. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

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

PRAYER

Plaintiffs 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 penalties and liquidated damages;

d. For this action to be maintained as a representative action under the PAGA;

e. For Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

f. For recovery of all civil penalties and other recoverable amounts under the PAGA;

g. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and

h. For such other relief the Court deems just and proper.

Dated: December 15, 2023

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorneys for Plaintiffs Onoray Jr. Davis and Mercedes Morris

EXHIBIT 1

Plaintiff Davis' Notice of Labor Code Violations

FERRARO VEGA
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October 20, 2023

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

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

AllSafe Services, Inc.
17988 Edison Ave.
Chesterfield, Missouri 63005

Aegion Energy Services, LLC
17988 Edison Ave.
Chesterfield, Missouri 63005

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

Dear LWDA Officer and Company Representatives:

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

ALLSAFE SERVICES, INC.; AEGION ENERGY SERVICES, 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 employed Plaintiff during the PAGA Period in the position of Permit Writer from about April 2022 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 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. Defendants violated the minimum wage laws in several ways.

First, Defendants required Plaintiff and aggrieved employees to complete mandatory training off-the clock, before they could begin work at the outset of employment. Plaintiff had to complete Refinery Safety Overview Training, Principles of Petroleum Training, Safety as it Pertains to Crafts Training, and Aegion Energy Services, Safety, Audiogram, Marathon Martinez Refinery Training. Altogether, this added up to at least **four days of onboarding, training, and testing without pay**. Defendants still have not paid Plaintiff for this mandatory training time.

Second, as detailed below, Defendants maintained an unlawful policy and practice of auto-deducting 30-minute meal periods from Plaintiff and aggrieved employees' timesheets even though Plaintiff and aggrieved employees often had to work through their meal periods. This discrepancy led to on-duty work time that Defendants unlawfully failed to compensate entirely.

Third, ***in addition*** to the automatic meal period deductions, when Plaintiff and aggrieved employees would badge themselves out of the project site to go to lunch or to take breaks, Defendants further subtracted time they spent "badged out" of the premises from the employees' total work hours those days. This includes time spent "badged out" for paid non-productive time, like rest 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 and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants violated California's overtime laws in multiple ways.

First, to the extent that the off-clock work mentioned above resulted in overtime hours not recorded, Plaintiff believes and alleges that 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.

Second, Plaintiff and aggrieved employees earned supplemental remuneration beyond their base wages, which Defendants did not properly factor into the aggrieved employees' overtime or double-time rates. For example, Plaintiff earned a per diem wage to supplement his adjustment and move to California to work for Defendants. Defendants adjusted per diem payments based directly on hours worked each pay period, adjusting for less per diem when the employees worked fewer hours or took PTO. This periodic adjustment to the per diem rate renders these payments more akin to "compensation for hours worked" rather than expense reimbursement. *See Clarke v. AMN Services, LLC*, 987 F.3d 848, 858 (9th. Cir. 2021) (holding where per diem payment deducts according to hours worked and occurs without regard to if expenses were actually incurred in a given pay period, the per diem is compensation for hours worked and factors into regular rate of pay).

As such, Defendants should have factored this additional per diem compensation into the regular rate of pay for overtime wages. Instead, Defendants only paid Plaintiff and aggrieved employees 1.5x their base hourly rate (for overtime) or 2x their base hourly rate (for double time), resulting in underpayment of overtime and double time wages. An example of the underpayment is below:

Employee: 90064977 Onoray Jr. Davis

Check No: 20739 **User Check No:** **Che**

Net Pay: 4,283.46

NWHR	Normal Hours	56.00	40	2,240.00
OVHR	Over-Time Hours	84.00	28	2,352.00
DTHR	Double Over-Time Hours	112.00	1	112.00
PD	PER DIEM	0.00		980.00

Plaintiff's wage statement for pay period June 19, 2023, to June 25, 2023, showing Plaintiff earned $980 in non-discretionary income in the same pay period as overtime and double-time, but Defendants only paid Plaintiff's overtime and double time at 1.5x and 2x his base hourly rate of $56.

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.

<u>Unpaid Paid Sick Leave</u>
Violation of Labor Code §§ 246 through 248.7

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

<u>Labor Code section 246</u> 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 <u>Labor Code sections 246, 246.5, 247</u>, and must further ensure that they maintain the paid sick leave records required by <u>Labor Code section 247.5</u>. 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."

On information and belief, Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay, Plaintiff believes and alleges that Defendants similarly underpaid sick leave in the same manner Defendants underpaid overtime and premium 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 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.

Due to permitting responsibilities, job duties, and short staffing, Plaintiff and the aggrieved employees suffered several missed, late, short, and/or interrupted meal periods. Defendants did not provide Plaintiff or aggrieved employees with a mechanism to schedule or plan for meal periods. In fact, often when Plaintiff was working, he would have to end his meal periods early, or delay taking them, to address contractor permitting issues.

As a Permit Writer, Plaintiff was required to do a "mid-shift update" on all the permits issued at the beginning of his shift. This was a daily, time sensitive procedure that occurred in the morning until all work permits issued were updated, and the procedure needed to wrap by the time contractors were finished with lunch. If there were any issues in the permitting process, the Permit Writer was required to go out to a worksite to address the issue, as they were the only positions with the authority to do so. These procedures often prevented Plaintiff and aggrieved employees from timely taking their due meal periods in full.

Despite these continuous deficiencies, Defendants auto-deducted a 30-minute period from Plaintiff and aggrieved employees' time records every shift. As discussed above, this unilateral adjustment occurred even when Plaintiff and aggrieved employees already clocked out of the project site to leave for a late meal period, resulting in even more uncompensated off-clock work. Plaintiff did not have access to these time records and does not know who edited the time sheets.

When Plaintiff and aggrieved employees suffered deficient meal periods, Defendants did not pay their due meal period premiums. To the extent Defendants paid Plaintiff and aggrieved employees any meal period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from 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 faction 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.

For the same reasons as stated above for meal periods, Plaintiff and aggrieved employees suffered deficient rest periods. Additionally, as discussed in the minimum wage section above, if Plaintiff or the aggrieved employees left the project site to take their rest periods, Defendants treated this time as "clocked-out" and did not compensate Plaintiff and aggrieved employees for this paid non-productive time.

Defendants maintain a policy and practice of failing to pay Plaintiff and aggrieved employees their due premiums when the employees suffer deficient rest periods. To the extent Defendants paid Plaintiff and aggrieved employees any rest period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from 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 pay at least minimum wage for all hours worked, and Defendants underpaid overtime, sick leave, and premiums by failing to properly calculate the regular rate of pay. 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 at least minimum wage for all hours worked, and Defendants underpaid overtime, sick leave, and premiums by failing to properly calculate the regular rate of pay. 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. Further, Defendants violated Labor Code section 226(a)(2) by failing to include the total hours worked each pay period on Plaintiff and the aggrieved employees' wage statements.

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

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.

<u>Failure to Maintain Accurate Records</u>
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.

<u>Labor Code section 1174</u> 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." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, 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.

<u>Unlawful Employment Condition</u>
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

Defendants required Plaintiff and aggrieved employees to sign a non-competition agreement, detailing that Plaintiff and aggrieved employees are prohibited from affiliation or employment with any competing business within a restricted territory during employment and for an 18-month period thereafter. This is an unlawful employment condition and restraint on Plaintiff's and aggrieved employees' professions.

> **5. <u>My Non-competition and Non-solicitation Obligations</u>**
>
> During my employment with Aegion, and for the eighteen (18) month period immediately after the termination of my employment:
>
> a) I will not, directly or indirectly, be employed by, be affiliated with, provide any service or advice to, operate, be a director to, or acquire any ownership interest in any Competing Business within the Restricted Territory in any capacity that (i) is similar to any position in which I was employed by Aegion, or (ii) involves or includes management, sales, executive, supervisory, or marketing responsibilities. "Competing Business" and "Restricted Territory" are defined according to the Aegion business unit(s) for which I provided services during the most recent two (2) years of my employment, as described in **<u>Exhibits A-H</u>**, attached hereto and incorporated herein. I understand that this restriction does not prohibit me from owning up to five percent of a publicly-traded company engaged in such a business provided my investment is passive, and I do not provide any services or advice to such business or violate any other terms of this Agreement in connection with such investment; and
>
> b) I will not, directly or indirectly, provide, offer or market any of the products or services of a Competing Business to any person or entity that was a Customer or Potential Customer of the Aegion business unit(s) to which I provided services during the most recent two (2) years of my employment if such Customer or Potential Customer was someone who I, or someone under my direct or indirect management, dealt with, solicited, called on, worked with, or made a bid or proposal to within such two (2) year time period. **"Customer"** means any person or entity to whom that Aegion business unit sold products or performed services. "**Potential Customer**" means any person or entity to whom that Aegion business unit submitted, or was in the process of submitting, an oral or written proposal, bid or direct marketing promotion, or any person or entity to whom or which Aegion devoted money or resources to develop as a Customer or
>
> Revised June 2021 Page 3 of 14 Initials: OD

An excerpt of the 2021 Confidentiality, Work Product and Non-Competition Agreement that Plaintiff was required to sign on April 14, 2022.

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.

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

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

- LITIGATION HOLD NOTICE –

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

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Onoray Davis Jr.

Loree Collins
Loree.collins@brockgroup.com

EXHIBIT 2

Plaintiff Morris' Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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October 10, 2023

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

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

AllSafe Services, Inc.
17988 Edison Ave.
Chesterfield, Missouri 63005

Aegion Energy Services, LLC
17988 Edison Ave.
Chesterfield, Missouri 63005

- 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 **MERCEDES MORRIS** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

ALLSAFE SERVICES, INC.; AEGION ENERGY SERVICES, 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 employed Plaintiff during the PAGA Period in the position of Permit Writer and Safety Coordinator from about May 2022 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 "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

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. Defendants violated the minimum wage laws in several ways.

First, Defendants required Plaintiff and aggrieved employees to complete mandatory training off-the clock, before they could begin work at the outset of employment. Plaintiff had to complete Refinery Safety Overview Training, Principles of Petroleum Training, Safety as it Pertains to Crafts Training, and Aegion Energy Services, Safety, Audiogram, Marathon Martinez Refinery Training. Altogether, this added up to at least **four days of onboarding, training, and testing without pay**. Defendants still have not paid Plaintiff for this mandatory training time.

Second, as detailed below, Defendants maintained an unlawful policy and practice of auto-deducting 30-minute meal periods from Plaintiff and aggrieved employees' timesheets even though Plaintiff and aggrieved employees often had to work through their meal periods. This discrepancy led to on-duty work time that Defendants unlawfully failed to compensate entirely.

Third, *in addition* to the automatic meal period deductions, when Plaintiff and aggrieved employees would badge themselves out of the project site to go to lunch or to take breaks, Defendants further subtracted time they spent "badged out" of the premises from the employees' total work hours those days. This includes time spent "badged out" for paid non-productive time, like rest 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 violated California's overtime laws in several ways.

First, to the extent that the off-clock work mentioned above resulted in overtime hours not recorded, Plaintiff believes and alleges that 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.

Second, Plaintiff and aggrieved employees earned supplemental remuneration beyond their base wages, which Defendants did not properly factor into the aggrieved employees' overtime or double-time rates. For example, Plaintiff earned a per diem wage to supplement her adjustment and move to California to work for Defendants. Defendants adjusted per diem payments based directly on hours worked each pay period, adjusting for less per diem when the employees worked fewer hours or took PTO. This periodic adjustment to the per diem rate renders these payments more akin to "compensation for hours worked" rather than expense reimbursement. *See Clarke v. AMN Services, LLC*, 987 F.3d 848, 858 (9th. Cir. 2021) (holding where per diem payment deducts according to hours worked and occurs without regard to if expenses were actually incurred in a given pay period, the per diem is compensation for hours worked and factors into regular rate of pay).

As such, Defendants should have factored this additional per diem compensation into the regular rate of pay for overtime wages. Instead, Defendants only paid Plaintiff and aggrieved employees 1.5x their base hourly rate (for overtime) or 2x their base hourly rate (for double time), resulting in underpayment of overtime and double time wages. An example of the underpayment is below:

Pay Period: 20			**Start Date: 05/08/2023**		**End Date: 05/14/2023**	
Employee: 90065097		**MERCEDES W MORRIS**			**Union:**	
Check No: 20540		**User Check No:**			**Check Amount:**	**4,181.28**
Net Pay: 4,181.28						
NWHR	Normal Hours	56.00	40	2,240.00	ACCD	Accident Coverag
OVHR	Over-Time Hours	84.00	16	1,344.00	CILL	Critical Illness
PTO	PTO	56.00	8	448.00	DENT	Dental Insurance
PD	PER DIEM	0.00		980.00	HOSP	Hosp Indemnity
					MEDI	Medical Insuranc
					VIS	Vision Insurance
					VLTD	Vol LTD
					VOLL	Voluntary Life
					VSTD	Vol STD

Plaintiff's wage statement for pay period May 8, 2023, to May 14, 2023, showing Plaintiff earned $980 in non-discretionary income in the same pay period as overtime, but Defendants only paid Plaintiff's overtime at 1.5x her base hourly rate of $56.

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 permitting responsibilities, job duties, and short staffing, Plaintiff and the aggrieved employees suffered several missed, late, short, and/or interrupted meal periods. Defendants did not provide Plaintiff or aggrieved employees with a mechanism to schedule or plan for meal periods. In fact, often when Plaintiff was working, she would have to end her meal periods early, or delay taking them, to address contractor permitting issues.

As a Permit Writer, Plaintiff was required to do a "mid-shift update" on all the permits issued at the beginning of her shift. This was a daily, time sensitive procedure that occurred in the morning until all work permits issued were updated, and the procedure needed to wrap by the time contractors were finished with lunch. If there were any issues in the permitting process, the Permit Writer was required to go out to a worksite to address the issue, as they were the only positions with the authority to do so. These procedures often prevented Plaintiff and aggrieved employees from timely taking their due meal periods in full.

Despite these continuous deficiencies, Defendants auto-deducted a 30-minute period from Plaintiff and aggrieved employees' time records every shift. As discussed above, this unilateral adjustment occurred even when Plaintiff and aggrieved employees already clocked out of the project site to leave for a late meal period, resulting in even more uncompensated off-clock work. Plaintiff did not have access to these time records and does not know who edited the time sheets.

When Plaintiff and aggrieved employees suffered deficient meal periods, Defendants did not pay their due meal period premiums. To the extent Defendants paid Plaintiff and aggrieved employees any meal period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from 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 faction 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.

For the same reasons as stated above for meal periods, Plaintiff and aggrieved employees suffered deficient rest periods. Additionally, as discussed in the minimum wage section above, if Plaintiff or the aggrieved employees left the project site to take their rest periods, Defendants treated this time as "clocked-out" and did not compensate Plaintiff and aggrieved employees for this paid non-productive time.

Defendants maintain a policy and practice of failing to pay Plaintiff and aggrieved employees their due premiums when the employees suffer deficient rest periods. To the extent Defendants paid Plaintiff and aggrieved employees any rest period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the per diem payments, from 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 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."

On information and belief, Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay, Plaintiff believes and alleges that Defendants similarly underpaid sick leave in the same manner Defendants underpaid overtime and premium 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 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 at least minimum wage for all hours worked, and Defendants underpaid overtime, sick leave, and premiums by failing to properly calculate the regular rate of pay. 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 at least minimum wage for all hours worked, and Defendants underpaid overtime, sick leave, and premiums by failing to properly calculate the regular rate of pay. 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. Further, Defendants violated Labor Code section 226(a)(2) by failing to include the total hours worked each pay period on Plaintiff and the aggrieved employees' wage statements.

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

<u>Unlawful Employment Condition</u>
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

Defendants required Plaintiff and aggrieved employees to sign a non-competition agreement, detailing that Plaintiff and aggrieved employees are prohibited from affiliation or employment with any competing business within a restricted territory during employment and for an 18-month period thereafter. This is an unlawful employment condition and restraint on Plaintiff's and aggrieved employees' professions.

5. **<u>My Non-competition and Non-solicitation Obligations</u>**

During my employment with Aegion, and for the eighteen (18) month period immediately after the termination of my employment:

a) I will not, directly or indirectly, be employed by, be affiliated with, provide any service or advice to, operate, be a director to, or acquire any ownership interest in any Competing Business within the Restricted Territory in any capacity that (i) is similar to any position in which I was employed by Aegion, or (ii) involves or includes management, sales, executive, supervisory, or marketing responsibilities. "Competing Business" and "Restricted Territory" are defined according to the Aegion business unit(s) for which I provided services during the most recent two (2) years of my employment, as described in **<u>Exhibits A-H</u>**, attached hereto and incorporated herein. I understand that this restriction does not prohibit me from owning up to five percent of a publicly-traded company engaged in such a business provided my investment is passive, and I do not provide any services or advice to such business or violate any other terms of this Agreement in connection with such investment; and

b) I will not, directly or indirectly, provide, offer or market any of the products or services of a Competing Business to any person or entity that was a Customer or Potential Customer of the Aegion business unit(s) to which I provided services during the most recent two (2) years of my employment if such Customer or Potential Customer was someone who I, or someone under my direct or indirect management, dealt with, solicited, called on, worked with, or made a bid or proposal to within such two (2) year time period. **"Customer"** means any person or entity to whom that Aegion business unit sold products or performed services. "**Potential Customer**" means any person or entity to whom that Aegion business unit submitted, or was in the process of submitting, an oral or written proposal, bid or direct marketing promotion, or any person or entity to whom or which Aegion devoted money or resources to develop as a Customer or

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An excerpt of the 2021 Confidentiality, Work Product and Non-Competition Agreement that Plaintiff was required to sign on May 9, 2022.

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.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(g)

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

- LITIGATION HOLD NOTICE –

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

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

REJ

Cc Plaintiff Mercedes Morris

Loree Collins
Loree.collins@brockgroup.com