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

MARLENE DELGAGO, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

L&P GROUP, INC., a California corporation;
and DOES 1–50, inclusive,

Defendants.

Case No. CVRI2305262
[Assigned for All Purposes to the Honorable
Daniel Ottolia of Department 4]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Unfair Competition
(Bus. & Prof. Code § 17200 *et seq.*);
2. Non-Provision of Meal and Rest Periods
(Lab. Code § 226.7);
3. Failures to Pay Minimum & Overtime
Wages
(Lab. Code § 1194);
4. Failures to Indemnify
(Lab. Code § 2802);
5. Wage Statement Penalties
(Lab. Code § 226);
6. Waiting Time Penalties
(Lab. Code § 203); and
7. Civil Penalties
(Lab. Code § 2698 *et seq.*).

JURY TRIAL DEMANDED

Action Filed: October 4, 2023

1 Plaintiff Marlene Delgado (hereafter, "Plaintiff"), on behalf of herself, all others similarly
2 situated, and as an aggrieved employee under the Labor Code Private Attorneys General Act of
3 2004, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a class and representative private attorney general action against
6 Defendants L&P Group, Inc., a California corporation, and Does 1–50, inclusive (collectively,
7 "Defendants") for violations of the Labor Code, Industrial Welfare Commission Order 4-2001
8 (hereafter, the "Wage Order"), and the Business and Professions Code. As set forth below,
9 Defendants have, as matters of policy and/or practice, failed to provide meal and rest periods to
10 their hourly workers, failed to pay them premium wages, failed to pay them minimum and/or
11 overtime wages for all time worked, failed to indemnify them for personal telephone expenses,
12 failed to provide them with accurate written wage statements, and failed to timely pay them all of
13 their earned and unpaid wages upon separation of employment. Consequently, Plaintiff now seeks
14 restitution of unpaid wages and related relief on behalf of herself and all other similarly situated
15 current and former employees of Defendants.

16 **JURISDICTION AND VENUE**

17 2. This Court has subject matter jurisdiction to hear this case in that the amount in
18 controversy in this case, exclusive of costs and attorneys' fees, exceeds \$25,000.

19 3. Venue is proper in Riverside County under Code of Civil Procedure §§ 395(a) and
20 395.5 because the events giving rise to liability in this action arose in Riverside County in that at
21 least some of the transactions that are the subject matter of this Complaint occurred therein and/or
22 because each defendant either is found, maintains offices, transacts business, and/or has an agent
23 therein.

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THE PARTIES

4. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

5. Plaintiff Marlene Delgado is an individual who, at relevant times, was employed by Defendants in Riverside County, California on an hourly basis as a water technician during the period from late April 2023 to until she was discharged on or around June 20, 2023.

6. Defendant L&P Group, Inc. is a corporation organized under California law that employs persons and does business in Riverside County, California.

7. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as Does 1–50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

8. Plaintiff will amend this Complaint to allege the true names and capacities of the Doe defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the Defendants has been a “person” within the meaning of Labor Code § 18.

10. Plaintiff is informed and believes that each of the Defendants is either an “employer” or a “person acting on behalf of an employer” within the meaning of Labor Code §§ 558 and 558.1 so as to render each of the Defendants liable for violations of Labor Code §§ 203, 226, 226.7, and 1194.

11. Plaintiff is informed and believes and thereon alleges that each of the Defendants has acted as an employer and/or joint employer of Plaintiff and class members within the meaning of Section 2(H) of the Wage Order.

12. Plaintiff is informed and believes and thereon alleges that each of the Defendants has acted in all respects pertinent to this action as the agent or employee of the other Defendants, carried out a joint scheme, business plan, or policy in all respects hereto, and therefore the acts of each of the Defendants are legally attributable to the other Defendants.

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1 13. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 herein, except as otherwise indicated, Defendants have been the agents, employees and/or
3 servants, masters or employers of the remaining Defendants, and in doing the things hereinafter
4 alleged, have been acting within the course and scope of such agency or employment, and with
5 the approval and ratification of each of the other Defendants.

6 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 and except as otherwise indicated, each and every one of the acts and omissions alleged herein
8 were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees,
9 and/or under the direction and control of each of the other Defendants, and that said acts and
10 failures to act have been within the course and scope of said agency, employment, and/or direction
11 and control.

12 15. Plaintiff is informed and believes and thereon alleges that, at all relevant times, in
13 perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant
14 to and in furtherance of policies and practices that constitute unfair competition in violation of
15 the Business and Professions Code and violate the requirements of the Labor Code and the Wage
16 Order.

17 **CLASS ACTION ALLEGATIONS**

18 16. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
19 reference as if fully set forth herein.

20 17. Plaintiff brings this action on behalf of herself and the following class and
21 subclasses pursuant to Code of Civil Procedure § 382:

22 A. **Plaintiff Class:** All hourly or non-exempt employees of Defendants in
23 California during the period beginning four years before the filing of this
24 action (plus any additional time afforded by the COVID-19 emergency
25 rules) and ending when final judgment is entered.

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1 B. **Former Employee Subclass:** All **Plaintiff Class** members who
2 voluntarily or involuntarily separated from their employment with
3 Defendants during the period beginning three years before the filing of this
4 action (plus any additional time afforded by the COVID-19 emergency
5 rules) and ending when final judgment is entered.

6 C. **Penalties Subclass:** All **Plaintiff Class** members who have been
7 employed by Defendants during the period beginning one year before the
8 filing of this action and ending when final judgment is entered.

9 18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
10 right to amend or modify the class definitions with greater specificity, by further division into
11 subclasses, and/or by limitation to particular issues. In addition, Plaintiff reserves the right to
12 pursue the cause of action for civil penalties under the Labor Code Private Attorneys General Act
13 of 2004 in a representative capacity without complying with Code of Civil Procedure § 382.

14 19. **Numerosity:** Class members are so numerous that the individual joinder of each
15 class member is impractical. While Plaintiff does not currently know the exact number of class
16 members, she is informed and believes and thereon alleges that the actual number exceeds the
17 minimum number required for numerosity purposes under Code of Civil Procedure § 382.

18 20. **Predominant Common Questions:** Common questions of law and fact exist as
19 to all class members and predominate over any questions that only affect individual class
20 members. These questions include, but are not limited to:

21 A. Whether Defendants, as matters of policy and/or practice, have
22 automatically deducted time from the time worked by **Plaintiff Class**
23 members for meal periods without regard to whether meal periods were
24 actually taken?

25 B. Whether Defendants, as matters of policy and/or practice, have failed to
26 keep accurate records of meal period start and stop times by automatically
27 deducting time from the time worked by **Plaintiff Class** members for meal
28 periods without regard to whether meal periods were actually taken?

- 1 C. Whether Defendants, as matters of policy and/or practice, have failed to
2 pay minimum and/or overtime wages as a result of automatically deducting
3 time from the time worked by **Plaintiff Class** members for meal periods
4 without regard to whether meal periods were actually taken?
- 5 D. Whether Defendants have actual or constructive knowledge of **Plaintiff**
6 **Class** members not being paid for all time worked?
- 7 E. Whether Defendants, as matters of policy and/or practice, have failed to
8 authorize and permit net rest periods for **Plaintiff Class** members of ten
9 minutes for each four-hour work period, or major fraction thereof?
- 10 F. Whether Defendants, as matters of policy and/or practice, have failed to
11 provide second duty-free meal periods for **Plaintiff Class** members of
12 thirty minutes after no more than ten hours of work?
- 13 G. Whether Defendants, as matters of policy and/or practice, have failed to
14 establish a mechanism for the payment of premium wages to **Plaintiff**
15 **Class** members when a timely meal or rest period is not provided?
- 16 H. Whether Defendants are liable to **Plaintiff Class** members for premium
17 wages under Labor Code § 226.7?
- 18 I. Whether Defendants, as matters of policy and/or practice, have paid
19 **Plaintiff Class** members less than legally applicable overtime wage rates
20 for some or all of their recorded working time?
- 21 J. Whether Defendants have systematically failed to pay earned and unpaid
22 wages to **Former Employee Subclass** members within the times set forth
23 in Labor Code §§ 201-202 as a result of failing to pay them minimum,
24 overtime, and/or premium wages?
- 25 K. Whether Defendants failures to pay minimum, overtime, and/or premium
26 wages to **Former Employee Subclass** members have been willful so as to
27 render them liable for waiting time penalties under Labor Code § 203?

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L. Whether Defendants are liable to **Penalties Subclass** members for statutory penalties under Labor Code § 226(e)?

21. **Typicality**: Plaintiff's claims are typical of class members' claims in that Defendants have policies and practices that violate the Labor Code, Wage Order, and Business and Professions Code as alleged herein that enable her to seek the same relief as they could seek under the same theories of recovery and to which Defendants may attempt to assert the same affirmative defenses.

22. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of class members in that she has no interests that are adverse to theirs and is represented by counsel experienced in employment and wage and hour class action litigation.

23. **Superiority**: A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The monetary amounts due to many class members are likely to be relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and address the problems inherent in random and fragmentary enforcement.

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1 not provided.

2 30. Collectively, Labor Code §§ 226(a), 510, 1174, 1194, 1197, and 1198, and
3 Sections 3, 4, and 7 of the Wage Order require an employer to pay a non-exempt employee no
4 less than minimum wage for each hour worked (see *Armenta v. Osmose, Inc.* (2005) 135
5 Cal.App.4th 314), no less than one and one-half times the employee's regular rate of pay for all
6 hours worked in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and
7 for the first 8 hours worked on a seventh consecutive workday, and at no less than twice the
8 employee's regular rate of pay for all hours worked in excess of 12 hours in a workday and/or in
9 excess of 8 hours on a seventh consecutive workday, and to maintain accurate records of all hours
10 worked by the employee. This includes all of the time that the employee is subject to the control
11 of the employer, or suffered or permitted to work, so long as the employer has actual or
12 constructive knowledge thereof.

13 31. Labor Code § 2802(a) requires an employer to indemnify an employee for all
14 necessary expenditures or losses that he or she incurs in direct consequence of the discharge of
15 her duties, or of the obedience of the employee to the employer's directions.

16 32. Plaintiff is informed and believes and thereon alleges that, all relevant times,
17 Defendants have violated the above-referenced laws as matters of policy and/or practice by,
18 among other things:

19 A. Not providing Plaintiff and **Plaintiff Class** members with timely first meal
20 periods of at least thirty minutes when they worked shifts of five or more
21 hours by not maintaining any policy and/or practice providing for first meal
22 periods after no more than five hours of work or second meal periods after
23 no more than ten hours of work, not scheduling meal periods, not providing
24 complete relief from duty for at least thirty minutes for meal periods,
25 automatically deducting time from time worked for purported meal periods
26 without regard to whether any meal period was taken and not keeping
27 accurate records of breaks as a result thereof, and/or by structuring work
28 in a manner that does not consistently allow for duty-free meal periods;

- 1 B. Not paying Plaintiff and **Plaintiff Class** members premium wages on
2 workdays of five or more hours when they have not been provided with
3 one or more required meal periods;
- 4 C. Not providing Plaintiff and **Plaintiff Class** members with paid rest periods
5 when they worked shifts of 3.5 or more hours by, among other things, not
6 maintaining any policy and/or practice providing for rest periods in the
7 manner and number required under the Wage Order, not scheduling rest
8 periods, not providing relief from duty for rest periods, not making good
9 faith efforts to provide rest periods in the middle of each four-hour work
10 period, and/or by structuring work in a manner that does not consistently
11 allow for duty-free rest periods;
- 12 D. Not paying Plaintiff and **Plaintiff Class** members premium wages on
13 workdays of three and one-half or more hours when they have not been
14 provided with one or more rest periods;
- 15 E. Not paying Plaintiff and **Plaintiff Class** members for all time worked at
16 legal minimum and/or overtime wage rates as a result of knowingly or
17 negligently deducting time for meal periods without regard to whether
18 meal periods were actually taken or the duration thereof; and
- 19 F. Not indemnifying Plaintiff and **Plaintiff Class** members for any use of
20 their personal telephones for Defendants' business purposes.

21 33. As a result of Defendants' violations of the Labor Code and the Wage Order set
22 forth above, Plaintiff has lost money or property by means of unfair competition in the form of
23 earned and unpaid wages and Defendants have, or may have, acquired money or property in the
24 form of earned and unpaid wages from **Plaintiff Class** members by means of unfair competition.

25 34. Pursuant to Business and Professions Code §§ 17203-17204, Plaintiff, on behalf
26 of herself and the **Plaintiff Class**, seeks an order awarding restitution of all earned and unpaid
27 wages that Defendants acquired, or may have acquired, by means of unfair competition in
28 amounts subject to proof.

35. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Plaintiff Class**, seeks reasonable costs and attorneys' fees in amounts subject to proof.

SECOND CAUSE OF ACTION

NON-PROVISION OF MEAL AND REST PERIODS

(Lab. Code § 226.7)

(By Plaintiff and the Plaintiff Class)

36. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

37. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of herself and **Plaintiff Class** members in amounts subject to proof.

38. Pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 218.5 and 218.6, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Plaintiff Class**, seeks awards of reasonable attorneys' fees and costs in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURES TO PAY MINIMUM & OVERTIME WAGES

(Lab. Code § 1194)

(By Plaintiff and the Plaintiff Class)

39. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

40. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and **Plaintiff Class** members, seeks unpaid minimum and overtime wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURES TO INDEMNIFY**

3 **(Lab. Code § 2802)**

4 **(By Plaintiff and the Plaintiff Class)**

5 41. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
6 reference as if fully set forth herein.

7 42. Pursuant to Labor Code § 2802(c), Plaintiff, on behalf of herself and the **Plaintiff**
8 **Class**, seeks to recover unreimbursed expenses, interest thereon, and awards of reasonable
9 attorney's fees and costs, all in amounts subject to proof.

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(Lab. Code § 203)**

13 **(By Plaintiff and the Former Employee Subclass)**

14 43. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
15 reference as if fully set forth herein.

16 44. Labor Code § 201 makes all of the earned and unpaid wages of a discharged
17 employee immediately due and payable at the time of discharge.

18 45. Labor Code § 202 makes all of the earned and unpaid wages of an employee who
19 quits after giving less than 72 hours previous notice within 72 hours of quitting.

20 46. Labor Code § 202 also makes all of the earned and unpaid wages of an employee
21 who quits after giving at least 72 hours previous notice at the time of quitting.

22 47. Labor Code § 203 entitles an employee to an additional day of wages as a penalty
23 for each day that wages remain unpaid, for up to a maximum of thirty days, where the employer
24 willfully fails to pay timely earned wages in compliance with § 201 or § 202.

25 48. Defendants failed to pay Plaintiff all of her earned and unpaid wages within the
26 times set forth in Labor Code § 201 as a result of failing to pay her all of her earned and unpaid
27 minimum, overtime, and premium wages.

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1 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants have failed to timely pay **Former Employee Subclass** all of their earned and unpaid
3 wages in violation of Labor Code § 201 or § 202 as a result of failing to pay them all of their
4 earned and unpaid minimum, overtime and/or premium wages.

5 50. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants' failures to timely pay Plaintiff and **Former Employee Subclass** members have been
7 willful in that, at all relevant times, Defendants have had the ability to comply with the above-
8 referenced laws concerning payments of minimum, overtime, and premium wages, and the timing
9 of wage payments but have deliberately maintained policies and practices in violation of the
10 requirements of the Labor Code and the Wage Order.

11 51. Pursuant to Labor Code § 203, Plaintiff, on behalf of herself and the **Former**
12 **Employee Subclass**, seeks up to a maximum of thirty days of waiting time penalties for each
13 subclass member in amounts subject to proof.

14 **SIXTH CAUSE OF ACTION**

15 **WAGE STATEMENT PENALTIES**

16 **(Lab. Code § 226)**

17 **(By Plaintiff and the Penalties Subclass)**

18 52. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
19 reference as if fully set forth herein.

20 53. Pursuant to Labor Code § 226(a), Defendants have been obliged to provide
21 Plaintiff and **Penalties Subclass** members, either semimonthly or at the time of each payment of
22 wages, accurate itemized written wage statements showing, among other things, each applicable
23 wage rate, the number of hours worked at each applicable wage rate, total hours worked during
24 the pay period, and amounts of gross and net wages earned.

25 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants have failed to provide her and **Penalties Subclass** members with accurate written
27 wage statements by providing them with wage statements that fail to accurately reflect, among
28 other things, their number of hours worked at each applicable wage rate and total hours worked

1 during the pay period (by automatically deducting time from time worked for purported meal
2 periods and by not paying them premium wages) and/or amounts of gross and net wages earned
3 (by not paying them minimum, overtime, and/or premium wages).

4 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants' failures to provide her and **Penalties Subclass** members with accurate wage
6 statements have been knowing and intentional, in that Defendants have, at all relevant times, had
7 the ability to provide them with accurate wage statements but, instead, have deliberately
8 maintained unlawful wage and hour policies with respect to timekeeping, minimum and overtime
9 wages, and meal and rest periods so as to result in inaccurate wage statements.

10 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 she and **Penalties Subclass** members have suffered injuries due to Defendants' failures to provide
12 them with accurate written wage statements in that, among other things, their legal rights to
13 receive accurate wage statements have been violated, they have been misled about the amounts
14 of wages they have earned, they have been prevented from immediately challenging allegedly
15 unlawful pay practices, have needed to reconstruct time and pay records and perform
16 mathematical computations to determine the amounts of wages they have earned, have been
17 unable to verify if they have been properly paid based on the information provided on their written
18 wage statements, and/or have had inaccurate information about their wages and deductions
19 submitted to government agencies,.

20 57. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and the **Penalties**
21 **Subclass**, seeks to recover the greater of actual damages or \$50 for the initial pay period in which
22 a § 226(a) violation occurred, the greater of actual damages or \$100 for each violation of § 226(a)
23 in a subsequent pay period, up to the greater of actual damages or an aggregate \$4,000 penalty
24 per subclass member, as well as awards of reasonable attorneys' fees and costs, all in amounts
25 subject to proof.

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(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

62. Defendants paid wages to Plaintiff and Aggrieved Employees on regular intervals.

63. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked as a result of not timely paying her minimum, overtime, and premium wages within the times set forth in Labor Code § 204.

64. Plaintiff is informed and believes and thereon alleges that Defendants failed to pay Aggrieved Employees on such intervals for all wages earned and all hours worked as a result of not timely paying them minimum, overtime, and/or premium wages within the times set forth in Labor Code § 204.

65. During the applicable time period, Defendants violated Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

66. Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

67. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1198 during the applicable limitations period in the following amounts:

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1 A. For violations of Labor Code § 204, one hundred dollars (\$100.00) for each
2 Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
3 Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts
4 established by Labor Code § 210).

5 B. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
6 for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each
7 Aggrieved Employee for each subsequent violation (penalty amounts established by Labor Code
8 § 226.3).

9 C. For violations of Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
10 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
11 Aggrieved Employee for each subsequent violation, per pay period in addition to an amount
12 sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558).

13 D. For violations of Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and
14 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
15 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
16 each subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).

17 E. For violations of Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
18 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
19 Aggrieved Employee for each subsequent violation, per pay period in addition to an amount
20 sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558).

21 F. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for
22 each Aggrieved Employee for each pay period for which the employee was underpaid in an initial
23 violation if the initial violation is found to be intentional, and two hundred fifty dollars (\$250.00)
24 for each Aggrieved Employee per pay period for each subsequent violation regardless of whether
25 or not the initial violation was intentional.

26 68. Pursuant to Labor Code § 2699(g), Plaintiff and Aggrieved Employees are entitled
27 to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims
28 for civil penalties.

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- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Damages;
- E. Restitution;
- F. Declaratory relief;
- G. Statutory penalties;
- H. Civil penalties;
- I. Pre-judgment interest;
- J. Post-judgment interest;
- K. Costs of suit;
- L. Reasonable attorney's fees; and
- M. Such other relief as the Court deems just and proper.

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and current and former aggrieved employees, hereby demands a trial by jury on all issues so triable.

BENOWITZ LAW CORPORATION
LAW OFFICE OF CARLY RESE

BY 
LOUIS BENOWITZ
Attorneys for Plaintiff
MARLENE DELGAGO

EXHIBIT A



Sender's direct number & email:
(818) 839-9610, Louis@BenowitzLaw.com

October 4, 2023

SENT VIA CERTIFIED U.S. MAIL/ONLINE SUBMISSION

L&P Group, Inc.
12120 Madera Way
Riverside, CA 92503

RE: *Marlene Delgado / L&P Group, Inc.*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.), Marlene Delgado ("Delgado") provides notice on behalf of herself and all other persons currently or formerly employed by L&P Group, Inc., a California corporation ("L&P") in California in hourly or otherwise non-exempt positions or in California during the applicable limitations period against whom one or more of the Labor Code violations alleged herein were committed (the "Aggrieved Employees"). As set forth herein, L&P violated the rights of Delgado and the Aggrieved Employees under Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

Delgado is a former employee of L&P who worked in an hourly water technician position from late April 2023 until she was discharged on or around June 20, 2023. At all relevant times, Delgado has been a "person" within the meaning of Labor Code § 18. At all relevant times, L&P has been an employer of Delgado and the Aggrieved Employees within the meaning of Section 2(F) of Industrial Welfare Commission Order No. 4-2001 (the "Wage Order") and in that it has exercised control over the wages, hours, and/or working conditions of Delgado and the Aggrieved Employees and caused the alleged violations of the Labor Code and the Wage Order set forth herein to be committed. At all relevant times, Delgado and the Aggrieved Employees have been "employees" of L&P within the meaning of Section 2(E) of the Wage Order and "aggrieved employees" within the meaning of Labor Code § 2699(c).

Failures to Pay Minimum & Overtime Wages

Under Labor Code § 1194, any purported agreement to pay an employee less than the minimum or overtime wages required by law is unlawful and invalid.

Under Labor Code § 1197, it is unlawful to pay an employee less than the minimum wage required under the Wage Order.

Under Labor Code § 1198, "The employment of any employee for longer hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 4 of the Wage Order requires an employer to pay a non-exempt employee at least the minimum wage for each hour worked.

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In relevant part, Labor Code § 510(a) states,

Eight hours of labor constitutes a day's work. Any 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. 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. In addition, 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.

These same requirements are set forth in Section 3 of the Wage Order.

In conjunction, these provisions of the Labor Code and the Wage Order require employers to pay their non-exempt employees no less than minimum, overtime, or agreed wage rates for each hour worked, and, unlike federal law, prohibit the use of an averaging method to determine whether these obligations have been met. (See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 321-324.) This standard applies to all time that the employee is either subject to the control of the employer and/or suffered or permitted to work.

At all relevant times, L&P deducted up to sixty (60) minutes from Delgado's time worked without regard to whether she actually took a meal period or how long of a meal period she took (if any). This policy and/or practice resulted in Delgado not being paid wages for working time at straight time and/or overtime rates. Delgado is informed and believes that L&P applied these same policies and/or practices to the Aggrieved Employees, thus denying minimum and/or overtime wages to other Aggrieved Employees in violation of the above-referenced Labor Code sections.

Failures to Provide Meal and Rest Periods

Under Labor Code § 1198, "The employment of any employee for longer hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage Order] is unlawful."

Under Section 12 of the Wage Order, an employer must authorize and permit net rest periods of at least ten minutes for each four-hour work period, or major fraction thereof, except for employees whose shifts do not exceed 3.5 hours. Said rest periods must be paid and must be counted as hours worked. Said rest periods also have to be completely duty-free. To comply with these requirements, employers must authorize and permit paid rest periods as follows based on shift length: (1) 3.50 to 6.00 hours – one rest period; (2) 6.01 to 10.00 hours – two rest periods; (3) 10.01 to 14.00 hours – three rest periods; and (4) 14.01 hours to 18.00 hours – four rest periods. In addition, an employee may not waive a rest period unless the employer has already authorized the rest period. Further, the employer must make good faith efforts to provide each rest period in the middle of each four-hour work period insofar as is practicable.

Under Labor Code § 512 and Section 11 of the Wage Order, an employer has a duty to provide its non-exempt employees with first meal periods of no less than thirty minutes after no more than five hours of work when they work shifts of at least five hours, and to provide its non-exempt employees with second meal periods of no less than thirty minutes after no more than ten hours of work when they work shifts of more than ten hours. In the absence of a valid on-duty meal period agreement, or a valid waiver, this duty requires an employer to affirmatively authorize said meal periods, completely relieve its employees of duty, allow them to come and go as they please, and to relinquish control over their activities. In addition, an employee may not waive a meal period unless the employer has already authorized the meal period. Further, Section 7 of the Wage Order requires the employer to keep accurate records of meal period start and stop times.

Under Labor Code § 226.7, and Section 12 of the Wage Order, an employer cannot require an employee to work during a meal or rest period mandated under the Wage Order and must pay premium wages on each workday when the meal or rest period is not provided.

At all relevant times, L&P violated Delgado's rights under these laws as a result of, among other things: (1) automatically deducting time minutes for meal periods and not keeping accurate records of her meal period start and stop times; (2) assuming the taking of timely meal periods by automatically deducting time for them; (3) interrupting her for work tasks during purported breaks; (4) not maintaining and/or clearly communicating compliant meal and rest period policies; (4) not maintaining compliant meal and rest period practices notwithstanding any written policies; (5) not providing any sort of second meal period (compliant or otherwise) on work days of more than ten hours; (6) scheduling and structuring her work in a manner that did not consistently allow her to be fully relieved for duty-free breaks; (7) not creating mechanisms for the payment of premium wages when compliant required meal or rest periods were not provided (such as when a meal period is taken late or not at all or when a rest period cannot be taken); and (8) not paying her premium wages when a required meal or rest period is not provided. Delgado is informed and believes and thereon alleges that L&P applied these same policies and/or practices to Aggrieved Employees and violated their rights under the above-referenced laws as a result thereof.

Failure to Provide Accurate Written Wage Statements

Labor Code § 226(a) states,

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Here, L&P violated the rights of Delgado under Labor Code § 226(a) by providing her with written wage statements with at least the following defects: (1) not accurately stating her total hours worked, or number of hours worked at each applicable wage rate, as a result of automatically deducting time for meal periods without regard to whether meal periods were actually taken and not paying or reporting meal and rest period premiums; and (2) not accurately stating her gross and net wages earned as a result of not paying her minimum, overtime, and premium wages as set forth herein. Delgado is informed and believes and thereon alleges that L&P violated the rights of Aggrieved Employees under § 226(a) as a result of applying the same policies and/or practices to them.

Failures to Timely Pay Wages

In relevant part, Labor Code § 201(a) states,

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

In relevant part, Labor Code § 202(a) states,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

In relevant part, Labor Code § 203(a) states,

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code § 204 states,

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Here, L&P violated the above-referenced code sections by failing to timely pay earned minimum, overtime, and premium wages to Delgado as set forth herein during employment in violation of Labor Code § 204 and by failing to timely pay her all of her earned and unpaid wages (including minimum, overtime, and premium wages) in violation of § 201. Delgado is informed and believes that, as a result of its unlawful policies and/or practices with respect to payments of minimum, overtime, and/or premium wages as set forth herein, L&P violated the rights of Aggrieved Employees under §§ 201-202 (after separations of employment) and § 204 (during employment).

Unreimbursed Expenses

California law, specifically Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred as a direct consequence of discharging his or her duties or obeying the directions of his or her employer. Here, Delgado used her personal telephone for L&P's work purposes without being indemnified for any portion of said expenses in violation of Labor Code § 2802(a). Delgado is informed and believes that other Aggrieved Employees worked from home and incurred expenses including, without limitation, electricity, internet, cell phone, and other utilities in direct consequence of discharging their duties, without being indemnified for any portion of said expenses in violation of § 2802(a) as well.

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October 4, 2023

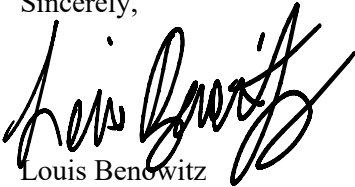
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Conclusion

As indicated above, this letter constitutes the notice required under Labor Code § 2699.3. Insofar as it is directed toward L&P, please be advised that Delgado intends to seek attorneys' fees and costs, in addition to the maximum civil penalties allowed by the Labor Code, in a civil action should the LWDA decline to investigate this matter.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Louis Benowitz

cc: Labor and Workforce Development Agency
(via online submission)

L&P Group, Inc.
c/o Michael Dominguez
23846 Sunnymead Boulevard
Suite 2
Moreno Valley, CA 92553

Jasmine C. Daniel-Johnson
(Jasmine.Daniel-Johnson@lewisbrisbois.com)

Carly Nese
(cnese@neselaw.com)

Marlene Delgado



Receipt

Print Date: Dec 12, 2023

RETURN TO

Benowitz Law Corpora
8605 Santa Monica Blvd Pmb 79183
West Hollywood, CA 90069

SHIP TO

L&P Group, Inc.
12120 Madera Way
Riverside, CA 92503

REFERENCE

Ship Date: Oct 04, 2023
Ship from ZIP: 90069
Weight: 0lbs. 2oz.
User: Imbenowitz
Cost Code:
Refund Type: Mail-in
Reference #:
Printed on: Shipping Label
Delivery Status: Delivered
Tracking #: 9414811206203684081464

SERVICE

UNIT PRICE

USPS First-Class Mail® Letter	\$0.87
Insurance (Carrier Insurance (\$0.00))	\$0.00
Certified Mail	\$4.35
Return Receipt Electronic	\$2.20
Subtotal	\$7.42
Label Quantity	1
Total Cost	\$7.42

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 8605 Santa Monica Boulevard, PMB 79183, West Hollywood, CA 90069.

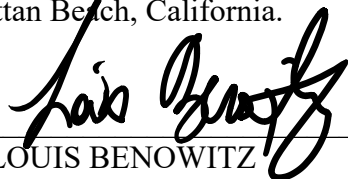
2. On December 12, 2023, I served the foregoing document(s) described as **FIRST AMENDED COMPLAINT** on interested parties as follows:

LEWIS BRISBOIS BISGAARD & SMITH LLP
JASMINE SHAMS, SB# 287410
E-Mail: Jasmine.Shams@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071

XXX BY ELECTRONIC MAIL: I caused the above-described document to be sent via electronic mail to the above recipient(s).

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

EXECUTED on December 12, 2023, at Manhattan Beach, California.



LOUIS BENOWITZ
Declarant