July 19, 2024

VIA ON-LINE SUBMISSION AND MAIL:
https://dir.tfaforms.net/128 **(copy by certified mail to all Defendants)**

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Hyve Solutions Corporation dba Hyve Solutions
44201 Nobel Drive
Fremont, CA 94538
Certified Mail Tracking Number: 9414 8112 0620 4252 4061 08

CT Corporation System
Agent for Service of Process for Hyve Solutions Corporation dba Hyve Solutions
330 North Brand Boulevard, Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4252 4065 043

Volt Management Corp. dba Volt Workforce Solutions
2400 Meadowbrook Parkway
Duluth, GA 30096
Certified Mail Tracking Number: 9414 8112 0620 4252 4018 99

CT Corporation System,
Agent for Service of Process for Volt Management Corp. dba Volt Workforce Solutions
330 North Brand Boulevard, Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4252 4013 25

Volt Information Sciences, Inc.
2400 Meadowbrook Parkway
Duluth, GA 30096
Certified Mail Tracking Number: 9414 8112 0620 4252 6397 59

CT Corporation System, Agent for Service of Process for Volt Information Sciences, Inc.
330 North Brand Boulevard, Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4252 4015 54

Design & Technical Solutions
2201 Walnut Ave. Suite 110,
Fremont, CA 94538
Certified Mail Tracking Number: 9414 8112 0620 4252 6396 36

P/S Partner Solutions, Ltd.
2400 Meadowbrook Parkway
Duluth, GA 30096
Certified Mail Tracking Number: 9414 8112 0620 4252 6394 14

CT Corporation System, Agent for Service of Process for P/S Partner Solutions, Ltd.
330 North Brand Boulevard, Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4252 6339 00

Hyve Solutions Corporation California USA
44201 Nobel Drive
Fremont, CA 94538
Certified Mail Tracking Number: 9414 8112 0620 4252 6333 063

Hyve Solutions Corporation California USA
16202 Bay Vista Dr.
Clearwater, FL 33760
Certified Mail Tracking Number: 9414 8112 0620 4252 6335 11

TD Synnex
44201 Nobel Drive
Fremont, CA 94538
Certified Mail Tracking Number: 9414 8112 0620 4252 6348 53

Slingshot Connections, LLC
840 The Alameda
San Jose, CA 95126
Certified Mail Tracking Number: 9414 8112 0620 4252 6347 47

CSC-Lawyers Incorporating, Agent for Service of Process for P/S Partner Solutions, Ltd.
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 9414 8112 0620 4252 6359 73

LWDA Case No.: LWDA-CM-997119-23

Re: Labor Code § 2698, *et seq*. Penalties – PAGA Notice Letter to the LWDA
Jasmina Guadalupe Vargas Gutierrez v. Hyve Solutions Corporation, et al.

Gentlepersons:

This office represents Plaintiffs Jasmina Guadalupe Vargas Gutierrez and Beverly Fields (collectively "Plaintiffs") and other similarly situated aggrieved employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq*.,; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 et seq.

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* ("the Act"). Unless specified below, Plaintiffs would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated, Aggrieved Employees, and the State of California, against Defendants, Hyve Solutions Corporation dba Hyve Solutions, Volt Management Corp. dba Volt Workforce

Solutions, Volt Information Sciences, Inc., Design & Technical Solutions, P/S Partner Solutions, Ltd., Hyve Solutions Corporation California USA, TD Synnex, Slingshot Connections, LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants").

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Alameda Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

Set forth herein are the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiffs an all of their Aggrieved Employees in California. This Notice Letter addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

The second purpose of this Notice letter is to provide Volt Management Corp. ("Volt") with notice pursuant to Labor Code §2810.3(d) that, upon the running of the 30-day notice period under Section 2810.3 and the running of the PAGA Notice period addressed below, Plaintiffs will be brining claims under the Act against Defendants through a formal Complaint. Plaintiffs are asserting against Defendants all claims asserted for civil penalties and other relief under the PAGA as articulated in this Notice Letter.

Defendants Hyve Solutions Corporation dba Hyve Solutions, Hyve Solutions Corporation California USA, TD Synnex, ("Hyve Solutions"), and Volt Management Corp. dba Volt Workforce Solutions, Volt Information Sciences, Inc., Design & Technical Solutions, P/S Partner Solutions, Ltd. ("Volt") and Slingshot Connections, LLC ("Slingshot Connections") (hereinafter collectively referred to as "The Client Employers") are a privately held companies that design and provide data and server storage and solutions. The Client Employers supplement its labor force by using temporary workers supplied by various temporary staffing agencies, such as named defendant Volt and Slingshot Connections. Plaintiffs have alleged that these Defendants jointly employ Plaintiffs and the putative Class Members and Aggrieved Employees, including those placed by Volt and Slingshot Connections and any other Labor Contractors (collectively "staffing companies") to perform work at The Client Employers' facilities. Plaintiffs also assert that the putative Class Members and Aggrieved Employees encompass both direct hires from The Client Employers and those whom the staffing companies placed to work at The Client Employers' facilities, as they are all subject to uniform policies and practices and share common contentions as to the alleged violations that have arisen from them.

Plaintiffs have therefore alleged that Defendants Hyve Solutions are and have been a client employer within the definition of Labor Code § 2810.3 and shares with Volt and Slingshot Connections and the other staffing companies, i.e., the labor contractors under Labor Code § 2810.3, all civil legal responsibility and civil liability for failure to pay all wages earned and related and derivative claims by Plaintiffs and the putative Class Members and Aggrieved Employees. This correspondence also satisfies the notice requirements under Section 2810.3, and the following details and liability theories summarize Plaintiffs' claims and provide notice to

Volt and the other staffing companies under Labor Code 2810.3(d) and firmly establish they are and have been joint employers of the Class members and the Aggrieved Employees with The Client Employers.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiffs and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiffs' class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiffs were employed by Defendants as a non-exempt hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiffs and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees").

Defendants had a common policy and practice of systemically failing to pay Plaintiffs and Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Aggrieved Employees were consistently required to perform work and be subject to the control of Defendants, off-the-clock, for which they were not paid wages. As a result of Defendants' systematic practices, upon arrival to their shifts and upon return from meal periods, Aggrieved Employees had to spend time off the clock to wait in line in order to go through required security checks of personal belongings and a metal detector of their person before they were permitted to clock-in. Similarly, upon leaving for a meal period or leaving at the end of a shift, Aggrieved Employees had to first clock out and subsequently go through the same security check under Defendants' control to exit the premises. As a result, Plaintiffs and Aggrieved Employees were under the direction, control, and authority of Defendants while Aggrieved Employees were off-the-clock complying with Defendants' security checks and waiting in line to clock in. The foregoing and uncompensated time was under the direction and control of Defendants.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied. Defendants further had a systematic policy and practice of failing to include all forms of remuneration, including non-discretionary bonuses, shift differentials, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the workweeks in which overtime was worked and the additional compensation earned for the purposes of calculating overtime rate of pay.

Additionally, Defendants also paid nondiscretionary bonuses, incentive pay, meal allowances and shift differentials to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Aggrieved Employees were denied the opportunity to take timely and duty-free meal periods, of at least 30 minutes, to which they were entitled. Aggrieved Employees' unpaid meal periods were regularly shorter than 30 minutes and not duty and control free as Aggrieved Employees were subject to Defendants' mandatory security checks. Additionally, Aggrieved Employees were not afforded the opportunity to take full 30-minute meal periods as required.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload; and (4) Defendants' systematic policy and practice of requiring Aggrieved Employees to go through off-the-clock mandatory security checks when entering and exiting the premises. Defendants also paid shift differentials, nondiscretionary bonuses, incentive pay, and meal allowances to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; and (3) Defendants' systematic policy and practice of exercising and subjecting control over Aggrieved Employees during rest periods by requiring the Aggrieved Employees to go through mandatory security checks to be able to exit and re-enter the premises, effectively either not permitting Aggrieved Employees to leave Defendants' premises or not permitting Aggrieved Employees to take full and complete control-free ten (10) minute rest periods. Defendants also paid shift differentials, nondiscretionary bonuses, incentive pay, and meal allowances to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements for Aggrieved Employees failed to accurately account for unpaid wages and overtime because their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements for Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Aggrieved Employees failed to list the name and address of the entity Aggrieved Employees were assigned to work at. In addition, Defendants had a systematic practice of failing to issue or make available wage statements as a result of Defendants' policy of not providing hard copies to Aggrieved Employees, but instead notifying Aggrieved Employees that their paystubs will be available for electronic retrieval without properly instructing Aggrieved Employees on how to access or retrieve such electronic wage statements.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work to the detriment of Aggrieved Employees. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203. Moreover, Defendants failed to provide Aggrieved Employees any of their final pay within 24 hours when terminated or 72 hours when resigned.

Defendants further failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204 and on a weekly basis as required by Labor Code § 201.3, as a result of failing to pay Aggrieved Employees all owed wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements.

Further, the facilities where Defendants required Aggrieved Employees to work were intolerably hot, and Plaintiffs and upon information and belief the Aggrieved Employees were concerned that they would suffer from heat-related injuries during their work shifts. By failing to maintain temperatures providing reasonable comfort levels consistent with industry-wide standards for the nature and process of the work performed, Defendants violated paragraph 15 of the applicable IWC Wage Orders and are entitled to civil penalties as appropriate.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendant's facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

PAGA Claim Details, Legal Bases for Violations and Penalties:
As addressed above and in further detail in the attached Class Action Complaint, Plaintiffs and the Aggrieved Employees complain of the following violations committed by Defendants:[1]

Failure to Pay Minimum Wages
Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be

[1] Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc*. (2018) 23 Cal.App.5th 745.

paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Aggrieved Employees were consistently required to perform work and be subject to the control of Defendants, off-the-clock, for which they were not paid wages. As a result of Defendants' systematic practices, upon arrival to their shifts and upon return from meal periods, Aggrieved Employees had to spend time off the clock to wait in line in order to go through required security checks of personal belongings and a metal detector of their person before they were permitted to clock-in at a designated sign-in sheet. Similarly, upon leaving for a meal period or leaving at the end of a shift, Aggrieved Employees had to first sign-out on a designated sheet and then go through the same security check under Defendants' control to exit the premises. The foregoing and uncompensated time was under the direction and control of Defendants.

Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Defendants further had a systematic policy and practice of failing to include all forms of remuneration, including shift differentials, non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the workweeks in which overtime was worked and the additional compensation earned for the purposes of calculating overtime rate of pay.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

<u>Failure to Pay Vacation Wages</u>
Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid shift differentials, nondiscretionary bonuses, incentive pay, and/or meal allowances to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3.

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Failure to Comply with Labor Code §§ 245 *et seq.* and 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid shift differentials, nondiscretionary bonuses, incentive pay, and/or meal allowances to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 245 *et seq. and* §§ 245 *et seq.* and 246.

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Aggrieved Employees were denied the opportunity to take timely and duty-free meal periods, of at least 30 minutes, to which they were entitled. Aggrieved Employees' unpaid meal periods were regularly interrupted by mandatory work-related activities. Additionally, Aggrieved Employees were not afforded the opportunity to take full 30-minute meal periods as required.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal due to the excessive workload; and (4) Defendants' systematic policy and practice of requiring Aggrieved Employees to go through off-the-clock mandatory security checks when entering and exiting the premises. Specifically, Aggrieved Employees were denied the opportunity to take timely and duty-free meal periods, of at least 30 minutes, to which they were entitled. Aggrieved Employees' unpaid meal periods were regularly shorter than 30 minutes and not duty and control free as Aggrieved Employees were subject to Defendants' mandatory security checks. Additionally, Aggrieved Employees were not afforded the opportunity to take full 30-minute meal periods as required.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e., one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make, such as by failing to calculate all forms of remuneration like shift differentials, non-discretionary bonuses, incentive pay, and meal allowances into the regular rate for meal period premiums. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

<u>Rest-Break Liability Under Labor Code § 226.7 and Penalties</u>
Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; and (3) Defendants' systematic policy and practice of exercising and subjecting control over Aggrieved Employees during rest periods by requiring the Aggrieved Employees to go through mandatory security checks to be able to exit and re-enter the premises, effectively either not permitting Aggrieved Employees to leave Defendants' premises or not permitting Aggrieved Employees to take full and complete control-free ten (10) minute rest periods.

Also, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." Defendants' policy of requiring Aggrieved Employees to go through security checks before exiting the premises and before re-entering the premises effectively eliminates the possibility for Aggrieved Employees to leave the business premises to take uninterrupted, control free full and complete ten (10) minute rest periods. As such, Defendants did not allow Aggrieved Employees to leave the Defendants' location and this is directly at odds with *Augustus*, as it "tethered [employees] by time and policy to a particular location" and therefore fails to relieve employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid, such as by failing to calculate all forms of remuneration like shift differentials, non-discretionary bonuses, incentive pay, and meal allowances into the regular rate for rest period premiums. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226
California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements for Aggrieved Employees failed to accurately account for unpaid wages and overtime because their actual hours worked were under-reported due to off the clock work. The wage statements for to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks. Additionally, the wage statements for Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Aggrieved Employees failed to list the name and address of the legal entity Aggrieved Employees were assigned to work at. In addition, Defendants had a systematic practice of failing to issue or make available wage statements as a result of Defendants' policy of not providing hard copies to Aggrieved Employees, but instead notifying Aggrieved Employees that their paystubs will be available for electronic retrieval without ever instructing Aggrieved Employees on how to access or retrieve such electronic wage statements.

Additionally, for the purposes of Subsection (a)(9), Plaintiff seeks to expand the scope of the Aggrieved Employees they seek to represent to extend to all individuals employed by Defendants during the applicable period. The wage statements issued to Aggrieved Employees failed to state all applicable hourly rates for which Aggrieved Employees were paid as required by Labor Code § 226(a)(9).

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, …"

Failure to Issue Timely Payments in Violation of Labor Code §§ 201.3 and 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204 and on a weekly basis as required by Labor Code § 201.3. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, Defendants did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204 and no less frequently than weekly in accordance with the requirements of Labor Code § 201.3. Additionally, by not providing wage statements as required under Labor Code §§ 201.3 and 204, Defendants systematically violated Labor Code §§ 201.3, 204, and 226.

Given the above described off the clock work, Aggrieved Employees were not paid at the correct overtime rate for all hours worked after eight hours into a shift or over forty in a work week and that Aggrieved Employee was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code §§ 201.3 and 204.

In light of the foregoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly or no less frequently than weekly, and upon separation or termination, under Labor Code §§ 201.3, 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 201.3, 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. Moreover, Defendants have a systematic practice of waiting until the regular payday on subsequent pay periods to issue Aggrieved Employees' final pay after separation of employment. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201.3, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Maintain Temperatures Under the Wage Orders

Under Labor Code § 1198, "[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." Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding the temperatures maintained at employers facilities within California: "(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort… (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section." (*See, e.g.,* Cal. Code Regs., tit. 8 § 11070(15), Cal. Code Regs., tit. 8, § 11090(15)).

Further California Labor Code § 6720 required the California Division of Occupational Safety and Health ("Cal/OSHA") to propose an indoor heat illness standard by January 1 2019. Cal/OSH's draft standard applies its proposed regulations to all indoor work areas where the temperature equals or exceeds 82° Fahrenheit when employees are present. At times during the relevant time period Plaintiffs and other warehouse workers were subjected to excessive heat and or humidity resulting in temperatures equaling or exceeding 82° F. During the relevant time period, as detailed above, Defendants violated Labor Code §§ 1198 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiffs and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, *inter alia*, providing adequate air conditioning or heat ventilation etc.

These practices and policies resulted in Defendants' failure to maintain temperature providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders. Plaintiffs and the Aggrieved Employees may therefore pursue damages and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in an amount to be determined at trial. More specifically, for the above addressed violations of paragraph 15 of the applicable IWC Wage Orders constituting violations of Labor

Code § 1198 and Labor Code § 2699.5, Plaintiffs seek penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Suitable Seating
Plaintiffs also alleges that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties.

With their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.

Unfair Competition Under Business and Professions Code § 17200, *et seq.*
Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq*.

Plaintiffs' PAGA Claim under Labor Code § 2698 *et seq*. and Recovery Bases:
After complying with the notice procedures of Labor Code § 2699.3, Plaintiffs will file a Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*, including as follows:

(a) <u>Wage Claims</u>: For failure to provide the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked, failure to pay proper reporting time and sick pay under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) <u>Failure to Provide Paid Sick Days:</u> For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) <u>Failure to Pay Vacation Wages</u>: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(d) <u>Meal and Rest Period Claims</u>: For failure to provide the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) <u>Inaccurate Wage Statements and Failure to Maintain Records</u>: For failure to provide the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, …";

(f) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201.3, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Maintain Temperatures: For failure to maintain temperature providing reasonable comfort constituting violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) Failure to Provide Suitable Seating: For Defendants' failure to provide suitable seating under Labor Code § 1198 the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 11982699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiffs allege have been violated, including the facts and relevant theories alleged against Defendants and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiffs respectfully request that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether the Aggrieved Employees should include them in a Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,
D LAW, INC.

David Yeremian

Cc: Hyve Solutions Corporation dba Hyve Solutions
Volt Management Corp. dba Volt Workforce Solutions
Volt Information Sciences, Inc.
Design & Technical Solutions,
P/S Partner Solutions, Ltd.
Hyve Solutions Corporation California USA
TD Synnex
Slingshot Connections, LLC