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Clerk of the Superior Court
By M. Romero ,Deputy Clerk

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

ELIEZER ACEVEDO, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

BENDER ROSENTHAL, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 26CU047976C
**REPRESENTATIVE ACTION
COMPLAINT**

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

Action Filed:

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

5 **INTRODUCTION**

6 1. This representative action arises from Defendants’ systemic failure to pay Plaintiff
7 Eliezer Acevedo (“Plaintiff”) and similarly situated non-exempt employees all wages owed under
8 California law. During his employment as a Land Agent from approximately February 19, 2025 to
9 April 23, 2026, Plaintiff was routinely required to perform work off-the-clock outside of his scheduled
10 shifts, including responding to work emails and phone calls and addressing project inquiries from
11 Defendants’ upper management and/or Defendants’ client on Microsoft Teams approximately two to
12 three times per week. Defendants restricted Plaintiff and the covered employees from recording this
13 time absent advance approval that, in practice, was rarely if ever obtainable.

14 2. As a direct result of these policies, Plaintiff and the covered employees were denied
15 minimum and overtime wages for hours actually worked, were pressured to work through legally
16 required meal and rest periods, and were directed to clock out to create the appearance of compliant
17 breaks on Defendants’ timekeeping records while continuing to work through them at their desks.
18 Defendants further failed to reimburse Plaintiff and the covered employees for necessary business
19 expenses, including personal cell phone, home internet, and vehicle mileage costs incurred in
20 performing their job duties, failed to timely pay all wages due each pay period, and failed to furnish
21 accurate itemized wage statements reflecting all hours worked and wages earned.

22 3. These are not isolated incidents, but the product of Defendants’ common policies and
23 practices applied uniformly to Plaintiff and the covered employees, including requiring advance
24 approval before any off-the-clock time could be recorded, requiring employees to clock out for meal
25 periods regardless of whether a compliant, duty-free break was actually provided, and failing to
26 reimburse mandatory use of personal cell phones, home internet, and personal vehicles for company
27 business. Plaintiff, individually, on behalf of similarly situated employees, and as a proxy for the State
28

1 of California under PAGA, seeks recovery of all unpaid wages and premiums, civil penalties, interest,
2 and attorneys' fees and costs recoverable under the Labor Code.

3 **JURISDICTION & VENUE**

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

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

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

12 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
13 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
14 some of the alleged violations in this County.

15 **PARTIES**

16 **A. Plaintiff Eliezer Acevedo**

17 8. Plaintiff Acevedo is an individual over 18 years of age who worked for Defendants in
18 California as a non-exempt employee from about February 19, 2025 to April 23, 2026. Plaintiff
19 worked as a Land Agent.

20 9. The State of California, via the Labor and Workforce Development Agency
21 ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9
22 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party
23 in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
24 *Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd., LLC* (2025) 109
25 Cal.App.5th 69, the PAGA claim is brought exclusively as a representative action and does not include
26 arbitrable claims.

1 **B. Defendants**

2 10. Defendant Bender Rosenthal, Inc. is a California Corporation that maintains operations
3 and conducts business throughout the State of California, including in this county.

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

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

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

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

22 **GENERAL ALLEGATIONS**

23 15. Defendants employed Plaintiff as a non-exempt Land Agent from approximately
24 February 19, 2025 to April 23, 2026. Throughout his employment, Defendants required Plaintiff and
25 the covered employees to perform work off-the-clock outside of their scheduled shifts, including
26 responding to work emails and telephone calls and addressing project inquiries from Defendants'
27 upper management and/or Defendants' client on Microsoft Teams. This uncompensated work
28 occurred approximately two to three times per week, took up to approximately one hour per day

1 depending on the complexity of the inquiry, and totaled approximately two hours of unpaid work per
2 week. Plaintiff and the covered employees were not permitted to record this time because Defendants
3 restricted employees from recording time worked outside of their regular scheduled shifts without
4 obtaining advance approval, which was not always possible to obtain in practice.

5 16. Plaintiff's scheduled meal periods were also frequently interrupted or shortened
6 because land management meetings routinely ran from an hour to an hour and a half beyond their
7 scheduled time. To avoid triggering meal period penalties on Defendants' timekeeping system,
8 Defendants required Plaintiff to clock out to record a facially compliant meal period while Plaintiff
9 continued to work through it at his desk. As a result, Plaintiff and the covered employees performed
10 additional off-the-clock work during their meal periods, for which they were not compensated, and
11 were denied the meal period premiums owed for these non-compliant meal periods. For similar reasons
12 related to the demands of land management meetings, Plaintiff was unable to take compliant rest
13 periods approximately three to four times per week and was not paid the rest period premiums owed
14 as a result.

15 17. Because Defendants failed to accurately record and pay for all hours that Plaintiff and
16 the covered employees worked, Defendants also failed to properly credit and pay accrued paid sick
17 leave in accordance with Labor Code section 246 et seq., failed to timely pay all wages and premiums
18 owed within the time periods required by Labor Code sections 204 and 204b, and failed to furnish
19 itemized wage statements that accurately reflected gross wages earned, net wages earned, total hours
20 worked, and the applicable hourly rates in effect, as required by Labor Code section 226(a).

21 18. Defendants further required Plaintiff and the covered employees to use their personal
22 cell phones and personal home internet on a daily basis to access Microsoft Teams and Outlook in
23 order to perform their job duties, and required Plaintiff to use his personal vehicle to travel to field
24 sites for client visits, totaling approximately 70 miles round-trip once or twice per month during the
25 last six months of his employment, without reimbursing Plaintiff for these necessary business
26 expenditures, in violation of Labor Code section 2802.

1 19. These practices were not unique to Plaintiff, but reflect Defendants’ uniform policies
2 and practices applicable to Plaintiff and the covered employees, as further described in Plaintiff’s
3 PAGA notice, attached hereto as Exhibit 1 and incorporated herein by reference.

4 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

6 27. On or about **July 1, 2026**, Plaintiff paid the requisite PAGA filing fee and provided
7 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
8 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
9 violations.

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

13 29. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
14 written PAGA notice from the LWDA.

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

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

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

25 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
26 1197, 1198; IWC Wage Orders.

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

- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- g. For such other relief the Court deems just and proper.

1
2 Dated: September 9, 2026

Ferraro Vega Employment Lawyers, Inc.

3
4 *Ricardo De Leon*

Ricardo De Leon

Rick Waltman

5 *Attorneys for Plaintiff Eliezer Acevedo*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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July 1, 2026

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

VIA CERTIFIED U.S. MAIL

- *Electronic Return Receipt* -

Bender Rosenthal, Inc.
2825 Watt Ave. Suite 200
Sacramento, CA 95821

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

Dear LWDA Officer and Company Representatives:

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

BENDER ROSENTHAL, INC.

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Land Agent from about February 19, 2025, to April 23, 2026. During their employment, Plaintiff and the covered (i.e., aggrieved) employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

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

Specifically, Defendants employed an unlawful practice of requiring Plaintiff and the covered employees to perform work while off-the-clock because, on information and belief, Defendants restricted Plaintiff and the covered employees from recording hours that were outside of their regular scheduled shifts without obtaining explicit approval beforehand. For example, Plaintiff routinely responded to work emails and answered phone calls outside of his shifts while off-the-clock, a practice documented by his email correspondence records.

Additionally, in his role as a land manager, Plaintiff was required to address project questions posed by Defendants’ upper management and/or Defendants’ client on Microsoft Teams. This occurred approximately two to three times per week after Plaintiff’s scheduled shifts and took about one hour per day to address depending on the complexity of the inquiry. In sum, Plaintiff spent approximately two hours per week responding to these emails and messages off-the-clock. Plaintiff was not allowed to record this time spent working because Plaintiff had no means of obtaining approval for this necessary work.

Furthermore, Plaintiff’s scheduled meal periods were frequently infringed upon by land management meetings that ran over by an hour to an hour and a half. To avoid incurring meal penalties, Plaintiff would clock out to record compliant meal periods but continue working through them at his desk. Consequently, Plaintiff and the covered employees performed work outside of their scheduled shifts and during their unpaid meal periods time for which they were not paid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the covered employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As enumerated herein, Plaintiff and the covered employees were not paid for all hours worked due to off-the-clock work they were required to perform. Plaintiff and the covered employees often worked over 8 hours in a day and over 40 hours in one week. To the extent Defendants’ unlawful practice of failing to pay for all hours worked resulted in overtime under California Law, Defendants failed to properly track and/or pay Plaintiff and the covered employees overtime wages.

Furthermore, Plaintiff and the covered employees were denied overtime compensation required under California law due to Defendants’ strict policy which required Plaintiff and the covered employees to obtain advance approval for any potential overtime accrual, which was not always possible in practice. Because of this policy, Defendants failed to track or measure the off-the-clock work Plaintiff and the covered employees regularly performed, including responding to work emails and taking phone calls outside of their shifts. For example, as stated above, in his role as a land manager, Plaintiff routinely performed uncompensated work after his scheduled shifts to answer project questions posed by Defendants’ management and/or Defendants’ client on Microsoft Teams. This off-the-clock work occurred two to three times per week, lasting approximately one hour per day, with Plaintiff spending an additional two

hours per week responding to messages and emails received during the weekend. Although Plaintiff's pay stubs occasionally reflected minimal overtime, these compensated amounts never exceeded five to ten minutes because Plaintiff had no means of obtaining approval for this additional work, so Plaintiff was forced to complete it off-the-clock. Additionally, land management meetings frequently cut into Plaintiff's meal periods by an hour to an hour and a half, forcing him to clock out for his meal periods to avoid accruing meal penalties while continuously working through them at his desk. Consequently, Defendants failed to properly compensate Plaintiff and the covered employees for all hours worked, including overtime hours.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

Defendants failed to comply with California's paid sick leave laws with respect to the covered employees. Because Defendants failed to record and pay for all hours that Plaintiff and the covered employees worked, Defendants failed to credit them with all sick leave hours that they accrued. Additionally, each time Plaintiff and the covered employees worked off-the-clock, resulting in unpaid overtime, the overtime hours were not accounted for when calculating an employee's accrued paid sick leave. Therefore, Plaintiff and the covered employees were not awarded the total accrued sick leave time they had earned.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Plaintiff and the covered employees routinely experienced missed, late, short, and/or interrupted meal periods due to the pressures to keep up with the high demands of the job. Due to high work volume, scheduling, and operational demands, Plaintiff and the covered employees could not always take compliant meal periods before the fifth hour of work. Defendants failed to provide adequate relief in order for Plaintiff and the covered employees to take compliant meal periods. Further, Defendants maintained a practice wherein they required Plaintiff and the covered employees to clock out and record compliant meal periods regardless of being able to take their meal periods in practice. As a result, Plaintiff and the covered employees had their meal periods interrupted, cut short, or completely unprovided.

For example, Defendants required Plaintiff to attend land management meetings which routinely ran from an hour to an hour and a half, heavily infringing upon Plaintiff's designated meal period times. Although these meetings started before Plaintiff's fifth hour of work and extended beyond it, Defendants required Plaintiff to clock out before the fifth hour of work specifically to avoid triggering meal period penalties. Furthermore, on numerous other occasions, even when Plaintiff was able to clock out for his scheduled meal periods, he was pressured by the workload to immediately return to his desk and continue working through his meal period while off-the-clock.

Every time Plaintiff and the covered employees received a non-compliant meal period, Defendants owed them a meal period premium at their regular rate of pay. However, while Plaintiff occasionally received a meal period premium on his pay stubs, this only occurred in rare instances when he was unable to clock out in a timely manner and record facially compliant meal periods. Defendants' records and premium payments failed to capture the numerous times Plaintiff clocked out on the company timecard to appear compliant but was forced to continuously work through his meal periods at his desk. Plaintiff alleges, based on information and belief, that this was a matter of common policy and practice with respect to the covered employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11

Cal.5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

As stated above, due to pressure to keep up with the high demands of the job and scheduling conflicts, Plaintiff and the covered employees were not always authorized or permitted to take their rest periods. Specifically, Plaintiff and the covered employees would often experience non-compliant rest periods, and in many instances, Plaintiff had to forgo his rest periods altogether because Defendants failed to authorize or permit them. For example, in his role as a land manager, Plaintiff was required to attend extended land management meetings that routinely ran from an hour to an hour and a half. Because of these demanding meetings, Plaintiff was rarely able to take his required rest periods, completely forgoing them three to four times a week. Every time Plaintiff and the covered employees received a non-compliant rest period, they were owed a rest period premium at their regular rate of pay. However, during Plaintiff’s employment with Defendants, Plaintiff never received a rest period premium, and his corresponding pay stubs fail to reflect any such compensation.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or

204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

Defendants failed to provide accurate itemized wage statements to the covered employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Additionally, Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time that Plaintiff and the covered employees worked due to Defendants’ policy and practice of requiring off-the-clock work.

Plaintiff and the covered employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiff and the covered employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

Defendants required Plaintiff and the covered employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the covered employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Plaintiff was required to use his personal cell phone and personal home internet every single day to perform his duties as a land manager, as Defendants required him to access and utilize Microsoft Teams and Outlook on his personal devices to respond to Defendants’ management and/or Defendants’ client’s inquiries and manage projects. Furthermore, Defendants failed to reimburse Plaintiff for necessary business mileage incurred when conducting field visits for Defendants’ client. For the last six months of his employment, Plaintiff was required to drive his personal vehicle from his home directly to various field sites that mandated a land management representative, totaling approximately 70 miles round-trip once or twice a month. Despite these mandatory work expenditures, Defendants failed to provide any reimbursement whatsoever for Plaintiff’s mileage, phone, or internet usage. This practice of failing to indemnify employees for mandatory work-related expenses was common amongst all covered employees.

Thus, in direct consequence of their job duties, Plaintiff and the covered employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice. To the extent Defendants reimbursed Plaintiff and the covered employees, those amounts were underpaid. At all times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the covered employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of the covered employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the covered

employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the covered employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronic data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in blue ink that reads "Ninel Kocharyan". The signature is fluid and cursive, with the first name "Ninel" being more prominent than the last name "Kocharyan".

Ninel Kocharyan

ZE

Cc Plaintiff Eliezer Acevedo
Sheila Bozin, HR, S.Bozin@Benderrosenthal.com