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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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

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

Plaintiffs,

vs.

CLOVER ENVIRONMENTAL SOLUTIONS,
LLC; CLOVER TECHNOLOGIES GROUP,
LLC; CLOVER IMAGING GROUP; and DOES
1 through 50, inclusive,

Defendants.

Case No. 37-2023-00055158-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
10. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff HEIDY MARTIJA, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 CLOVER ENVIRONMENTAL SOLUTIONS, LLC; CLOVER TECHNOLOGIES GROUP, LLC;
5 CLOVER IMAGING GROUP; and DOES 1 through 50, inclusive (collectively “Defendants”),
6 alleging as follows:

7 **INTRODUCTION**

8 1. This is a class and representative action filed for wage and hour violations of the
9 California Labor Code against Clover Environmental Solutions and its related entities.

10 2. Defendants employed class members in California and failed to pay for all hours
11 worked, to include all forms of remuneration in the regular rate of pay when paying overtime (e.g.,
12 bonuses), and failed to pay sick leave at the correct rate. Defendants also failed to provide and/or
13 authorize or permit employees to take all meal and rest periods to which they were entitled.

14 3. As a result of these violations, Defendants underpaid Plaintiff and class members and
15 are liable for the underlying wages and premiums.

16 **JURISDICTION & VENUE**

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

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

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

25 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
26 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
27 of the alleged violations in this county.
28

PARTIES

A. Plaintiff Heidy Martija

8. Plaintiff Martija is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 27, 2017 to October 5, 2023. Plaintiff worked as a Picker/Packer Associate.

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

B. Defendants

10. Defendant Clover Environmental Solutions, LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

11. Defendant Clover Technologies Group, LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county. Clover Technologies Group does business as Clover Environmental Solutions, LLC and on information and belief has also done business as Clover Imaging Group.

12. Defendant Clover Imaging Group is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county. Clover Imaging Group also does business as Clover Environmental Solutions, LLC.

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

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

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

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

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

19. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants,

1 which resulted in losses to the class. Proof of common unlawful business
2 practices, which Plaintiff experienced, will establish the right of the class to
3 recover on the causes of action alleged herein.

4 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
5 steps to protect the class members' interests adequately and fairly; has no
6 interest antagonistic to other class members; and is represented by attorneys
7 who have substantial experience prosecuting, defending, resolving, and
8 litigating wage and hour class, collective, and representative actions in
9 California state and federal courts.

10 d. Superiority: A class action is superior to other means for adjudicating this
11 dispute. Individual joinder is impractical. Class treatment will allow for
12 common issues to be resolved in a single forum, simultaneously, and without
13 duplication of effort and expense.

14 e. Public Policy Considerations: Certification of this lawsuit as a class action
15 advances the State of California's strong public interest in ensuring its
16 approximately millions of employed residents are properly paid the wages they
17 earned for the hours they worked. Class actions provide a mechanism for
18 enforcement of labor laws and allow for vindication of employee rights by
19 unnamed class members.

20 20. Common questions of law and fact as to the class members predominate over questions
21 affecting only individual members. The common questions of law and fact exist as to whether the
22 employment policies and practices formulated by Defendants and applied to the class members
23 constitute violations of California law.

24 **GENERAL ALLEGATIONS**

25 21. Defendants failed to pay overtime and double time at the lawful rate of pay by failing
26 to calculate Plaintiff's and other class members' additional remuneration into the "regular rate of pay"
27 as required by California law.
28

1 22. Plaintiff's records show Defendants had a policy and practice of paying overtime at
2 1.5x Plaintiff's base rate, rather than 1.5x Plaintiff's regular rate of pay, which should have factored in
3 all remuneration, including bonuses.

4 23. Defendants paid Plaintiff and class members bonuses and other forms of remuneration
5 that Defendants failed to include in the overtime and double time rates in the pay periods when
6 employees worked overtime hours.

7 24. Plaintiff's wage statements with the pay date of 07/21/2023 provides an illustrative
8 example of the regular rate underpayment.

9 25. Plaintiff and other employees experienced missed, late, short, and interrupted meal
10 periods in order to keep up with the demands of the job. Additionally, while Plaintiff and other
11 employees were clocked out for their unpaid meal periods, they experienced work-related interruptions
12 from supervisors and others. On some occasions, employees were even required to return back to
13 work without taking a compliant meal period to complete time sensitive tasks (e.g., loading or
14 unloading trucks that needed to leave by a certain time). On other occasions, Plaintiff and the
15 aggrieved employees were required to clock out for a meal period although they were still working
16 and unable to actually take the meal period at the time they clocked out. This was done to avoid the
17 appearance of meal period non-compliance on the time records.

18 26. When Plaintiff and class members experienced non-compliant meal periods,
19 Defendants failed to pay meal period premiums at the regular rate of compensation in violation of
20 Labor Code section 226.7.

21 27. Defendants additionally had a policy and practice of not paying rest periods when they
22 were due. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code
23 section 226.7 because such premiums were not paid at the correct regular rate of compensation to
24 aggrieved employees, which would have factored in bonuses and other forms of compensation based
25 on their policy and practice of miscalculating underpaying the regular rate of pay applicable to
26 overtime and other premiums.

27 28. Additionally, Defendants failed to pay Plaintiff and class members for all hours
28 worked, due to their unlawful policy and practice of requiring Plaintiff and other class members to

1 clock out regardless of their ability to take a compliant meal break, depriving them of regular and
2 overtime wages.

3 29. In effect, requiring Plaintiff and class members to work-off-the clock without pay.
4 When Plaintiff and class members worked more than 8 hours, this practice resulted in unpaid overtime
5 wages.

6 30. Furthermore, Plaintiff Defendants failed to pay sick leave at the correct rate as they
7 failed to factor in all forms of remuneration (including bonuses) into the sick leave rate, resulting in
8 underpayments of paid sick leave wages.

9 31. Defendants' failure to pay regular and overtime, paid sick leave, and premium
10 payments each pay period or upon separation of employment, rendered the payments untimely and
11 subject to civil penalties for the violations committed against the aggrieved employees under Labor
12 Code §§ 201 through 203.

13 32. Defendants failed to provide accurate itemized wage statements to the aggrieved
14 employees each pay period as a result of these policies and practices.

15 33. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
16 the correct "gross wages earned" or "net wages earned" on those statements because the amounts listed
17 failed to include and account for the underpaid overtime and sick leave and unpaid meal and rest period
18 premiums Plaintiff and class members earned but were not paid.

19 34. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
20 employee statements each pay period the applicable hourly rates and the number of hours worked at
21 that rate, as Defendants failed to pay all wages, sick leave, and premiums owed to employees each pay
22 period (i.e., meal and rest period premiums). The amounts stated are instead depreciated and
23 underpaid, resulting in an inaccurate reflection to the pay stub.

24 35. In violation of Labor Code section 226(a)(2), the total hours worked on employees'
25 wage statements were incorrect during pay periods when they performed work during an unpaid meal
26 period.

27 36. These wage statement violations created significant confusion among Plaintiff and
28 other aggrieved employees with respect to what amounts were owed and paid, at what rates, the

1 number of hours worked, and how those amounts were or should be calculated. The wage statements
2 reflect a false statement of earnings and concealed the underlying problems of underpayments of
3 employee wages.

4 37. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
5 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
6 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
7 Order by maintaining practices, policies, and customs that are inconsistent with their obligations under
8 California Law.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

11 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

12 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

13 38. All outside paragraphs of this Complaint are incorporated into this section.

14 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
15 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days
16 of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt
17 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
18 and further provide a private right of action for an employer's failure to pay all minimum wages (plus
19 liquidated damages).

20 40. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
21 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
22 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of
23 Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful
24 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
25 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
26 Code § 1194.2.

27 41. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
28 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class

1 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
2 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys'
3 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **Violation of Labor Code §§ 510 and 1194**

7 42. All outside paragraphs of this Complaint are incorporated into this section.

8 43. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
10 wages all overtime hours worked, and which further provide a private right of action for an employer's
11 failure to pay all overtime compensation for overtime hours worked.

12 44. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
13 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
14 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
15 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
16 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
17 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
18 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

19 45. Plaintiff and class members are entitled to recover the full amount of the unpaid
20 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
21 extent permitted by law.

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **Violation of Labor Code §§ 226.7 and 512**

25 46. All outside paragraphs of this Complaint are incorporated into this section.

26 47. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
28 meal period premiums in lieu thereof), and which further provide a private right of action for an

1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

3 48. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
5 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
6 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
7 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
8 sections of the applicable orders).

9 49. Further, Defendants willfully failed in their affirmative obligation to consistently pay
10 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
11 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
12 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
13 applicable orders).

14 50. Plaintiff and class members are entitled to recover the full amount of the meal period
15 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
16 the extent permitted by law.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7 and 516**

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

21 52. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

26 53. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

54. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

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

56. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

57. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated 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 of employment.

1 (3) Paid sick time for exempt employees shall be calculated in the same manner
2 as the employer calculates wages for other forms of paid leave time.

3 58. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
4 of the lawful rates set forth in the statute because Defendants failed to include in their sick leave
5 calculation the additional remuneration received by Plaintiff and class members.

6 59. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
7 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
8 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code
9 sections 246, 248.1, 248.2, and 248 *et seq.*

10 60. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
11 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
12 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
13 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
14 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
15 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
16 to September 30, 2022, and may be extended thereafter.

17 61. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
18 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
19 (2) state minimum wage, (3) local minimum wage.

20 62. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
21 paid sick leave according to the highest of the following four methods:

22 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
23 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
24 the employee actually works overtime in that workweek.

25 (II) Calculated by dividing the covered employee's total wages, not including
26 overtime premium pay, by the employee's total hours worked in the full pay periods
27 of the prior 90 days of employment.

28 (III) The state minimum wage.

1 (IV) The local minimum wage to which the covered employee is entitled.

2 63. Labor Code section 248.6 requires employers to pay supplemental sick leave using
3 either method (I) or (II), as identified above.

4 64. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
5 Leave in the manner described above because Defendants failed to include in their sick leave
6 calculation the additional remuneration received by class members.

7 65. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
8 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

9 **SIXTH CAUSE OF ACTION**

10 **UNTIMELY PAYMENT OF WAGES**

11 **Violation of Labor Code §§ 204, 210, 218**

12 66. All outside paragraphs of this Complaint are incorporated into this section.

13 67. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
14 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
15 period, and which further provide a private right of action for an employer's failure to comply with
16 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
17 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

18 68. Defendants willfully failed in their affirmative obligation to timely pay all wages,
19 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
20 during each calendar month on days designated in advance by the employer as regular paydays (for
21 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly
22 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
23 "Minimum Wages" sections of the applicable orders).

24 69. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
25 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
26 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
27 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
28 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **SEVENTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **Violation of Labor Code § 226**

4 70. All outside paragraphs of this Complaint are incorporated into this section.

5 71. This cause of action is brought by a wage statement subclass pursuant to Labor Code
6 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
7 pay period, and which further provide a private right of action for an employer's failure to comply
8 with this obligation.

9 72. Defendants knowingly and intentionally failed in their affirmative obligation to provide
10 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
11 class members. Specifically, the wage statements issued to Plaintiff and class members did not
12 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

13 73. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
14 accurate itemized wage statements, causing confusion and concealing wage and premium
15 underpayments.

16 74. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
17 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
18 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
19 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
20 Code section 226(e).

21 **EIGHTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **Violation of Labor Code §§ 201 *et seq.***

24 75. All outside paragraphs of this Complaint are incorporated into this section.

25 76. This cause of action is brought by a waiting time subclass pursuant to Labor Code
26 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
27 employment, and which further provide a private right of action to recover statutory waiting time
28

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

77. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

78. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

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

80. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

81. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

82. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

83. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year

1 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
2 violations do not provide a private right of action.

3 84. Plaintiff and class members are entitled to injunctive relief against Defendants,
4 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
5 an ownership interest and to prevent future damage and the public interest under Business and
6 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
7 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
8 § 1021.5.

9 **TENTH CAUSE OF ACTION**

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

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

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

13 85. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

26 89. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

15 93. On or about **December 18, 2023**, Plaintiff paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

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

22 95. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
23 written PAGA notice from the LWDA.

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

27 97. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
28 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate

the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, and 1194,.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. 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;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- o. For such other relief the Court deems just and proper.

Dated: February 22, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorney for Plaintiff Heidy Martija

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

December 18, 2023

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

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

Clover Environmental Solutions, LLC
4200 Columbus St
Ottawa, Illinois 61350

Clover Imaging Group
4200 Columbus St
Ottawa, Illinois, 61350

Clover Technologies Group, LLC
4200 Columbus St
Ottawa, Illinois 61350

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

CLOVER ENVIRONMENTAL SOLUTIONS, LLC; CLOVER TECHNOLOGIES GROUP, LLC; CLOVER IMAGING GROUP

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Picker/Packer Associate from about February 27, 2017 to October 5, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. As discussed in more detail in the meal periods section, Plaintiff and the aggrieved employees’ meal periods would be interrupted and/or cut short and they would have to return back to work. During the times when the aggrieved employees were clocked out for a meal period, this issue resulted in unpaid minimum wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. When employees worked off the clock during unpaid meal periods, this resulted in unpaid overtime wages. Furthermore, Defendants failed to pay overtime at the regular rate of pay because they did not include bonuses and other non-discretionary remuneration in the calculation of such pay.

As illustrated in the example below, Plaintiff earned a \$200 attendance bonus in the same pay period that she worked overtime. Despite this bonus, Defendants paid Plaintiff’s overtime at a rate of \$28.65, which is a 1.5x multiple of her base hourly rate of \$19.10. The overtime should have been paid at the regular rate of pay. This underpayment of overtime was a matter of common payroll practice that applied to Plaintiff and other aggrieved employees.

CLOVER ENVIRONMENTAL SOLU 4200 Columbus St Ottawa, IL 61350 Heidy Martija 12 W Steer Ct Heber, CA 92249	Period Beginning Date	Pay Date	Co.	Clock	Home Dept	Home Cost Number
	7/3/2023	7/21/2023	9DB		CA2010	401312218
	Period Ending Date	WGPS Advance Pay Date	File #	Number		Worked In Cost Number
	7/16/2023		002392	00290055		401312218
Gross Pay						\$ 200.00
ATTEND BONUS (field 3)						\$ 200.00

Plaintiff’s wage statement with \$200 attendance bonus for period of 7/3/2023 to 7/21/2023

CLOVER ENVIRONMENTAL SOLU
4200 Columbus St
Ottawa, IL 61350

Heidy Martija
12 W Steer Ct
Heber, CA 92249

Period Beginning Date 7/3/2023
Pay Date 7/21/2023

Co.
9DB

Clock

Home Dept
CA2010

Home Cost Number
401312218

Period Ending Date 7/16/2023
WGPS Advance Pay Date

File # 002392
Number 00290054

Worked In Cost Number
401312218

Gross Pay			\$ 1,545.77
Regular	Rate: 19.1000	Hours: 65.05	\$ 1,242.46
Overtime	Rate: 28.6500	Hours: 3.92	\$ 112.31
1522 Sick (field 3)	Rate: 19.1000	Hours: 2.00	\$ 38.20
HOLIDAY (field 3)	Rate: 19.1000	Hours: 8.00	\$ 152.80

Plaintiff's wage statement for period of 7/3/2023 to 7/21/2023 showing overtime paid at 1.5x her base hourly rate

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

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Specifically, Defendants failed to pay sick leave at one of the rates required by section 246(i) because they failed to factor in bonuses and other non-discretionary payments into the sick leave rate. As illustrated below, Defendants paid Plaintiff’s sick leave wages at her base hourly rate of \$19.10 although she earned an attendance bonus during the same period in which she was paid sick leave. Defendants’ paid sick leave underpayments were a matter of common payroll practices that applied to Plaintiff and other aggrieved employees.

CLOVER ENVIRONMENTAL SOLU 4200 Columbus St Ottawa, IL 61350 Heidy Martija 12 W Steer Ct Heber, CA 92249	Period Beginning Date	Pay Date	Co.	Clock	Home Dept	Home Cost Number
	7/3/2023	7/21/2023	9DB		CA2010	401312218
	Period Ending Date	WGPS Advance Pay Date	File #	Number		Worked In Cost Number
	7/16/2023		002392	00290055		401312218
Gross Pay						\$ 200.00
ATTEND BONUS (field 3)						\$ 200.00

Plaintiff’s wage statement with \$200 attendance bonus for period of 7/3/2023 to 7/21/2023

CLOVER ENVIRONMENTAL SOLU 4200 Columbus St Ottawa, IL 61350 Heidy Martija 12 W Steer Ct Heber, CA 92249	Period Beginning Date	Pay Date	Co.	Clock	Home Dept	Home Cost Number
	7/3/2023	7/21/2023	9DB		CA2010	401312218
	Period Ending Date	WGPS Advance Pay Date	File #	Number		Worked In Cost Number
	7/16/2023		002392	00290054		401312218
Gross Pay						\$ 1,545.77
Regular	Rate: 19.1000		Hours: 65.05		\$ 1,242.46	
Overtime	Rate: 28.6500		Hours: 3.92		\$ 112.31	
1522 Sick (field 3)	Rate: 19.1000		Hours: 2.00		\$ 38.20	
HOLIDAY (field 3)	Rate: 19.1000		Hours: 8.00		\$ 152.80	

Plaintiff’s wage statement for period of 7/3/2023 to 7/21/2023 showing sick leave paid at her base hourly rate

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

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

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

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

Defendants failed to provide Plaintiff and the aggrieved employees all compliant meal periods to which they were entitled. On information and belief, when Defendants' records showed that employees experienced a late, short, or missed meal period, Defendants failed to pay employees a meal period premium. Additionally, while Plaintiff and other employees were clocked out for their unpaid meal periods, they experienced work-related interruptions from supervisors and others. On some occasions, employees were even required to return back to work without taking a compliant meal period to complete time sensitive tasks (*e.g.*, loading or unloading trucks that needed to leave by a certain time). On other occasions, Plaintiff and the aggrieved employees were required to clock out for a meal period although they were still working and unable to actually take the meal period at the time they clocked out. This was done to avoid the appearance of meal period non-compliance on the time records.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

On information and belief and for the same reasons as discussed in the meal period section, the aggrieved employees were unable to take all of the rest periods to which they were entitled.

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

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

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

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor

within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). 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. Defendants failed to pay all minimum wages, overtime, sick leave wages, and meal and rest period premiums that employees were entitled to receive each pay period.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages, sick leave, and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Defendants failed to pay overtime and sick leave at the correct rate, resulting in unpaid wages for all employees who have left Defendants employ. Defendants also failed to pay all meal and rest premiums owed as regular and overtime wages for work performed during unpaid meal periods, resulting in further unpaid wages.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages, sick leave, 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, sick leave, and premiums owed and at the correct rate to employees. The amounts stated are instead depreciated and underpaid (or missing entirely, resulting in an inaccurate reflection on the pay stub. In violation of Labor Code section 226(a)(2), the total hours worked on employees’ wage statements were incorrect during pay periods when they performed work during an unpaid meal period.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3

(\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’

written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Plaintiff Heidy Martija

Liz Campbell
Human Resources
Clover Imaging Group