Maria Rodriguez
Attorney at Law
mcrodriguez@mwe.com
+1 310 788 1586

January 19, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
Attention: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, California 94612

VIA CERTIFIED MAIL AND E-MAIL NICK@FERRAROVEGA.COM & LAUREN@FERRAROVEGA.COM

Nicholas J. Ferraro
Lauren N. Vega
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108

Re: Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3
Case No. LWDA-CM-1000422-23; Case Filed by Heidy Martija

Dear PAGA Administrator:

McDermott Will & Emery represents Clover Environmental Solutions LLC and Clover Imaging Group (together, "Clover") and submits this response and cure notice to the Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 filed by Heidy Martija ("Claimant") with the California Labor and Workforce Development Agency on December 18, 2023, ("Notice Letter"). **A true and correct copy of the Notice Letter is attached hereto as Exhibit A.** Clover complies with California Wage and Hour Laws and submits this response and cure notice to explain its operations and outline its plans going forward in accordance with Labor Code Section 2699(d).

I. BACKGROUND

Clover hired Claimant on March 6, 2017, to work in its Distribution Department. As part of her onboarding and training, Clover trained Claimant about Clover's practices, policies, and procedures in order to ensure a safe working environment for Claimant and other Clover employees.

Clover employed Claimant as an hourly, non-exempt employee with the job title of Picker Packer where she worked the mid-shift. Throughout her employment, Claimant received moderate reviews from management. During her employment, Claimant was also counseled for using her cell phone during working time, interpersonal conflicts with her fellow employees, selling outside merchandise, and not following safety rules.

On October 5, 2023, it was reported to Clover's Human Resources that Claimant was using working hours for personal use and engaging in horseplay during working hours. Video surveillance confirmed that Claimant was playing a game known as "quarters" with her coworkers during working time after being specifically told by a supervisor to stay productive and at her workstation. After Claimant had finished playing the game, the video shows that she lounged on top of a box of customer product and appeared to relax for a period of time. When interviewed about the video, Claimant confirmed that she had engaged in this behavior. Claimant was terminated the next day for these actions. **A true and correct copy of the Positive Counseling Form/Termination Form is attached hereto as Exhibit B.**

Claimant never mentioned or reported any alleged violation that she enumerates in her Notice Letter, despite Clover's policies for reporting complaints. Nor does Claimant report the truth to the LWDA regarding her performance issues that caused her termination. Instead, she alleges Clover violated numerous employment laws, yet the records demonstrate that her allegations are unsupported. Furthermore, out of an abundance of caution, Clover has cured any alleged violations.

II. CLAIMANT'S ALLEGATIONS

In her Notice Letter, Plaintiff sets forth a laundry list of alleged violations, that Clover:

1) failed to pay minimum wage because it failed to pay for all hours worked due to the allegation that it "interrupted and/or cut short" employee meal periods;
2) failed to pay overtime due to failure to pay for off the clock work;
3) Failed to pay overtime wages at the lawful rate of pay due to improper regular rate calculations centering around a quarterly attendance bonus;
4) failed to provide sick leave at the regular rate of pay;
5) failed to pay meal period premium wages;
6) failed to pay rest break premiums;

7) failed to pay all wages due to Claimant within the time period specified under California Labor Code Section 204;

8) failed to provide complete and accurate itemized wage statements;

9) failed to timely pay wages upon separation of employment; and

10) failed to maintain accurate payroll records.

Clover addresses each of these allegations below in turn, all of which are without merit and/or have been cured.

A. <u>Payment For Hours Worked</u>

Clover pays its non-exempt employees, including Claimant, for all hours worked at the applicable and appropriate rates in accordance with California law.

Claimant and fellow non-exempt employees are paid one and one-half the regular rate of pay for all hours worked in excess of eight hours up to and including twelve (12) hours in any workday, and for the first eight hours worked on the seventh (7^{th}) consecutive day of work in a workweek, and double the regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

Clover utilizes ADP, an industry-leading global payroll provider. Employees access the time keeping software application, ADP Workforce Now, using their cell phone. Through this application, employees can see their time entries, payroll calculations, paychecks, and other important data. Employees can clock in using their cell phone or by using an actual ADP time clock using their unique code. As such, all employees are accurately paid for all of the time they work.

After a thorough review of its records, Clover has determined that it is not in violation of any wage and hour laws and thus there are **no violations that can be cured**.

B. <u>Calculation of Regular Rate Related To Attendance Bonuses</u>

Claimant alleges that Clover pays a periodic attendance bonus without factoring the bonus into the regular rate of pay which resulted in underpayment of meal/rest period premiums, sick leave, and overtime pay. Clover does pay a quarterly attendance bonus to some employees, which is clearly itemized on employee wage statements. These bonuses are paid quarterly, i.e., only four (4) times per year. As such, there can be no dispute about any regular rate calculations in pay periods where an attendance bonus was not paid. Clover has determined that no alleged violations during the pay periods where no attendance bonus was paid occurred and thus there are **no violations that can be cured** in those pay periods.

Out of an abundance of caution, **Clover has cured** the regular rate calculation claim as follows: by including the attendance bonus in regular rate calculation, updating wage statements, and addressing any regular rate recalculation owed.

C. Meal and Rest Breaks

Claimant and fellow non-exempt employees all receive paid, timely, off-duty meal and rest breaks according to California law. Clover schedules employee meal and rest breaks in a staggered manner and in compliance with California law. In short, Clover gives timely and compliant meal and rest breaks and pays meal and rest period premiums when required.

After a thorough review of its records, Clover has determined that it is not in violation of any wage and hour laws and thus there are **no violations that can be cured**.

D. Timely Wages and Accurate Itemized Wage Statements

Clover timely paid all wages earned to Claimant and her fellow employees in accordance with Labor Code Section 224(d) which states that the "requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Clover also provided an accurate itemized statement conforming to the requirements of Labor Code Section 226. In an abundance of caution, Clover is issuing supplemental wage statements to any employee that has been potentially underpaid pursuant to a potential regular rate of pay issue and addressing any regular rate recalculation owed.

Clover has been in full compliance with the above-stated requirements; therefore, **a cure is not required**. Even if a cure is necessary, **Clover has cured**.

III. CONCLUSION

Clover has cured any arguable violations alleged in the Notice Letter and cures are not necessary in the other alleged instances as Clover has complied with the applicable laws governing its conduct. Clover denies that Claimant is entitled to any relief and denies that Claimant was damaged in the nature alleged, or in any other matter, or at all. Further, Clover denies that Claimant has sustained any injury, damage or loss by reason of any conduct, action, error or omission on the part of Clover, or any agent, employee or any other person acting under Clover's authority or control.

Yours very truly,

Maria Rodriguez
Attachments

EXHIBIT A

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 Technologies Group, LLC
4200 Columbus St
Ottawa, Illinois 61350

Clover Imaging Group
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 –

<u>Unpaid Hours Worked/Minimum Wage</u>
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.

<u>Labor Code section 1194</u> renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. <u>Labor Code section 1197</u> 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." <u>Labor Code section 1198</u> 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 <u>California Minimum Wage Order</u> and the applicable sections of the <u>IWC Wage Orders</u> 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.

<u>Unpaid Overtime</u>
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.

<u>Labor Code section 510</u> 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." <u>Labor Code section 1194</u> renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. <u>Labor Code section 1198</u> 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 <u>IWC Wage Orders</u> further require payment of overtime wages for all overtime hours worked, including the "<u>Hours and Days of Work</u>" 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
[redacted]

Period Beginning Date 7/3/2023 | **Pay Date** 7/21/2023 | **Co. Clock Home Dept Home Cost Number** [redacted]

Period Ending Date 7/16/2023 | **WGPS Advance Pay Date** | **File # Number** [redacted] | **Worked In Cost Number** [redacted]

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	**Period Beginning Date** 7/3/2023	**Pay Date** 7/21/2023	**Co.**	**Clock**	**Home Dept**	**Home Cost Number**
			[redacted]			
[redacted]	**Period Ending Date** 7/16/2023	**WGPS Advance Pay Date**	**File #**	**Number**		**Worked In Cost Number**
			[redacted]			

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
[redacted]

Period Beginning Date	Pay Date	Co.	Clock	Home Dept	Home Cost Number
7/3/2023	7/21/2023	[redacted]			

Period Ending Date	WGPS Advance Pay Date	File #	Number	Worked In Cost Number
7/16/2023		[redacted]		

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

[redacted]

Period Beginning Date	Pay Date	Co.	Clock	Home Dept	Home Cost Number
7/3/2023	7/21/2023	[redacted]			

Period Ending Date	WGPS Advance Pay Date	File #	Number	Worked In Cost Number
7/16/2023		[redacted]		

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.

<u>Unpaid Meal Period Premium Wages</u>
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.

<u>Labor Code section 512</u> 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. <u>Labor Code section 226.7</u> 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. <u>Labor Code section 1198</u> 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 <u>Section 11</u> (<u>Meal Periods</u>), 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 <u>Section 11(A)</u> 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 faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

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. <u>Labor Code section 210</u> 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.

<u>Untimely Payment of Wages Upon Separation of Employment</u>
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.

<u>Labor Code section 201</u> requires that if an employer fires an employee, the wages must be paid immediately. <u>Labor Code section 202</u> requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. <u>Labor Code section 202</u> states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. <u>Labor Code section 203</u> 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.

<u>Non-Compliant Wage Statements</u>
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).

<u>Labor Code section 226(a)</u> 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 <u>must be suspended immediately</u>.

- CONCLUSION -

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

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

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Heidy Martija

Liz Campbell
Human Resources
Clover Imaging Group

EXHIBIT B

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Positive Counseling Form

Employee Information:

Heidy Martija	2392	10/05/2023
Employee Name	Employee No.	Date
Distribution	Mid-Shift	Picker Packer
Employee's Department	Shift	Position

______ **Record of Conversation**
______ **Formal Reminder**
______ **Final Warning**
__X__ **Positive Follow-Up /Separation**

Reason for Counseling (Include all relevant dates and facts):

On Thursday 10/05/23, it was reported to the Human Resources Department that Heidy was using scheduled working hours for personal use and engaging in horseplay during working hours. This happened approximately 90 minutes after the daily huddle meeting in which all employees received a reminder by the Supervisor to stay focused and busy at the workstations. In this same meeting the Supervisor explained that there was a high volume of LTL orders for the next two weeks and it was important employees stay focused (productive).

Video surveillance was reviewed to determine if Heidy used working hours for personal use or engaged in horseplay as reported. The video confirmed that Heidy appears to play a game referred to as quarters with two other co-workers. Specifically, in the video Heidy has a conversation with a co-worker, a third co-worker approached them, then Heidy and the two co-workers walk away from the workstation to an open area to play the game. Next, Heidy and her co-workers are seen throwing or tossing something on the floor. They continue to laugh and/or joke around. At some point they pick up the objects they tossed to the floor. Finally, they engage in a conversation and then each make their way back to their workstations. As part of this inquiry, a signed witness statement confirmed that the item being tossed or thrown by Heidy and the co-worker was a coin (i.e., a quarter). Thus, the video confirmed the reported horseplay.

Additionally, the video shows that when Heidy did return to her workstation. She proceeded to sit on customer product/finished goods (cartridges) which were boxed and stacked on a pallet, as if to use the packaged finished goods as a chair. In the video Heidy is seen just sitting for a period. She then changes position and is seen leaning against her cart before she eventually stands up because the pallet needs to be moved.

During the inquiry Heidy was asked about the reported behavior. Heidy confirmed and admitted the actions seen on the video. Heidy also confirmed and acknowledged that the supervisor had just reminded the group that same morning to stay busy and at their workstations.

Letter of Commitment/Performance Improvement Plan:

Work rules have been established by Clover to ensure that all employees are provided with a safe, orderly, and productive environment. When it has been determined that certain acts are a serious violation of acceptable work behavior, they will be subject to discharge.

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Heidy was hired on 3/06/2017. She understands and acknowledges the expectation to be at her workstation and to be productive during working hours. Heidy knows that horseplay and personal use of working hours is prohibited as outlined in the company employee handbook. Heidy also knows it is prohibited to misuse or sit on finished goods.

Heidy was present at the morning huddle meeting which was held less than two hours before she engaged in the misconduct. In that huddle meeting the Supervisor was personally present and specifically reminded employees to stay focused and ensure they were working. He stressed the importance and the reasons why.

Despite this, Heidy decided to intentionally disregard the Supervisors directive. She left her workstation to engage in horseplay with a co-worker. In addition to this, Heidy had complete disregard for the customers' product by using it as a place to sit.

After carefully reviewing Heidy's intentional disregard of her Supervisor's instruction and her willful act of sitting on finished goods; a decision has been made to terminate her employment effective immediately.

Employee Comments:

Employee Signature: Termed via phone [redacted] **Date:** 10/6/23

Supervisor Signature: **Date:** 10.6.23

Manager/Director: **Date:** 10/06/2023

HR Signature: **Date:** 10/6/23

Copy to: Employee
Employee's Work History File