

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
David X. Lin (State Bar No. 312350)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
david@ferrarovega.com

Attorneys for Plaintiff Timothy McDermott

Electronically FILED by
Superior Court of California,
County of Los Angeles
5/06/2024 4:42 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Chanes, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiffs,

vs.

ABBOTT LABEL, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. **24NWCV01424**

**REPRESENTATIVE ACTION
COMPLAINT**

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

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

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action complaint on behalf of the State of California
7 for Defendants’ systemic violations of the California Labor Code and IWC Wage Orders against all
8 aggrieved employees of Defendants in California.

9 2. Defendants violated the aggrieved employees’ rights by failing to pay all minimum,
10 regular, and overtime wages earned and owed, failing to pay all wages owed for non-productive time,
11 failing to provide all paid sick leave, failing to provide all required meal and rest periods and pay
12 associated premiums, failing to pay all unused vacation wages, failing to timely pay all wages during
13 and upon separation of employment, failing to pay all waiting time penalties, failing to provide
14 accurate, itemized wage statements, failing to reimburse all necessary business expenses, failing to
15 provide all employee records upon written request, and failing to maintain accurate records.

16 3. Specifically, Defendants required Plaintiff and other aggrieved employees to remain
17 on duty even when they were supposed to be relieved of all duties, including during off-the-clock meal
18 periods and rest periods, and rounded down their hours worked Moreover, Defendants failed to
19 incorporate all bonuses and other non-discretionary forms of pay into the aggrieved employees’
20 regular rate of pay for the purposes of paying overtime wages and premiums. These policies, practices,
21 and procedures resulted in underpayments and lack of payments to the aggrieved employees.

22 4. Therefore, Plaintiff seeks all civil penalties recoverable under PAGA for Defendants’
23 Labor Code and IWC Wage Order violations against the aggrieved employees.

24 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Timothy McDermott

9. Plaintiff McDermott is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 15, 2023 to October 27, 2023. Plaintiff worked as a Maintenance and Safety Coordinator.

10. 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.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiff brings the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

B. Defendants

11. Defendant Abbott Label, Inc. is a Texas corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. 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.

13. 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.

14. 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.

15. 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.

GENERAL ALLEGATIONS

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

17. Specifically, Defendants rounded Plaintiff and other aggrieved employees' worked hours down so that they were paid for less time than they actually worked. Moreover, Defendants required the aggrieved employees to carry radios with them throughout the workday and monitor the radio at all times, including during off-the-clock meal periods.

18. Defendants failed to pay Plaintiff and other aggrieved employees separately for their rest and recovery periods. Rather, they included pay for rest periods at employees' base hourly rate rather than incorporating the average of all total compensation for the workweek as required by section 226.2(3).

19. 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. Due to Defendants' pattern and practice of rounding down employee hours, Defendants undercounted aggrieved

employees' working hours, including those that should have counted towards overtime whenever they worked more than eight hours in a day or forty hours in a week.

20. When Defendants paid overtime wages, they failed to do so at the proper rate. Defendants failed to incorporate all non-discretionary bonuses, premiums, and other qualifying forms of remuneration into Plaintiff and other aggrieved employees' rate of pay for overtime purposes. For example, Plaintiff earned a bonus of \$100 on July 18, 2023. *Fig. 1.*

ABBOTT LABEL INC 11440 HILLGUARD RD DALLAS TX 75243			TIMOTHY AARON MCDERMOTT EMPLOYEE ID: 992073 DEPARTMENT: 12040 DD RECEIPT: 1278592717				
FEIN: 75-2909199 Pay Period 07/18/2023 - 07/18/2023 Pay Date 07/21/2023							
Earnings		RATE	HOUR/UNIT	CURRENT	YTD HOUR/UNIT	YTD	
Hourly					296.00	7,548.00	
OT					22.85	874.01	
Hol					16.00	408.00	
Bonus				100.00		100.00	
PTO					4.00	102.00	
Total				\$100.00	338.85	\$9,032.01	
Total Hours Worked					318.85		
Deductions				CURRENT	YTD		
401k				1.00	25.86		
Total				\$1.00	\$25.86		
Time Off (hours)		ACCRUED	TAKEN	AVAILABLE			
PTO				12.00			
Sick CA				24.00			
Other Amount				CURRENT	YTD		
401KMatch				1.00	25.86		
Taxes				CURRENT	YTD		
MED				1.45	130.96		
SOC				6.20	559.99		
CASDI				0.90	81.29		
Total				\$8.55	\$772.24		
Net Pay						\$90.45	

Fig. 1, wage statement for July 18, 2023.

21. Nevertheless, in the pay period between July 10, 2023 and July 23, 2023, Defendants only paid Plaintiff overtime wages at 1.5 times his base rate of pay, and did not factor his earned bonus into his regular rate for overtime pay whatsoever. *Fig. 2.*

ABBOTT LABEL INC
11440 HILL GUARD RD
DALLAS TX 75243

TIMOTHY AARON MCDERMOTT
EMPLOYEE ID: 992073
DEPARTMENT: 12040
DD RECEIPT: 1279062424



FEIN: 75-2909199
Pay Period 07/10/2023 - 07/23/2023
Pay Date 07/28/2023

Earnings		RATE	HOUR/UNIT	CURRENT	YTD HOUR/UNIT	YTD
Hourly		25.50	80.00	2,040.00	376.00	9,588.00
OT		38.25	6.50	248.63	29.35	1,122.64
Hol					16.00	408.00
Bonus						100.00
PTO					4.00	102.00
Total			86.50	\$2,288.63	425.35	\$11,320.64
Total Hours Worked			86.50		405.35	
Deductions		CURRENT		YTD		
401k		22.89		48.75		
Total		\$22.89		\$48.75		
Time Off (hours)		ACCRUED	TAKEN	AVAILABLE		
PTO				16.00		
Sick CA				24.00		
Other Amount		CURRENT		YTD		
401KMatch		22.89		48.75		
Taxes		CURRENT		YTD		
MED		33.19		164.15		
SOC		141.90		701.89		
CASDI		20.60		101.89		
Total		\$195.69		\$967.93		
Net Pay						\$2,070.05

Fig. 2, wage statement for the pay period of July 10 through July 23, 2023.

22. Additionally, Defendants maintained a policy of paying aggrieved employees shift differentials for working second and third shift hours but, on information and belief, these differentials were also not factored into employees' regular rate of pay for overtime purposes.

23. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As described above, Defendants failed to incorporate employees' non-discretionary bonuses, shift differentials, and other qualifying forms of remuneration in employees' regular rate of pay for overtime purposes. Similarly, Defendants also failed to incorporate these forms of remuneration into aggrieved employees' rate of pay for sick leave.

24. Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Due to Defendants' pattern and practice of rounding down employees' worked hours and having employees work off the clock, Defendants recorded fewer hours for Plaintiff and aggrieved employees than they actually worked. Consequently, the aggrieved employees received fewer paid time off hours than they had actually accrued.

1 25. Moreover, when Defendants did pay vacation wages, they did so at the improper rate
2 because they did not include all forms of qualifying remuneration into employees' "final rate" for
3 paying out vacation wages.

4 26. Plaintiff often took late, short, or interrupted meal periods, or missed his meal period
5 entirely in order to keep Defendants' machines up and running. Moreover, as described above, Plaintiff
6 and other aggrieved employees kept their radios on them throughout their shifts and had to monitor
7 them during meal periods.

8 27. Despite failing to provide employees with compliant meal periods, Defendants did not
9 pay all meal period premiums as required by California law. To the extent that any meal period
10 premiums were paid, Plaintiff alleges that Defendants did not pay them at the proper rate of pay as
11 they failed to include all qualifying forms of remuneration in employees' regular rate of pay.

12 28. For the same reasons that Plaintiff and other aggrieved employees were not able to take
13 all meal periods and were not paid all meal period premiums described above, they also were unable
14 to take all rest periods, and were not paid all rest period premiums owed.

15 29. Defendants failed to timely pay all wages owed within seven days of the close of each
16 pay period. As described above, Defendants failed to pay Plaintiff and other employees all wages
17 owed for the time that they rounded down from employees' working hours, and for the time that they
18 spent monitoring their radios while off the clock. Further, they failed to pay overtime, sick leave,
19 vacation hours, and meal and rest period premiums at the proper rates of pay, if at all. Defendants have
20 yet to pay all such amounts to this day.

21 30. For those aggrieved employees who have separated from employment with
22 Defendants, Defendants failed to timely pay all wages owed within the time periods set forth in Labor
23 Code sections 201, 202, and 203. Despite failing to pay all wages to departing employees, Defendants
24 have not paid all waiting time penalties owed.

25 31. Defendants are also subject to waiting time penalties apart from the wage and hour
26 violations described above. For example, Plaintiff's last day of employment was October 27, 2023,
27 when he was laid off. However, Defendants did not issue his final wage statement and payment until
28 October 31, 2023 and Plaintiff did not receive it until approximately two business days after.

1 Defendants failed to pay Plaintiff waiting time penalties for the time he spent waiting for his final
2 check.

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

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

19 34. Defendants required Plaintiff and the aggrieved employees to incur costs for work-
20 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and
21 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
22 as a matter of policy and practice.

23 35. For example, Defendants required Plaintiff to drive to Lowe’s and a dye manufacturer
24 to pick up items that the facility needed. However, Defendants never provided Plaintiff a
25 reimbursement form and never paid him any reimbursement for the travel expenses he incurred.
26 Moreover, Plaintiff had to use his personal cell phone to communicate with Defendants when he could
27 not use his radio and Defendants never provided reimbursement.
28

36. Defendants failed to provide all records upon Plaintiff's request. In response to Plaintiff's written request for his employment file, Defendants made a production of records, but failed to include Plaintiff's timekeeping records.

37. Because of the policies and practices set forth in this Complaint, 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.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

41. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of 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."])

42. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil

1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

14 46. On or about **February 28, 2024**, Plaintiff paid the requisite PAGA filing fee and
15 provided written notice (by online electronic filing with the LWDA and by certified mail to
16 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
17 the alleged violations.

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

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

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

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

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.*

51. 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 Hours Worked/Non-Productive, Rest, and Recovery Periods.*** Violation of Labor Code §§ 226.2; IWC Wage Orders.
- c. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- e. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- f. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- g. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- h. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- i. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- j. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- k. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- l. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- m. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

Dated: May 6, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Lauren N. Vega
David X. Lin
Attorneys for Plaintiff Timothy McDermott

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
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

February 28, 2024

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

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

Abbott Label, Inc.
11440 Hillguard Rd
Dallas, TX 75243

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

ABBOTT LABEL, INC.;

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 Maintenance and Safty Coordinator from about May 15, 2023 to October 27, 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. Specifically, Defendants rounded Plaintiff and other aggrieved employees’ worked hours down so that they were paid for less time than they actually worked. Moreover, Defendants required the aggrieved employees to carry radios with them throughout the workday and monitor the radio at all times, including off-the-clock meal periods.

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 Hours Worked/Non-Productive, Rest, and Recovery Periods **Violation of Labor Code §§ 226.2; IWC Wage Orders**

In addition to the foregoing unpaid wage violations, Defendants also violated Labor Code sections 226.2 and the “Hours and Days of Work,” “Minimum Wages,” and “Rest Periods” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 226.2(a)(1) also requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.” Under Labor Code section 226.2(a)(3), rest and recovery periods must be paid at an hourly rate that is no less than the higher of (i) an average hourly rate taken by dividing

an employee's total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee's total hours worked and (ii) the applicable minimum wage. Under Labor Code section 226.2(a)(4), other nonproductive time must be paid at an hourly rate that is no less than the applicable minimum wage.

Furthermore, the "Hours and Days of Work," "Minimum Wages," and "Rest Periods" sections of the applicable IWC Wage Orders—as addressed in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98—require employers to separately compensate all employees, not just piece-rate employees, for all hours worked, including rest periods and nonproductive time, to comply with California's minimum wage obligations.

Defendants failed to pay Plaintiff and other aggrieved employees separately for their rest and recovery periods. Rather, they included pay for rest periods at employees' base hourly rate rather than incorporating the average of all total compensation for the workweek as required by section 226.2(3).

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. Due to Defendants' pattern and practice of rounding down employee hours, Defendants undercounted aggrieved employees' working hours, including those that should have counted towards overtime.

When Defendants paid overtime wages, they failed to do so at the proper rate. Defendants failed to incorporate all non-discretionary bonuses, premiums, and other qualifying forms of remuneration into Plaintiff and other aggrieved employees' rate of pay for overtime purposes. For example, Plaintiff earned a bonus of \$100 on July 18, 2023. *Fig. 1.*

ABBOTT LABEL INC
11440 HILLGUARD RD
DALLAS TX 75243

TIMOTHY AARON MCDERMOTT
EMPLOYEE ID: 992073
DEPARTMENT: 12040
DD RECEIPT: 1278592717



FEIN: 75-2909199
Pay Period 07/18/2023 - 07/18/2023
Pay Date 07/21/2023

Earnings	RATE	HOUR/UNIT	CURRENT	YTD HOUR/UNIT	YTD	
Hourly				296.00	7,548.00	
OT				22.85	874.01	
Hol				16.00	408.00	
Bonus			100.00		100.00	
PTO				4.00	102.00	
Total			\$100.00	338.85	\$9,032.01	
Total Hours Worked				318.85		
Deductions	CURRENT	YTD	Taxes	CURRENT	YTD	
401k	1.00	25.86	MED	1.45	130.96	
Total	\$1.00	\$25.86	SOC	6.20	559.99	
			CASDI	0.90	81.29	
Time Off (hours)	ACCRUED	TAKEN	AVAILABLE	Total	\$8.55	\$772.24
PTO			12.00			
Sick CA			24.00	Net Pay		\$90.45
Other Amount	CURRENT	YTD				
401KMatch	1.00	25.86				

Fig. 1, wage statement for July 18, 2023.

Nevertheless, in the pay period between July 10, 2023 and July 23, 2023, Defendants only paid Plaintiff overtime wages at 1.5 times his base rate of pay, and did not factor his earned bonus into his regular rate for overtime pay whatsoever. *Fig. 2.*

ABBOTT LABEL INC
11440 HILLGUARD RD
DALLAS TX 75243

TIMOTHY AARON MCDERMOTT
EMPLOYEE ID: 992073
DEPARTMENT: 12040
DD RECEIPT: 1279062424



FEIN: 75-2909199
Pay Period 07/10/2023 - 07/23/2023
Pay Date 07/28/2023

Earnings		RATE	HOUR/UNIT	CURRENT	YTD HOUR/UNIT	YTD
Hourly		25.50	80.00	2,040.00	376.00	9,588.00
OT		38.25	6.50	248.63	29.35	1,122.64
Hol					16.00	408.00
Bonus						100.00
PTO					4.00	102.00
Total			86.50	\$2,288.63	425.35	\$11,320.64
Total Hours Worked			86.50		405.35	
Deductions		CURRENT		YTD		
401k		22.89		48.75		
Total		\$22.89		\$48.75		
Time Off (hours)		ACCRUED	TAKEN	AVAILABLE		
PTO				16.00		
Sick CA				24.00		
Other Amount		CURRENT		YTD		
401KMatch		22.89		48.75		
Taxes		CURRENT		YTD		
MED		33.19		164.15		
SOC		141.90		701.89		
CASDI		20.60		101.89		
Total		\$195.69		\$967.93		
Net Pay						\$2,070.05

Fig. 2, wage statement for the pay period of July 10 through July 23, 2023.

Additionally, Defendants maintained a policy of paying aggrieved employees shift differentials for working second and third shift hours but, on information and belief, these differentials were also not factored into employees' regular rate of pay for overtime purposes.

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. As described above in the overtime section, Defendants failed to incorporate employees’ non-discretionary bonuses, shift differentials, and other qualifying forms of remuneration in employees’ regular rate of pay for overtime purposes. Similarly, Defendants also failed to incorporate these forms of remuneration into aggrieved employees’ rate of pay for sick leave.

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 Vacation Wages **Violation of Labor Code § 227.3**

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Due to Defendants’ pattern and practice of round down

employees' worked hours, Defendants recorded fewer hours for Plaintiff and aggrieved employees than they actually worked and consequently, the aggrieved employees accrued fewer paid time off hours than they were owed. Moreover, when Defendants did pay vacation wages, they did so at the improper rate because they did not include all forms of qualifying remuneration into employees' "final rate" for paying out vacation 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 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.

Plaintiff often took late, short, or interrupted meal periods, or missed his meal period entirely in order to keep Defendants' machines up and running. Moreover, as described above, Plaintiff and other aggrieved employees kept their radios on them throughout their shifts. Despite failing to provide employees with compliant meal periods, Defendants did not pay all meal period premiums as required by California law. To the extent that any meal period premiums were paid, Plaintiff alleges that Defendants did not pay them at the proper rate of pay as they failed to include all qualifying forms of renumeration in employees' regular rate of pay.

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.

Plaintiff often took late, short, or interrupted rest periods, or missed his rest period entirely in order to keep Defendants' machines up and running. Moreover, as described above, Plaintiff and other aggrieved employees kept their radios on them throughout their shifts. Despite failing to provide employees with compliant rest periods, Defendants did not pay all rest period premiums as required by California law. To the extent that any rest period premiums were paid, Plaintiff alleges that Defendants did not pay them at the proper rate of pay as they failed to include all qualifying forms of renumeration in employees' regular rate of pay.

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.

As described above, Defendants failed to pay Plaintiff and other employees all wages owed for the time that they rounded down from employees’ working hours, and for the time that they spent monitoring their radios while off the clock. Further, they failed to pay overtime, sick leave, vacation hours, and meal and rest period premiums at the proper rates of pay, if at all. Defendants have yet to pay all such amounts paid to this day.

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 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.

Plaintiff's last day of employment was October 27, 2023, when he was laid off. However, Defendants did not issue his final wage statement and payment until October 31, 2023 and Plaintiff did not receive it until approximately two business days after.

As described above, Defendants failed to pay Plaintiff and other employees all wages owed for the time that they rounded down from employees' working hours, and for the time that they spent monitoring their radios while off the clock. Further, they failed to pay overtime, sick leave, vacation hours, and meal and rest period premiums at the proper rates of pay, if at all. Defendants have yet to pay all such amounts paid to this day, well after Plaintiff and other aggrieved employees' last day of employment. Defendants have yet to pay all waiting time penalties owed.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code sections 256 and/or 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 and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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.

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. For example, Defendants required Plaintiff to drive to Lowe's and a dye manufacturer to pick up items that the facility needed. However, Defendants never provided Plaintiff a reimbursement form and never paid him any reimbursement for the travel expenses he incurred. Moreover, Plaintiff had to use his personal cell phone to communicate with Defendants when he could not use his radio and Defendants never provided reimbursement.

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.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. In response to Plaintiff’s written request for his employment file, Defendants made a production of records, but failed to include Plaintiff’s timekeeping 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 sections 226.3 (\$250/\$1,000), 1174.5 (\$500), 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.

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 black ink, appearing to read "David X. Lin". The signature is fluid and cursive, with a large initial "D" and "L".

David X. Lin

Cc Plaintiff Timothy McDermott

Shannon Marie Jenkins, Esq.
Tredway, Lumsdaine & Doyle LLP
sjenkins@tldlaw.com