

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 Kelly Nurse

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

KELLY NURSE, on behalf of the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

C-STORE SERVICES, INC.; HASSAN &
SONS, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00011528-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

1 Plaintiff KELLY NURSE, individually and on behalf of the State of California under the
2 Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED REPRESENTATIVE
3 ACTION COMPLAINT against Defendants C-STORE SERVICES, INC.; HASSAN & SONS, INC.;
4 and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action filed for wage and hour violations of the California Labor
7 Code against Defendants, who operate convenience stores and gas stations across the state of
8 California.

9 2. Defendants failed to provide Plaintiff and aggrieved employees compliant meal and
10 rest breaks. When Plaintiff and aggrieved employees suffered non-compliant meal and rest breaks, C-
11 Store Services failed to pay applicable premiums.

12 3. Defendants deprived Plaintiff and aggrieved employees wages for all hours worked as
13 they required Plaintiff and aggrieved employees to work off-the-clock.

14 4. Defendants failed to provide suitable seating for Plaintiff and aggrieved employees
15 during their working hours.

16 5. As a result, Defendants are liable to Plaintiff, the state of California, and aggrieved
17 employees for applicable civil penalties under PAGA and the California Labor Code. 10.

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

23 **JURISDICTION & VENUE**

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

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

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

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

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

13 **GENERAL ALLEGATIONS**

14 19. Due to Defendants' failure to adequately staff the store, Defendants often required
15 Plaintiff and aggrieved employees to work through portions of their meal periods. On numerous
16 occasions, when Plaintiff was taking her meal period, Defendants required her to return to the cash
17 register to assist customers. Defendants failed to compensate Plaintiff and aggrieved employees for
18 these on-duty portions of their meal periods.

19 20. Defendants did not properly pay Plaintiff and aggrieved employees for all overtime
20 hours worked. Because Defendants required Plaintiff and aggrieved employees to work off the clock
21 hours during meal periods, Plaintiff and aggrieved employees' time records inaccurately reflected their
22 hours worked, resulting in overtime hours that were incorrectly recorded as regular hours.

23 21. Defendants did not provide suitable seating to Plaintiff and aggrieved employees. IWC
24 Wage Orders require that, "when employees are not engaged in the active duties of their employment
25 and the nature of the work requires standing, an adequate number of suitable seats shall be placed in
26 reasonable proximity to the work area and employees shall be permitted to use such seats when it does
27 not interfere with the performance of their duties." Even though seating would not have interfered
28 with employee duties, Defendants required Plaintiff and aggrieved employees to stand for the vast

majority of their shifts. The only seating that Defendants provided to Plaintiff and aggrieved employees was a plastic crate on the sidewalk outside the store. Even when an employee brought his own chair to sit in, Defendants prohibited any employee from using the chair and moved it to the back of the store.

22. As previously stated, Defendants required Plaintiff and aggrieved employees to work through portions of their meal periods. Since Defendants did not allow Plaintiff and aggrieved employees to take full, uninterrupted 30-minute meal periods, Defendants were required under California law to pay a premium of one hour of wages at employees' regular rate of pay for each non-compliant meal period. Plaintiff alleges Defendants failed to pay all meal period premiums to Plaintiff and aggrieved employees for these non-compliant meal periods as a matter of policy and practice.

23. Additionally, Defendants failed to provide compliant rest periods to Plaintiff and aggrieved employees. Due to Defendants' inadequate staffing practices, Plaintiff, was occasionally unable to take a rest period as there were no other employees to temporarily relieve her for the purpose of taking a compliant rest period. Further, any rest period that was taken was non-compliant as Defendants failed to adequately provide rest areas for Plaintiff and aggrieved employees. Plaintiff alleges that Defendants failed to pay rest period premiums to Plaintiff and aggrieved employees as a matter of policy and practice.

24. Defendants' failure to pay regular, minimum, and overtime wages, and meal/rest period premiums each pay period or upon separation of employment, rendered the payments untimely and subject to civil and statutory penalties for the violations committed against the aggrieved employees.

25. Defendants also failed to timely pay all of aggrieved employees' wages and premiums upon separation from employment. As a result, aggrieved employees were owed waiting time penalties under Labor Code section 203. However, Defendants have not paid all waiting time penalties owed.

26. Further, Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of these policies and practices.

27. Specifically, Defendants violated Labor Code sections 226(a)(1), (2), and (5) by not listing the correct "gross wages earned," "total hours worked," or "net wages earned" on those

statements as the amounts listed failed to include and account for unpaid hours worked and meal and rest period premiums Plaintiff and aggrieved employees earned but were not paid.

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

29. Defendants failed to reimburse Plaintiff and aggrieved employees for work related expenses. IWC Wage Orders Section 9 (Uniforms and Equipment) specifies that, “When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.” Defendants required Plaintiff and aggrieved employees to wear black or khaki dress pants as part of their uniform. Plaintiff wore black jeans in an attempt to comply with the Defendants’ requirements, however, Defendants reprimanded her and threatened to fire her if she was not wearing black or khaki dress pants. Plaintiff and aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice. Plaintiff alleges that Defendants did not reimburse Plaintiff and aggrieved employees for these expenses.

30. Plaintiff is informed, believes, and alleges that Defendants’ acts and omissions have knowingly and intentionally caused harm to Plaintiff and the aggrieved employees. Plaintiff is informed, believes and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders by maintaining policies and practices that are inconsistent with their obligations under California law.

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)

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

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

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

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

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

13 35. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
14 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
15 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
16 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
17 action brought by an aggrieved employee on behalf of himself or herself and other current or former
18 employees pursuant to the procedures specified in Section 2699.3. “

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

25 37. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

1 38. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
2 penalties under the PAGA.

3 39. On or about **February 15, 2024**, Plaintiff paid the requisite PAGA filing fee and
4 provided written notice (by online electronic filing with the LWDA and by certified mail to
5 Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support
6 the alleged violations.

7 40. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
8 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
9 forth herein (the "PAGA notice").

10 41. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
11 written PAGA notice from the LWDA.

12 42. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
13 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
14 providing a description of any actions taken to cure the alleged violations.

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

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

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
23 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
25 Orders.
- 26 c. ***Suitable Seating.*** Violation of Labor Code § 1198; IWC Wage Orders.
- 27 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
28 1198; IWC Wage Orders.

- 1 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
2 1198; IWC Wage Orders.
- 3 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
4 §§ 204, 204b, 210.
- 5 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
6 Labor Code §§ 201, 202, 203, 256.
- 7 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 8 i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 9 j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
10 Wage Orders.

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

15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

Plaintiff prays for judgment as follows:

- a. For this action to be maintained as a representative action under the PAGA;
- b. 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;
- c. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- d. For all recoverable pre- and post-judgment interest;
- e. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- f. For such other relief the Court deems just and proper.

Dated: April 29, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Lauren N. Vega

David X. Lin

Attorneys for Plaintiff Kelly Nurse

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

February 15, 2024

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

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

C-Store Services, Inc.
2860 North Santiago Boulevard
Orange, California 92867

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

Hassan & Sons, Inc.
2860 North Santiago Boulevard
Orange, California 92867

Dear LWDA Officer and Company Representatives:

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

C-STORE SERVICES, INC.; HASSAN & SONS, 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 Cashier from about October 15, 2023, through the current date. 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. Due to Defendants’ failure to adequately staff the store, Plaintiff and the aggrieved employees would often be required to work through portions of their meal breaks. On numerous occasions, when Plaintiff was on her meal break and a line accumulated at the register, Defendants required her to return to the register to assist customers. During these on-duty portions of the employee’s meal periods, Defendants failed to pay Plaintiff and the aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor Code section 1194.

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' policy of requiring Plaintiff and employees to work through portions of unpaid meal periods, Plaintiff and employees were not fully compensated for overtime hours. Since many employees worked off-the-clock hours, any employee who worked 8 hours in a workday, or 40 hours in a workweek, as calculated by Defendants, worked unpaid overtime. Defendants' failure to compensate Plaintiff and the aggrieved employees for all overtime hours worked and at the lawful rate of pay is in clear violation of Labor Codes section 510 and 1194.

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.

Suitable Seating Violations **Violation of Labor Code §§ 1198; IWC Wage Orders**

When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties, including during rest and recovery periods. Labor Code section 1198 provides that: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for hours longer than those fixed by the order or under conditions of labor prohibited by the order is unlawful and provides for civil penalties." The Seating requirements section of the applicable IWC Wage Orders specifically require "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats" and "when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the

work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

Due to the nature of the store, Defendants required Plaintiff and the aggrieved employees to stand for the vast majority of the time on their shifts. However, Defendants did not provide Plaintiff and the aggrieved employees an adequate number of suitable seats in a reasonable proximity to the work area. The only seating that Defendant provided was a plastic crate on the ground outside the store. Defendants instructed Plaintiff and employees that if they wanted to sit, their only option was to go outside and sit on the plastic crate. On one occasion, an employee brought a chair to sit in and Defendants prevented them or any other employee from using a chair. Defendants practice and policy of not providing suitable seating to Plaintiff and the aggrieved employees is in clear violation of Labor Code section 1198.

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) and the IWC Wage Orders 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.

As previously stated, Defendants required Plaintiff and the aggrieved employees to work through portions of their meal periods. Since Defendants did not allow Plaintiff and the aggrieved employees to take full uninterrupted 30-minute meal periods, any meal period interrupted by on-duty time was non-compliant. For these non-compliant meal periods, Plaintiff alleges that Defendants failed to pay meal period premiums, in violation of labor code section 226.7.

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.

Defendants failed to provide compliant rest periods to Plaintiff and the aggrieved employees. Due to inadequate staffing practices, Plaintiff, on occasion, was unable to take a rest break as she had to keep up with the customer demands and could not be temporarily relieved. As previously described, Defendants did not provide suitable resting facilities to Plaintiff and the aggrieved employees. Consequently, any rest period that Plaintiff and the aggrieved employees

took was non-compliant, requiring a rest period premium. Defendants did not pay Plaintiff and the aggrieved employees rest period premiums in violation of Labor Code section 226.7.

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 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. Due to Defendants policy and practice of failing to calculate hours worked and pay meal and rest period premiums, Plaintiff alleges that any employee who had an on-duty portion of their meal period or had a noncompliant meal and rest period in their final pay period did not receive a complete and accurate final paycheck.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1), (2), and (5) by not listing the correct "gross wages earned," "total hours worked," or "net wages earned," as the employees earned wages and premiums that were not paid, and worked hours that were unrecorded, resulting in an inaccurate reflection, and recording of "gross wages earned," "total hours worked," or "net wages earned" on those wage statements.

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. IWC Wage Orders Section 9 (Uniforms and Equipment) specifies that, “When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.” Defendants required Plaintiff and the aggrieved employees to purchase black or khaki dress pants as part of their work uniform. Plaintiff attempted to comply with the Defendants’ requirements when she wore black jeans, but Defendants told Plaintiff that she must wear dress pants. These losses, expenditures, and costs were unavoidably and necessarily incurred as a matter of policy and practice.

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 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,



Nicholas J. Ferraro

Cc Plaintiff Kelly Nurse

Human Resources Department
info@hnsenergyproducts.com