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Superior Court of California,
County of San Diego
04/19/2024 at 01:22:00 PM
Clerk of the Superior Court
By Tanisha Moore, Deputy Clerk

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

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

Plaintiffs,

vs.

ST. MADELEINE SOPHIE'S CENTER and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00007254-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff NEYLY BECERRA, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants ST.
4 MADELEINE SOPHIE'S CENTER and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this action against Defendants to recover unpaid wages, premiums, all
8 statutory penalties, interest, fees, and costs on behalf of herself and all other similarly-situated
9 employees of Defendants. Plaintiff and other similarly-situated employees are and were subject to
10 Defendants’ policies, practices, and procedures which deprived them of full payment for all hours
11 worked, the opportunity to take all legally-compliant meal and rest periods and associated premiums,
12 full rest period pay, payment of all paid sick leave accrued, payment of all vacation wages accrued,
13 timely payment of all wages owed, and accurate itemized wage statements.

14 2. Plaintiff and other similarly-situated employees worked for Defendants as non-exempt
15 employees, providing education and other services for individuals with developmental and/or
16 intellectual disabilities. However, due to Defendants’ common employment policies, practices, and
17 procedures, employees were not always able to take their full, timely, uninterrupted meal and rest
18 periods yet were compelled to clock out for there periods regardless, resulting in unpaid wages for
19 time spent working off the clock. Moreover, Defendants failed to the required premiums for non-
20 compliant meal and rest periods even when employee time records showed that employees were unable
21 to take such break periods.

22 3. Defendants also failed to include all forms of remuneration in employees’ regular rate
23 of pay for the purpose of calculating overtime, rest period, sick leave, and vacation pay, resulting in
24 further underpayment of wages.

25 4. Plaintiff therefore seeks to represent herself a class of all other similarly-situated
26 employees of Defendants to recuperate all wages and premiums properly owed to her and the rest of
27 the class, as well as assess any penalties, fees, costs, and interest recoverable for the Labor Code and
28 IWC Wage Order violations they suffered.

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

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 conduct business and committed some of the alleged violations in this county.

A. Plaintiff Neyly Becerra

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.”])

11. Defendant St. Madeleine Sophie's Center is a California 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.

CLASS ALLEGATIONS

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

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

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so

1 numerous that joinder of all class members is impracticable. The identities of
2 class members are ascertainable by inspection of Defendants' employment and
3 payroll records.

4 b. Typicality: Plaintiff's claims are typical of the claims of the other class
5 members. They were subject to the same policies and practices of Defendants,
6 which resulted in losses to the class. Proof of common unlawful business
7 practices, which Plaintiff experienced, will establish the right of the class to
8 recover on the causes of action alleged herein.

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

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

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

25 19. Common questions of law and fact as to the class members predominate over questions
26 affecting only individual members. The common questions of law and fact exist as to whether the
27 employment policies and practices formulated by Defendants and applied to the class members
28 constitute violations of California law.

GENERAL ALLEGATIONS

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

21. Defendants compelled Plaintiff and other aggrieved employees to clock out for meal periods even when they were not able to take them. For example, Plaintiff regularly brought groups of four to five clients out on trips into the community to teach them how to interact in typical social situations.

22. During these times, Plaintiff was the only staff member to look after the clients in her care. As such, she was unable to take any breaks, including off-the-clock meal periods.

23. When she was onsite at Defendants' facility, Plaintiffs' meal periods were sometimes interrupted when the facility was understaffed and there were not enough staff members to look after all of the classes.

24. Even when they had to work through their meal periods, Plaintiff and other employees had to clock out because Defendants instructed them to clock out for meal and rest periods or they would face disciplinary action.

25. Defendants did not pay Plaintiff and other aggrieved employees for the time that they worked off the clock and therefore are in violation of California's minimum wage laws.

26.

27. Further, Defendants have not paid Plaintiff any wages for the hours that she worked on her last day just before Defendants terminated her.

28. Defendants failed to pay Plaintiff and other similarly-situated employees all rest period wages owed because they failed to include employees' bonuses and other forms of renumeration into their rate of pay for the rest periods. For example, Plaintiff earned a bonus payment of \$200 in her wage statement for the period ending on September 30, 2023. *Fig. 1.*

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ST. MADELEINE SOPHIES TRAINING
2119 E. MADISON AVE.
EL CAJON, CA 92019

Earnings Statement



Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/10/2023

NEYLY BECERRA

Earnings				rate	hours	this period	year	to date	Other Benefits and Information			
BONUS						200.00		200.00		this period	total to date	
Regular								7,979.62		Max Elig/Comp	200.00	8,661.28
Overtime								481.66				
								8,661.28				
									Important Notes			
									BASIS OF PAY: HOURLY			
Deductions				Statutory				Additional Tax Withholding Information				
										Taxable Marital Status:		
										CA:	Single	
										Exemptions/Allowances:		
										CA:	0	
						</						

Fig. 1, wage statement ending Sept 30, 2023, showing bonus

29. During this same period, Plaintiff also recorded ten-minute rest periods. See "Time Card Detail" section of Fig. 2.

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ST. MADELEINE SOPHIES TRAINING
2119 E. MADISON AVE.
EL CAJON, CA 92019

Earnings Statement



Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/10/2023

NEYLY BECERRA

Earnings	rate	hours	this period
Regular	19.0000	78.98	1,500.62
Overtime	28.5000	2.82	80.37
Gross Pay			\$1,580.99

year to date
7,979.62
481.66
8,461.28

Other Benefits and Information	this period	total to date
Max Elig/Comp	1,580.99	8,461.28
Sick Balance	14.10	
Vacation Bal	16.26	
Total Hrs Worked	81.80	

Deductions	Statutory
Federal Income Tax	-111.30
Social Security Tax	-98.02
Medicare Tax	-22.93
CA State Income Tax	-33.45
CA SDI Tax	-14.23

545.79
524.60
122.69
160.59
76.15

Important Notes

BASIS OF PAY: HOURLY

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Other
Lunch Paymen
Cell Phone
Payment

130.00
-60.00
64.95

Adjustment
Cell Phone
Net Pay
Checking 1
Net Check

+10.00
\$1,261.06
-1,261.06
\$0.00

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
MON 09/18	6:30AM	9:20AM	9:30AM	11:04AM	
MON 09/18	11:35AM	2:19PM	2:29PM	3:05PM	8.06
TUE 09/19	6:37AM	8:43AM	9:13AM	3:03PM	7.93
WED 09/20	6:32AM	8:35AM	9:05AM	2:05PM	7.05
THU 09/21	6:38AM	8:25AM	8:58AM	3:35PM	8.40
FRI 09/22	6:36AM	8:27AM	8:58AM	3:29PM	8.37
MON 09/25	6:35AM	9:58AM	10:08AM	11:42AM	
MON 09/25	12:12PM	3:54PM			8.81
TUE 09/26	6:36AM	8:36AM	9:06AM	3:14PM	8.13
WED 09/27	6:40AM	8:32AM	9:03AM	3:12PM	8.02
THU 09/28	6:42AM	8:40AM	9:11AM	3:43PM	8.50
FRI 09/29	6:37AM	11:08AM	11:38AM	1:50PM	
FRI 09/29	2:00PM	3:38PM			8.52

Your federal taxable wages this period are
\$1,580.99

Fig. 2, wage statement ending Sept. 30, 2023 showing non-bonus wages and time card detail

30. Nevertheless, Defendants failed to include Plaintiff's bonus while calculating Plaintiff's rest and recovery period wages. Rather, Defendants merely included Plaintiff's rest and recovery period wages in her regular wages and paid her at her base \$19 hourly rate.

31. Defendants failed to pay Plaintiff and the other similarly-situated employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As described above, Defendants failed to pay Plaintiff and other aggrieved employees for all of the time that they worked off the clock during meal periods.

32. Further, Defendants did not include all non-discretionary bonuses and other forms of remuneration into employees' regular rate of pay for overtime purposes. For example, Plaintiff's wage statement in Fig. 1 above shows that she earned \$200 in the same pay period that she earned 2.82

1 hours of overtime pay, *Fig. 2*. Nevertheless, Defendants only paid Plaintiff an overtime rate of 1.5x
2 her base rate of pay and did not factor in her bonus whatsoever.

3 33. Defendants failed to comply with California's paid sick leave laws with respect to the
4 class. For example, when Plaintiff was involved in a car accident at work, she suffered injuries and
5 needed time off from work to recover. Although Plaintiff requested sick leave in order to recover from
6 her injuries, Defendants failed to pay her any sick leave pay for the time that she took off which forced
7 her back to work prematurely.

8 34. On information and belief any sick leave wages that Defendants did pay was at the
9 improper rate of pay as it did not factor in non-discretionary bonuses and other forms of qualifying
10 remuneration.

11 35. Defendants maintained an unlawful policy and practice of failing to pay all accrued and
12 unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture
13 of vested vacation time and wages.

14 36. As described above, Defendants did not count all of the hours that Plaintiff worked on
15 her final day as working hours and did not pay her those hours. Consequently, Defendants also failed
16 to count these hours towards Plaintiff's vacation accrual hours.

17 37. Moreover, Defendants failed to include any non-discretionary bonuses or any other
18 qualifying forms of remuneration in Plaintiff's final rate of pay for purposes of paying out vacation
19 wages. Rather, Defendants paid Plaintiff's vacation wages at her base rate of pay. *Fig. 3*.

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ST MADELEINE SOPHIE
2119 E MADISON AVENUE
EL CAJON, CA 92019

Earnings Statement

Period Beginning Date: 10/01/2023

Period Ending: 10/15/2023

Pay Date: 10/20/2023

NEYLY BECERRA

Gross Pay	Deductions	Net Pay/Net Check
\$412.46	\$25.26	\$387.20

Hours and Earnings

Description	Hours	This Period
Regular Earnings	7.87	149.53
SNACKBAR		26.00
VACATION	12.47	236.93

Hours and Earnings Rates

Description	Hours	Rate	This Period
Regular	7.87		149.53
VACATION	12.47		236.93
SNACKBAR			26.00

Basis of Pay: Hourly

Totl Hrs Worked: 20.34

Taxes

Description	This Period
Social Security Tax	25.57
Medicare Tax	5.98
CA SUI/SDI	3.71

Deductions

Description	This Period
Cell Phone	-10.00

Memos

Description	This Period
H	20.34
J	412.46
Max Elig/comp	412.46

Fig. 3, Plaintiff's final wage statement

38. As described above, Plaintiff and other similarly-situated employees were not always able to take fully, timely, uninterrupted meal periods afforded to them under California law. Nevertheless, because Defendants had Plaintiff and other similarly-situated employees clock out and remain clocked out even if their meal periods were interrupted, Defendants did not pay the class members all wages owed.

39. Even when employees recorded non-compliant meal periods in their time records, Defendants did not pay them all meal premiums owed. For example, Plaintiff's wage statement for the pay period ending September 15, 2023 shows that she had two meal periods shorter than 30 minutes on September 7, 2023 and September 13, 2023. Nevertheless, Defendants paid her no meal period premiums in this pay period. *Fig. 4.*

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ST. MADELEINE SOPHIES TRAINING
2119 E. MADISON AVE.
EL CAJON, CA 92019

Earnings Statement



Period Beginning: 09/01/2023
Period Ending: 09/15/2023
Pay Date: 09/25/2023

NEYLY BECERRA

Earnings				year to date	Other Benefits and Information		
	rate	hours	this period			this period	total to date
Regular	19.0000	75.95	1,443.05	6,479.00	Max Elig/Comp	1,656.80	6,880.29
Overtime	28.5000	7.50	213.75	401.29	Sick Balance	11.75	
Gross Pay				6,880.29	Vacation Bal	13.55	
					Totl Hrs Worked	83.45	
Deductions					Important Notes		
Statutory					BASIS OF PAY: HOURLY		
Federal Income Tax		-120.39		434.49	Additional Tax Withholding Information		
Social Security Tax		-102.72		426.58	Taxable Marital Status:		
Medicare Tax		-24.02		99.76	CA: Single		
CA State Income Tax		-36.78		127.14	Exemptions/Allowances:		
CA SDI Tax		-14.91		61.92	CA: 0		
Other					Time Card Detail		
Payment		-64.95		64.95	DATE	IN	OUT
Cell Phone				-50.00	FRI 09/01	7:04AM	8:46AM
Lunch Paymen				80.00	FRI 09/01	11:27AM	3:55PM
Adjustment					TUE 09/05	6:44AM	8:32AM
Cell Phone		+10.00			WED 09/06	6:50AM	9:26AM
Net Pay					WED 09/06	11:40AM	1:42PM
Checking 1		-1,303.03			THU 09/07	6:49AM	8:52AM
Net Check					FRI 09/08	6:45AM	8:26AM
					FRI 09/08	11:57AM	1:21PM
					SAT 09/09	8:04AM	9:40AM
					TUE 09/12	6:34AM	8:43AM
					TUE 09/12	12:00PM	1:57PM
					WED 09/13	6:35AM	8:27AM
					WED 09/13	12:11PM	1:26PM
					THU 09/14	6:30AM	10:11AM
					THU 09/14	11:32AM	3:52PM
					FRI 09/15	6:37AM	8:38AM

Your federal taxable wages this period are
\$1,656.80

Fig. 4, wage statement ending Sept. 15, 2023

40. Plaintiff and other similarly-situated employees were not always able to take full, timely, uninterrupted rest periods because there were not enough staff members on hand to look after all of the clients. Even though they were unable to take their rest periods, Plaintiff and other similarly-situated employees still clocked out for break periods and worked through them because, as with meal periods, Defendants threatened the aggrieved employees with disciplinary action for missing their rest period clock-outs. As a result, Defendants did not record all non-compliant rest periods and did not pay all associated premiums.

41. Even when class members' time records reflected missed rest periods, Defendants did not pay them all rest period premiums that they were owed. For example, Plaintiff's time punch records

1 in *Fig. 4* above shows that she did not take any rest periods on September 5, 2023. Nevertheless,
2 Defendants did not pay Plaintiff any rest period premiums in this pay period.

3 42. Because Defendants failed to pay all wages and premiums in each pay period in which
4 such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b
5 (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by
6 failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within
7 seven calendar days of the close of the payroll period, as a result of the policies and practices set forth
8 in this notice.

9 43. As described above, Defendants failed to pay Plaintiff and other similarly-situated
10 employees for all hours worked during off-the-clock meal periods, failed to pay the employees at the
11 proper rate of pay for overtime, rest period, sick leave, and vacation pay, and failed to pay all meal
12 and rest period premiums owed. These wages and premiums remain unpaid to this day.

13 44. Further, because these wages and premiums were not paid within the time periods
14 mandated by Labor Code sections 201 and 202, Plaintiff and other similarly-situated employees whose
15 employment with Defendants ended during the relevant statutory period are owed waiting time
16 penalties under Labor Code section 203. Defendants have yet to pay all waiting time penalties owed.

17 45. Defendants failed to provide accurate itemized wage statements to the class members
18 in each pay period as a result of the policies and practices set forth above. Defendants violated Labor
19 Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,”
20 as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection,
21 and recording of “gross wages earned” on those wage statements.

22 46. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
23 employee wage statements each pay period the applicable hourly rates in effect and the number of
24 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
25 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
26 pay stub.

27 47. Plaintiff and other class members cannot promptly and easily determine from the wage
28 statement alone the wages paid or earned without reference to other documents or information. Indeed,

1 these wage statement violations are significant because they sow confusion among Plaintiff and other
2 similarly-situated employees with respect to what amounts were owed and paid, at what rates, the
3 number of hours worked, and how those amounts were or should be calculated. The wage statements
4 reflect a false statement of earnings and concealed the underlying problems and underpayments of
5 employee wages.

6 48. The Labor Code and IWC Wage Order violations described above were the result of a
7 common pattern and practice that applied to all class members. Hence, Plaintiff seeks to represent a
8 class of all similarly-situated employees to recover all applicable damages from Defendants.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

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

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

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

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

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

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

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

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

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

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

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

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

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

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

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

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY FOR AUTHORIZED REST PERIODS/NON-PRODUCTIVE TIME

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

67. Because Plaintiff and class members were not separately compensated for rest periods (a rate required by statute) and non-productive time, Plaintiff and class members are owed wages for this time.¹

68. The IWC Wage Orders state Plaintiff and class members must be paid for all “hours worked” for time they are “subject to the control of the employer, and includes all the time the employee is suffered or permitted to work.” Cal. Code Regs., tit. 8, § 11040, subd. 2(k).

69. The IWC Wage Orders state rest periods are “hours worked for which there will be no deduction from wages.” Cal. Code Regs., tit. 8, § 11040, subd. 12(a).

70. Labor Code section 226.2 applies to employees who are compensated in whole, or in part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.”

71. Non-productive time must be compensated at a rate no less than the applicable state or local minimum wage. Cal. Lab. Code § 226.2(a)(4).

72. Rest and recovery periods must be compensated the *higher* of (1) 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 or (2) the applicable minimum wage. Cal. Lab. Code § 226.2(a)(3)(A).

¹ See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

73. Section 226.2 expressly requires that any employees paid in whole or in part on a piece rate basis must receive at least minimum wage for all hours worked as well as any required overtime compensation.

74. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked (including all non-productive time) in violation of Labor Code sections 226.2, 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect.

75. Defendants also failed in their affirmative obligation to pay Plaintiff and class members for rest periods at the rate required by section 226.2(a)(3)(A), resulting in unpaid wages to Plaintiff and class members.

76. Defendants' unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime, and premium wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

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

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

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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

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

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

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

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

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

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

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

(III) The state minimum wage.

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

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

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

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

SEVENTH CAUSE OF ACTION

UNPAID VACATION WAGES

Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198

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

89. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be timely paid all vested vacation wages at their final rate of pay upon separation of employment, and

1 which further provide a private right of action for an employer's timely failure to pay all vacation
2 compensation upon termination.

3 90. Defendant offered Plaintiff and class members an employment contract or policy
4 providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued
5 vacation and/or PTO pursuant to the contract or policy.

6 91. Upon separation of Plaintiff and class members, Defendants willfully failed in their
7 affirmative obligation to timely pay Plaintiff and class members all accrued but unused vacation at
8 their final rate during their employment with Defendants, in violation of Labor Code sections 201(a),
9 202(a), and 227.3.

10 92. Plaintiff and class members are entitled to recover the full amount of the accrued
11 vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and
12 costs to the extent permitted by law.

13 **EIGHTH CAUSE OF ACTION**

14 **UNTIMELY PAYMENT OF WAGES**

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

16 93. All outside paragraphs of this Complaint are incorporated into this section.

17 94. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
18 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
19 period, and which further provide a private right of action for an employer's failure to comply with
20 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
21 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

6 **NINTH CAUSE OF ACTION**

7 **WAGE STATEMENT VIOLATIONS**

8 **Violation of Labor Code § 226**

9 97. All outside paragraphs of this Complaint are incorporated into this section.

10 98. This cause of action is brought by a wage statement subclass pursuant to Labor Code
11 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
12 pay period, and which further provide a private right of action for an employer's failure to comply
13 with this obligation.

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

18 100. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
19 accurate itemized wage statements, causing confusion and concealing wage and premium
20 underpayments.

21 101. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
22 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
23 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
24 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
25 Code section 226(e).

1 **TENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

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

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

5 103. This cause of action is brought by a waiting time subclass pursuant to Labor Code
6 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
7 employment, and which further provide a private right of action to recover statutory waiting time
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
9 wages.

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

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

17 **ELEVENTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

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

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

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

24 108. Defendants' dependence on these unfair and/or unlawful business practices deprived
25 Plaintiff and continue to deprive other class members of compensation to which they are legally
26 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
27 Defendants over competitors who have been and/or are currently employing workers in compliance
28

1 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
2 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

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

7 110. Plaintiff does not have an adequate remedy at law for past or future violations, to the
8 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
9 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
10 violations do not provide a private right of action.

11 111. Plaintiff and class members are entitled to injunctive relief against Defendants,
12 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
13 an ownership interest and to prevent future damage and the public interest under Business and
14 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
15 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
16 § 1021.5.

17 **TWELFTH CAUSE OF ACTION**

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

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

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

21 112. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

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

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

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

22 119. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
23 penalties under the PAGA.

24 120. On or about **February 13, 2024**, Plaintiff paid the requisite PAGA filing fee and
25 provided written notice (by online electronic filing with the LWDA and by certified mail to
26 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
27 the alleged violations.
28

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

4 122. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

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

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

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

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods.***
19 Violation of Labor Code §§ 226.2; IWC Wage Orders.
- 20 c. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
21 Orders.
- 22 d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 23 e. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- 24 f. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
25 1198; IWC Wage Orders.
- 26 g. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
27 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. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

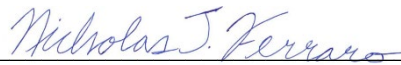
Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For this action to be maintained as a representative action under the PAGA;
- i. 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;
- j. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194,
3 2699, and Code of Civil Procedure section 1021.5; and
4 l. For recovery of damages in amount according to proof;
5 m. For all recoverable pre- and post-judgment interest;
6 n. For such other relief the Court deems just and proper.

7
8 Dated: April 19, 2024

Ferraro Vega Employment Lawyers, Inc.

9
10 

Nicholas J. Ferraro

Attorneys for Plaintiff Neyly Becerra

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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ATTORNEYS AT LAW
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San Diego, California 92108

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

February 13, 2024

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

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

St. Madeleine Sophie's Center
c/o Debra Emerson
2119 East Madison Avenue
El Cajon, CA 92019

- 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 **NEYLY BECERRA** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendant”:

ST. MADELEINE SOPHIE'S CENTER;

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 Direct Support Professional ("DSP") from about October 20, 2023 to July 3, 2023. Plaintiff's duties included teaching and looking after groups of individuals with developmental and/or intellectual disabilities. 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. Defendants compelled Plaintiff and other aggrieved employees to clock out for meal periods even when they were not able to take them.

For example, Plaintiff regularly brought groups of four to five clients out on trips into the community to teach them how to interact in typical social situations. During these times, Plaintiff was the only staff member to look after the clients in her care. As such, she was unable to take any breaks, including off-the-clock meal periods. When she was onsite at Defendants’ facility, Plaintiffs’ meal periods were sometimes interrupted when the facility was understaffed and there were not enough staff members to look after all of the classes. Even when they had to work through their meal periods, Plaintiff and other employees had to clock out because Defendants instructed them to clock out for meal and rest periods or they would face disciplinary action. Defendants did not pay Plaintiff and other aggrieved employees for the time that they worked off the clock and therefore are in violation of California’s minimum wage laws.

Further, Defendants have not paid Plaintiff any wages for the hours that she worked on her last day just before Defendants terminated her.

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.

Here, Defendants failed to comply with Labor Code section 226.2(a)(3) because they failed to include employees’ bonuses and other forms of remuneration into their regular rate of pay for the rest periods. For example, Plaintiff earned a bonus payment of \$200 in her wage statement for the period ending on September 30, 2023. *Fig. 1*.

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	070
D9T	020311	110105		0000400005	2

ST. MADELEINE SOPHIES TRAINING
2119 E. MADISON AVE.
EL CAJON, CA 92019

Earnings Statement



Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/10/2023

NEYLY BECERRA

Earnings	rate	hours	this period
BONUS			200.00
Regular			
Overtime			
Gross Pay			\$200.00

year to date
200.00
7,979.62
481.66
8,661.28

Other Benefits and Information	this period	total to date
Max Elig/Comp	200.00	8,661.28

Important Notes

BASIS OF PAY: HOURLY

Deductions	Statutory		year to date
	Social Security Tax	-12.40	537.00
	Medicare Tax	-2.90	125.59
	CA SDI Tax	-1.80	77.95
	Federal Income Tax		545.79
	CA State Income Tax		160.59
	Other		
	Cell Phone		-60.00
	Lunch Paymen		130.00
	Payment		64.95
	Net Pay	\$182.90	
	Checking 1	-182.90	
	Net Check	\$0.00	

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Your federal taxable wages this period are \$200.00

Fig. 1, wage statement ending Sept 30, 2023, showing bonus

During this same period, Plaintiff also recorded ten-minute rest periods. See "Time Card Detail" section of Fig. 2.

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ST. MADELEINE SOPHIES TRAINING
2119 E. MADISON AVE.
EL CAJON, CA 92019

Earnings Statement



Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/10/2023

NEYLY BECERRA

Earnings	rate	hours	this period	year to date
Regular	19.0000	78.98	1,500.62	7,979.62
Overtime	28.5000	2.82	80.37	481.66
Gross Pay			\$1,580.99	8,461.28

Deductions	Statutory		year to date
	Federal Income Tax	-111.30	545.79
	Social Security Tax	-98.02	524.60
	Medicare Tax	-22.93	122.69
	CA State Income Tax	-33.45	160.59
	CA SDI Tax	-14.23	76.15
	Other		
	Lunch Paymen	-50.00	130.00
	Cell Phone		-60.00
	Payment		64.95

Adjustment	
Cell Phone	+10.00
Net Pay	\$1,261.06
Checking 1	-1,261.06
Net Check	\$0.00

Your federal taxable wages this period are
\$1,580.99

Other Benefits and Information	this period	total to date
Max Elig/Comp	1,580.99	8,461.28
Sick Balance	14.10	
Vacation Bal	16.26	
Total Hrs Worked	81.80	

Important Notes

BASIS OF PAY: HOURLY

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
MON 09/18	6:30AM	9:20AM	9:30AM	11:04AM	
MON 09/18	11:35AM	2:19PM	2:29PM	3:05PM	8.06
TUE 09/19	6:37AM	8:43AM	9:13AM	3:03PM	7.93
WED 09/20	6:32AM	8:35AM	9:05AM	2:05PM	7.05
THU 09/21	6:38AM	8:25AM	8:58AM	3:35PM	8.40
FRI 09/22	6:36AM	8:27AM	8:58AM	3:29PM	8.37
MON 09/25	6:35AM	9:58AM	10:08AM	11:42AM	
MON 09/25	12:12PM	3:54PM			8.81
TUE 09/26	6:36AM	8:36AM	9:06AM	3:14PM	8.13
WED 09/27	6:40AM	8:32AM	9:03AM	3:12PM	8.02
THU 09/28	6:42AM	8:40AM	9:11AM	3:43PM	8.50
FRI 09/29	6:37AM	11:08AM	11:38AM	1:50PM	
FRI 09/29	2:00PM	3:38PM			8.52

Fig. 2, wage statement ending Sept. 30, 2023 showing non-bonus wages and time card detail

However, Defendants failed to include Plaintiff's bonus while calculating Plaintiff's rest and recovery period wages. Rather, Defendants merely included Plaintiff's rest and recovery period wages in her regular wages and paid her at her base \$19 hourly rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 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. As described above, Defendants failed to pay Plaintiff and other aggrieved employees for all of the time that they worked off the clock during meal periods. Further, Defendants did not include all non-discretionary bonuses and other forms of remuneration into employees’ regular rate of pay for overtime purposes. For example, Plaintiff’s wage statement in *Fig. 1* above shows that she earned \$200 in the same pay period that she earned 2.82 hours of overtime pay, *Fig. 2*. Nevertheless, Defendants only paid Plaintiff an overtime rate of 1.5x her base rate of pay and did not factor in her bonus whatsoever. This underpayment was the result of a common pattern and practice that applied to all aggrieved employees.

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. When Plaintiff was involved in a car accident at work, she suffered injuries and needed time off from work to recover. Although Plaintiff requested sick leave in order to recover from her injuries, Defendants failed to pay her any sick leave pay for the time that she took off which forced her back to work prematurely.

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. As described above, Defendants did not count all of the hours that Plaintiff worked on her final day as working hours and did not pay her those hours. Consequently, Defendants also failed to count these hours towards Plaintiff’s vacation accrual hours. Moreover, Defendants failed to include any non-discretionary bonuses or any other qualifying forms of renumeration in Plaintiff’s final rate of pay for purposes of paying out vacation wages. Rather, Defendants paid Plaintiff’s vacation wages at her base rate of pay. *Fig. 4.*

Earnings Statement
 Period Beginning Date: 10/01/2023
 Period Ending: 10/15/2023
 Pay Date: 10/20/2023

ST MADELEINE SOPHIE
2119 E MADISON AVENUE
EL CAJON, CA 92019

Summary of Earnings and Deductions

Gross Pay	Deductions	Net Pay/Net Check
\$412.46	\$25.26	\$387.20

Hours and Earnings

Description	Hours	This Period
Regular Earnings	7.87	149.53
SNACKBAR		26.00
VACATION	12.47	236.93

Hours and Earnings Rates

Description	Hours	Rate	This Period
Regular	7.87		149.53
VACATION	12.47		236.93
SNACKBAR			26.00

Basis of Pay: Hourly
Total Hrs Worked: 20.34

Taxes

Description	This Period
Social Security Tax	25.57
Medicare Tax	5.98
CA SUI/SDI	3.71

Deductions

Description	This Period
Cell Phone	-10.00

Memos

Description	This Period
H	20.34
J	412.46
Max Elig/comp	412.46

Fig. 4, Plaintiff’s final wage statement

Plaintiff and other aggrieved employees were subject to the same policies, practices, and procedures which resulted in the underpayment of vacation wages upon separation of employment.

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.

As described above, Plaintiff and other aggrieved employees were not always able to take fully, timely, uninterrupted meal periods afforded to them under California law. Nevertheless, because Defendants had Plaintiff and other aggrieved employees clock out and remain clocked out even if their meal periods were interrupted, Defendants did not pay the aggrieved employees all wages owed.

Even when employees recorded non-compliant meal periods in their time records, Defendants did not pay them all meal premiums owed. For example, Plaintiff's wage statement for the pay period ending September 15, 2023 shows that she had two meal periods shorter than 30 minutes on September 7, 2023 and September 13, 2023. Nevertheless, Defendants paid her no meal period premiums in this pay period. *Fig. 3.*

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Page 1(Con't Next Page)					
ST. MADELEINE SOPHIES TRAINING					
2119 E. MADISON AVE.					
EL CAJON, CA 92019					

Earnings	rate	hours	this period	year to date
Regular	19.0000	75.95	1,443.05	6,479.00
Overtime	28.5000	7.50	213.75	401.29
Gross Pay			\$1,656.80	6,880.29

Deductions	Statutory		
Federal Income Tax		-120.39	434.49
Social Security Tax		-102.72	426.58
Medicare Tax		-24.02	99.76
CA State Income Tax		-36.78	127.14
CA SDI Tax		-14.91	61.92
Other			
Payment		-64.95	64.95
Cell Phone			-50.00
Lunch Paymen			80.00
Adjustment			
Cell Phone		+10.00	
Net Pay		\$1,303.03	
Checking 1		-1,303.03	
Net Check		\$0.00	

Your federal taxable wages this period are

\$1,656.80

Earnings Statement

Period Beginning: 09/01/2023
Period Ending: 09/15/2023
Pay Date: 09/25/2023

NEYLY BECERRA

Other Benefits and Information	this period	total to date
Max Elig/Comp	1,656.80	6,880.29
Sick Balance	11.75	
Vacation Bal	13.55	
Total Hrs Worked	83.45	

Important Notes

BASIS OF PAY: HOURLY

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single

Exemptions/Allowances:
CA: 0

Time Card Detail						
DATE	IN	OUT	IN	OUT	TOTAL	
FRI 09/01	7:04AM	8:46AM	9:16AM	11:16AM		
FRI 09/01	11:27AM	3:55PM				8.33
TUE 09/05	6:44AM	8:32AM	9:02AM	4:01PM		8.78
WED 09/06	6:50AM	9:26AM	9:36AM	11:07AM		
WED 09/06	11:40AM	1:42PM	1:52PM	4:06PM		8.71
THU 09/07	6:49AM	8:52AM	9:21AM	4:24PM		9.10
FRI 09/08	6:45AM	8:26AM	8:56AM	11:47AM		
FRI 09/08	11:57AM	1:21PM	1:31PM	3:20PM		8.08
SAT 09/09	8:04AM	9:40AM	9:51AM	12:02PM		3.95
TUE 09/12	6:34AM	8:43AM	9:13AM	11:49AM		
TUE 09/12	12:00PM	1:57PM	2:06PM	4:18PM		9.22
WED 09/13	6:35AM	8:27AM	8:56AM	12:01PM		
WED 09/13	12:11PM	1:26PM	1:36PM	4:51PM		9.79
THU 09/14	6:30AM	10:11AM	10:20AM	11:02AM		
THU 09/14	11:32AM	3:52PM				8.86
FRI 09/15	6:37AM	8:38AM	9:08AM	12:15PM		

Fig. 3, wage statement ending September 15, 2023

Plaintiff and other aggrieved employees were subject to a common set of payroll policies, practices, and procedures which resulted in being deprived of meal premiums owed.

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 and other aggrieved employees were not always able to take full, timely, uninterrupted rest periods because there were not enough staff members on hand to look after all of the clients. Even though they were unable to take their rest periods, Plaintiff and other aggrieved employees still clocked out for break periods and worked through them because, as with meal periods, Defendants threatened the aggrieved employees with disciplinary action for missing their rest period clock-outs. Because of this, Defendants did not record all non-compliant rest periods and did not pay all associated premiums.

Even when aggrieved employees' time records reflected missed rest periods, Defendants did not pay them all rest period premiums that they were owed. For example, Plaintiff's time punch records in *Fig. 3* shows that she did not take any rest periods on September 5, 2023. Nevertheless, Defendants did not pay Plaintiff any rest period premiums in this pay period.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, 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 aggrieved employees for all hours worked during off-the-clock meal periods, failed to pay the employees at the proper rate of pay for overtime, rest period, sick leave, and vacation pay, and failed to pay all meal and rest period premiums owed. Defendants are in violation of Labor Code sections 204 and 210 because these wages and premiums remain unpaid 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. As described above, Defendants failed to pay Plaintiff and other aggrieved employees for all hours worked during off-the-clock meal periods, failed to pay the employees at the proper rate of pay for overtime, rest period, sick leave, and vacation pay, and failed to pay all meal and rest period premiums owed. Defendants are in violation of Labor Code sections 201 through 203 because these wages and premiums remain unpaid to this day, long after Plaintiff and other aggrieved employees separated from employment with Defendants.

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, and thirty days of wages per employee according to Labor Code section 256, 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.

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.

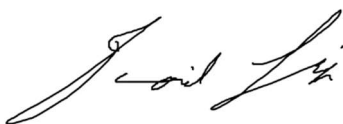
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- 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", with a stylized flourish at the end.

David X. Lin

Cc Plaintiff Neyly Becerra

Stacey E. James, Littler Mendelson, P.C.
sjames@littler.com