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Attorneys for Plaintiff Patricia Morales

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

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

Plaintiffs,

vs.

IHERB, LLC; IHERB INTERNATIONAL
SALES CORPORATION; IHERB HOLDINGS,
LLC; IHERB HOLDCO, INC.; IHERB
CHARITABLE FOUNDATION; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00018529-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff PATRICIA MORALES, individually and on behalf of all others similarly situated and
2 the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants IHERB, LLC; IHERB
4 INTERNATIONAL SALES CORPORATION; IHERB HOLDINGS, LLC; IHERB HOLDCO, INC.;
5 IHERB CHARITABLE FOUNDATION; and DOES 1 through 50, inclusive (collectively
6 “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. Defendants failed to provide compliant meal and rest periods to Plaintiff and class
9 members. Due to Defendants’ inadequate staffing practices, Plaintiff and class members were
10 occasionally unable to be relieved of their duties to take compliant meal and rest periods.

11 2. Additionally, Defendants underpaid Plaintiff and class members by failing to include
12 forms of non-discretionary remuneration in the “regular rate” used to calculate and pay overtime, paid
13 sick leave, vacation wages, and meal and rest period premiums.

14 3. As a result, Defendants are liable to Plaintiff and class members for the underlying
15 wages and premiums, interest and penalties, including waiting time, late payment of wages, and wage
16 statement penalties, in amounts according to proof.

17 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Patricia Morales

8. Plaintiff Morales is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 1, 2014 to June 30, 2023. Plaintiff worked as a Sorter, Packing, Receiving, and Material Handler.

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

B. Defendants

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

11. Defendant iHerb International Sales Corporation is a Nevada limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant iHerb Holdings, LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant iHerb Holdco, Inc. is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. Defendant iHerb Charitable Foundation is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

15. 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.

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

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

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

13 **GENERAL ALLEGATIONS**

14 19. Defendants did not compensate Plaintiff and class members at the lawful rate of pay.
15 Plaintiff and class members received non-discretionary bonuses and other forms of qualifying
16 remuneration. When Plaintiff and class members earned these bonuses in the same period as overtime
17 wages, Defendants did not adjust the class members' overtime rates to reflect the regular rate of pay,
18 inclusive of all forms of non-discretionary income.

19 20. Plaintiff alleges, on information and belief, that Defendants underpaid Plaintiff and
20 class members' paid sick leave due to Defendants' policy and practice of excluding non-discretionary
21 bonuses and other forms of qualifying remuneration from the regular rate of pay.

22 21. Defendants maintained an unlawful policy and practice of failing to pay reporting time
23 wages. Plaintiff and class members occasionally arrived to work for their scheduled shifts and
24 Defendants immediately sent them home. Defendants consistently sent home a portion of the
25 employees who showed up for their scheduled shifts. Plaintiff and class members did not receive
26 reporting time pay.

27 22. As a result of Defendants sending home employees, Plaintiff and class members often
28 could not take compliant rest periods due to staffing shortages. There were not enough employees to

adequately relieve Plaintiff and class members of their duties to take rest periods. This resulted in late, short, missed, or interrupted rest periods.

23. Further, to the extent Defendants ever paid rest period premiums, Plaintiff alleges such amounts were underpaid due to Defendants' policy and practice of excluding non-discretionary bonuses and other forms of qualifying remuneration from the regular rate of pay.

24. For similar reasons as class members' missed rest periods, Plaintiff and class members suffered noncompliant meal periods. To the extent that Defendants paid meal period premiums, Plaintiff alleges such amounts were underpaid due to Defendants' policy and practice of excluding non-discretionary bonuses and other forms of qualifying remuneration from the regular rate of pay.

25. Defendants' failure to accurately compensate Plaintiff and class members' regular and overtime pay, meal and rest period premiums, and paid sick leave each pay period or upon separation of employment, rendered the payments untimely and subject to civil penalties for the violations committed against the class members.

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

27. Specifically, Defendants violated Labor Code sections 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned" on those statements as the amounts listed failed to include and account for all overtime wages, paid sick leave, or meal and rest period premiums Plaintiff and class members earned but were not paid.

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

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

30. Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Despite Plaintiff’s request, Defendants failed to provide her with any records.

31. Defendants required Plaintiff and class members to sign confidentiality agreements that included language prohibiting them from discussing other employee's compensation. Defendants violated Labor Code sections 1197.5 and 423.5 by preventing Plaintiff and class members from freely discussing their own or others' wages and requiring them to sign the confidentiality agreement.

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

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

36. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

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

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

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

18 40. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
19 penalties under the PAGA.

20 41. On or about **February 9, 2024**, Plaintiff paid the requisite PAGA filing fee and
21 provided written notice (by online electronic filing with the LWDA and by certified mail to
22 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
23 the alleged violations.

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

27 43. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
28 written PAGA notice from the LWDA.

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

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

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

- 11 a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
12 Orders.
- 13 b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 14 c. ***Unpaid Reporting Time Wages.*** Violation of Labor Code § 1198; IWC Wage
15 Orders.
- 16 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
17 1198; IWC Wage Orders.
- 18 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
19 1198; IWC Wage Orders.
- 20 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
21 §§ 204, 204b, 210.
- 22 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
23 Labor Code §§ 201, 202, 203, 256.
- 24 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 25 i. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432,
26 1174, 1198.5; IWC Wage Orders.
- 27 j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
28 Wage Orders.

1 k. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

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

6 **PRAYER**

7 Plaintiff prays for judgment as follows:

- 8 a. For recovery of damages in amount according to proof;
9 b. For all recoverable pre- and post-judgment interest;
10 c. For this action to be maintained as a representative action under the PAGA;
11 d. For Plaintiff and counsel of record to be provided with all enforcement capability as if
12 the action were brought by the State of California or the California Division of Labor
13 Enforcement;
14 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
15 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
16 permitted by law, including (without limitation) under Labor Code § 2699, and Code
17 of Civil Procedure section 1021.5; and
18 g. For such other relief the Court deems just and proper.

19
20 Dated: April 18, 2024

Ferraro Vega Employment Lawyers, Inc.

21 
22 _____
23 Nicholas J. Ferraro
24 Attorney for Plaintiff Patricia Morales
25
26
27
28

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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February 9, 2024

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

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

iHerb, LLC
17400 Laguna Canyon Road, Suite 400
Irvine, California 92618

iHerb Holdco, Inc.
17400 Laguna Canyon Road, Suite 400
Irvine, California 92618

iHerb International Sales Corporation
17400 Laguna Canyon Road, Suite 400
Irvine, California 92618

iHerb Charitable Foundation
17400 Laguna Canyon Road, Suite 400
Irvine, California 92618

iHerb Holdings, LLC
17400 Laguna Canyon Road, Suite 400
Irvine, California 92618

- 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 **PATRICIA MORALES** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

IHERB, LLC; IHERB INTERNATIONAL SALES CORPORATION; IHERB HOLDINGS, LLC; IHERB HOLDCO, INC.; IHERB CHARITABLE FOUNDATION

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 positions of Sorter, Packing, Receiving, or Material Handler from about September 2014 to June 30, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid 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. Defendants paid Plaintiff and employees non-discretionary bonuses in addition to their regular hourly earnings throughout their employment. However, when Plaintiff and the aggrieved employees earned these bonuses in the same pay period as overtime wages, Defendants did not fully adjust the aggrieved employees’ overtime rates to reflect the regular rate of pay, inclusive of all forms of non-discretionary income. Instead, Defendants only partially increased the base hourly rate, but not to an amount no less than one and one-half times the regular rate of pay.

Plaintiff alleges Defendants committed the same regular rate of pay violations against other aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

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. Defendants maintained a policy and practice of excluding bonus income from the regular rate of pay for the purpose of calculating sick leave wages. Due to this failure, when Plaintiff and the aggrieved employees earned a bonus and sick pay in the same period, Defendants failed to factor in the bonus to the aggrieved employees’ sick leave in violation of Labor Code sections 248.6 and 248.7.

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

Unpaid Reporting Time Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 5 (Reporting Time Pay) of the applicable IWC Wage Orders concerning reporting time wages with respect to the aggrieved employees.

Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5 further requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to the aggrieved employees. Plaintiff and the aggrieved employees occasionally arrived to work for their scheduled shift and Defendants immediately sent them home. Defendants maintained a policy of consistently sending home a portion of the employees who showed up for their scheduled shifts. Plaintiff and the aggrieved employees did not receive reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Plaintiff is unable to furnish an illustrative example as Defendants refused to produce time records upon request.

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, and 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.

Due to Defendants’ policy of sending home workers at the start of the shift, Plaintiff and the aggrieved employees often could not take compliant rest periods due to staffing shortages. Because of the demands of their work, there were not enough employees to adequately relieve Plaintiff and the aggrieved employees of their duties to take rest periods. This resulted in late, short, missed, and/or interrupted rest periods. Further, to the extent Defendants ever paid any rest period premiums, such amounts were underpaid due to Defendants’ policy and practice of not including all forms of remuneration in the regular rate of pay, as discussed in the overtime and sick leave sections above.

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.

To the extent Defendants paid meal period premiums, Plaintiff alleges on information and belief that Defendants failed to pay the premiums at the lawful rate based on its policy and practice of not including all forms of remuneration in the regular rate of pay, as discussed in the overtime and sick leave sections above.

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

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

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

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Defendants failed to fully compensate Plaintiff and the aggrieved employees for overtime hours, sick pay, reporting time wages, and any applicable meal and rest period premiums. As a result, Defendants failed to pay all wages, premiums, and other earnings on time each pay day in violation of Labor Code section 204 and/or 204b.

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

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

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

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

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Due to Defendants' policy and practice of not including all forms of remuneration in the regular rate of pay, Plaintiff alleges that any employee who earned a bonus along with overtime, sick pay, or meal and rest period premium in the same pay period as their separation of employment did not receive a complete and accurate final payment.

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

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

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

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the

inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages 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 Provide Employee Records **Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders**

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

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and

make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. Specifically, Defendants failed to produce time records within the 30 day period of Plaintiff’s request.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing,

to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Prohibiting employees from discussing their own, or the wages of others, is unlawful. California Labor Code section 1197.5 states, “An employer shall not prohibit an employee from disclosing the employee’s own wages, discussing the wages of others, [or] inquiring about another employee’s wages.” Defendants required that Plaintiff and the aggrieved employees sign confidentiality agreements that included language prohibiting them from discussing other employee’s compensation. An excerpt from the confidentiality agreement is shown below.

a. Confidentiality and Confidential Information. I acknowledge that during the course of my employment, I will obtain, receive or gain access to certain valuable, proprietary or confidential information of the Company that is not otherwise generally known to the public, relating or pertaining to the Company’s business, projects, products, customers, suppliers, inventions or trade secrets, including but not limited to: business and financial information; Company techniques, operations and methods of conducting business; computer programs, software and code; unpublished know-how, whether patented or unpatented; customer names, addresses, buying habits, needs and the methods of fulfilling those needs; supplier names, addresses and pricing policies; information regarding the skills, ability and compensation of other employees; and Company pricing policies, marketing strategies and research projects or developments relating to any aspect of the present or actual anticipated business of the Company (hereinafter collectively the “Confidential Information”). I further acknowledge that such Confidential Information may be in oral, written or electronic form and need not be marked or identified as “confidential.” I promise and agree that during my employment with the Company and at all times thereafter, I shall hold in strictest confidence and shall not publish, disclose or communicate any Confidential Information to any person or entity, except as required in connection with my work for the Company, and I shall not use or acquire for my own purposes or the purposes of any others, including any future employers or companies, any Confidential Information of the Company without the prior written approval of a duly authorized officer of the Company.

Excerpt from confidentiality agreement.

Defendants prohibited Plaintiff and the aggrieved employees from freely discussing their own or others’ wages in violation of Labor Code section 1197.5. Additionally, Defendants violated section 432.5 by requiring Plaintiff and the aggrieved employees to sign the confidentiality agreement.

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

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Patricia Morales

Sean Daley

iHerb

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