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

SARAH WHISPER MARTINY, individually
and on behalf of all others similarly situated and
the State of California under the Private
Attorneys General Act,

Plaintiffs,

vs.

BOFFO CINEMAS, LLC and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2024-00008262-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. Paid Sick Leave Violations
6. Unlawful Wage Deductions
7. Conversion
8. Unpaid Split Shift Premiums
9. Unpaid Reporting Time Wages
10. Untimely Payment of Wages
11. Waiting Time Penalties
12. Wage Statement Violations
13. Unfair Competition
14. Whistleblower Retaliation
15. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff SARAH WHISPER MARTINY, individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 BOFFO CINEMAS, LLC, BOFFO CINEMAS LA JOLLA, LLC, BOFFO CINEMAS POINT
5 LOMA, LLC, THE LOT BISHOP RANCH, LLC, THE LOT FASHION ISLAND, LLC, and DOES
6 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. Plaintiff brings this wage and hour lawsuit on behalf of herself and other similarly-
9 situated employees of Defendants who have been unlawfully deprived of their wages, tips, and other
10 payments to which they are rightfully entitled.

11 2. Plaintiff also brings claims against Defendants for retaliation for the use of sick leave
12 and for reporting workplace conditions.

13 3. Defendants subjected Plaintiff and similarly-situated employees to a number of Labor
14 Code violations by denying them all of their earned wages, including overtime wages, reporting time
15 wages, and split shift premiums, denying them timely, off-duty, uninterrupted meal and rest periods
16 and associated meal and rest period premiums, denying them proper sick leave pay, making unlawful
17 deductions from wages and tips, and failing to provide accurate, itemized wage statements.

18 4. Defendants manipulated Plaintiff and other employees’ time records to reflect meal
19 periods not actually taken and/or deleted time to make it appear that they had worked less than six
20 hours, thereby depriving them of earned wages and meal period premiums. Whenever employees
21 refused to alter their time records at Defendants’ urging, Defendants retaliated by reducing their hours.
22 Similarly, Defendants reduced the hours of employees who used sick leave and/or complained of or
23 reported workplace conditions.

24 5. Plaintiff seeks to hold Defendants accountable for their pattern and practice of Labor
25 Code violations, and seeks damages on behalf of herself and all other similarly-situated employees,
26 accordingly.

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

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

9. 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 Sarah Whisper Martiny

10. Plaintiff Martiny is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 15, 2022 to the present. Plaintiff has worked as a Server for Defendants throughout this period.

11. 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.”])

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

13. Defendant Boffo Cinemas La Jolla, LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

1 14. Defendant Boffo Cinemas Point Loma, LLC is a limited liability company that
2 maintains operations and conducts business throughout the State of California, including in this
3 county.

4 15. Defendant the Lot Bishop Ranch, LLC is a limited liability company that maintains
5 operations and conducts business throughout the State of California, including in this county.

6 16. Defendant the Lot Fashion Island, LLC is a limited liability company that maintains
7 operations and conducts business throughout the State of California, including in this county.

8 17. Defendants operate a series of entertainment venues throughout southern California
9 which include movie theaters and restaurants. They employ and employed non-exempt hourly
10 employees at each of their locations during the time period covered by this action.

11 18. The true names and capacities, whether individual, corporate, or otherwise, of the
12 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
13 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
14 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
15 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true
16 names and capacities once ascertained.

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

21 20. Each named Defendant maintains the same service address.

22 21. Upon information and belief, Defendants have common ownership, common
23 management, interrelationship of operations, and centralized control over labor relations and are
24 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
25 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

26 22. Upon information and belief, Defendants acted in all respects pertinent to this action as
27 an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated
28

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

23. 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.

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

25. 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 numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and

litigating wage and hour class, collective, and representative actions in California state and federal courts.

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

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

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

GENERAL ALLEGATIONS

27. Defendants failed to pay Plaintiff and other similarly-situated employees wages for all hours worked.

28. Specifically, Defendants compelled Plaintiff and other similarly-situated employees to clock out for meal periods but continue working off-the-clock and/or clock out as they approached a shift length of six hours and continue working so that Defendants could avoid providing legally-mandated meal periods.

29. Defendants also altered Plaintiff and other similarly-situated employees' timekeeping records to deduct time for meal periods that they were not actually able to take. Defendants pressured Plaintiff and other similarly-situated employees to write in a time clock adjustment log ("TCA") to adjust their time. Those employees who refused to comply with these time clock manipulations were punished by having their hours and shifts reduced.

30. Defendants told Plaintiff and other similarly-situated employees that they would add the lost time back into their records but did not do so. As a result, Defendants deprived Plaintiff and other similarly-situated employees of wages for all of the hours that they worked.

31. Defendants failed to pay Plaintiff and 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 compelled Plaintiff and other similarly-situated employees to work off-the-clock. Many of these off-the-clock hours would have and should have counted towards overtime pay had they been properly documented. Therefore, Defendants' illegal practices and procedures deprived Plaintiff and other similarly-situated employees of the overtime wages they earned.

32. When Defendants did pay overtime wages, they failed to do so at the proper rate of pay because they failed to include all forms of remuneration into the regular rate of pay for overtime purposes. For example, Plaintiff's wage statement for the pay period ending July 31, 2023, shows that Plaintiff earned a "Gratuity" payment of \$178. *See Fig. 1 below.*

CO. FILE DEPT. CLOCK VCHR. NO. 070 IGH: 005817 000600 0000320075 1	Earnings Statement	
THE LOT LIBERTY STATION 2620 TRUXTON RD SAN DIEGO, CA 92160	Period Beginning: 07/16/2023 Period Ending: 07/31/2023 Pay Date: 08/07/2023	
	SARAH MARTINY	
Social Security Number: [REDACTED]		
Earnings	rate hours this period	year to date
Regular	16.3000 45.32 738.72	9,083.02
Overtime	24.4500 1.62 39.61	39.61
Gratuity		1,578.79
Tips		1,654.81
Paid Meal		292.10
Gross Pay	\$2,611.14	25,453.09
Other Benefits and Information	this period	total to date
Sick Available	40.00	
Total Hrs Worked	46.94	
Important Notes		
619.566.0069		
BASIS OF PAY: HOURLY		

Fig. 1, wage statement ending July 31, 2023.

33. Plaintiff's wage statement for the pay period ending September 30, 2023, shows that Plaintiff earned a "Service Charge" payment of \$408. *See Fig. 2 below.*

CO. FILE DEPT. CLOCK VCHR. NO. 070
IGH 005817 000600 0000400061 1

THE LOT LIBERTY STATION
2620 TRUXTON RD
SAN DIEGO, CA 92160

Earnings Statement



Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/06/2023

SARAH MARTINY

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	16.3000	56.84	926.49	11,913.69	Sick Available	16.00	
Overtime	24.4500	.48	11.74	51.35	Total Hrs Worked	57.32	
Paid Meal	16.3000	3.00	48.90	341.00			
Service Charge			408.76	1,987.55			
Tips			1,392.75	18,579.54			
Sick				391.20			
					Important Notes		
					619.586.0069		
Gross Pay			\$2,788.64	33,264.33			

BASIS OF PAY: HOURLY

Fig. 2, wage statement ending September 30, 2023.

34. These “Gratuity” and “Service Charge” payments are distinct from the true gratuities she received from guests, which are denoted as “Tips” on Plaintiff’s wage statements. Rather, they are automatic charges applied to customers’ checks whenever there is a table of six or more individuals in the case of a “Gratuity” and whenever there is a special event in the case of a “Service Charge.” Nevertheless, Defendants failed to include these forms of remuneration into Plaintiff’s regular rate of pay for overtime purposes. Rather, Defendants only paid Plaintiff 1.5 times her base rate of pay, not her regular rate of pay:

35. On information and belief, Defendants had a pattern and practice of systemically failing to include all forms of remuneration in all class members’ regular rate of pay.

36. Defendants failed to comply with California’s paid sick leave laws with respect to Plaintiff and other similarly-situated employees. As noted above, Defendants failed to include all forms of remuneration, including “Gratuity” and “Service Charge” pay in employees’ regular rate. As such, they paid Plaintiff and other similarly-situated employees’ sick leave at their base pay rate rather than at their regular rate of pay as required under California law.

37. Moreover, Defendants retaliated against employees who used their sick leave by reducing their hours and shifts.

38. Plaintiff and other similarly-situated employees were often unable to take meal periods due to the volume of work and insufficient staffing. However, despite failing to provide employees with all legally-compliant meal periods, Defendants failed to pay all meal premium wages owed. As described above, Defendants compelled Plaintiff and other similarly-situated employees to clock out yet continue working, and edited Plaintiff's and other similarly-situated employees' timekeeping records to reflect meal periods that were never taken. Due to these illegal practices and procedures, Defendants failed to pay Plaintiff and other class members all meal premium wages owed.

39. When Defendants did pay Plaintiff and other class members meal period premiums, they failed to do so at the proper rate of pay because they failed to include all forms of remuneration into the regular rate of pay for meal premiums. For example, Plaintiff's wage statement for the pay period ending July 15, 2023, shows that Plaintiff earned a "Gratuity" payment of \$146.28. *See Fig. 3 below.*

CO. FILE DEPT. CLOCK VCHR. NO. 070 IGH: 005817 000600 0000290067 1		Earnings Statement 																																	
THE LOT LIBERTY STATION 2620 TRUXTON RD SAN DIEGO, CA 92160		Period Beginning: 07/01/2023 Period Ending: 07/15/2023 Pay Date: 07/21/2023																																	
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Social Security Number: 																																			
Earnings	<table border="0"> <tr> <th>rate</th> <th>hours</th> <th>this period</th> <th>year to date</th> </tr> <tr> <td>Regular</td> <td>16.3000</td> <td>50.50</td> <td>823.15</td> </tr> <tr> <td>Gratuity</td> <td></td> <td></td> <td>146.28</td> </tr> <tr> <td>Paid Meal</td> <td>16.3000</td> <td>3.00</td> <td>48.90</td> </tr> <tr> <td>Tips</td> <td></td> <td></td> <td>1,306.09</td> </tr> <tr> <td>Gross Pay</td> <td></td> <td>\$2,324.42</td> <td>22,841.95</td> </tr> </table>	rate	hours	this period	year to date	Regular	16.3000	50.50	823.15	Gratuity			146.28	Paid Meal	16.3000	3.00	48.90	Tips			1,306.09	Gross Pay		\$2,324.42	22,841.95	<table border="0"> <tr> <th>Other Benefits and Information</th> <th>this period</th> <th>total to date</th> </tr> <tr> <td>Sick Available</td> <td>40.00</td> <td></td> </tr> <tr> <td>Totl Hrs Worked</td> <td>50.50</td> <td></td> </tr> </table>	Other Benefits and Information	this period	total to date	Sick Available	40.00		Totl Hrs Worked	50.50	
rate	hours	this period	year to date																																
Regular	16.3000	50.50	823.15																																
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Deductions		Important Notes 619.566.0069																																	
Statutory Federal Income Tax 22.84		BASIS OF PAY: HOURLY																																	

Fig. 3, wage statement ending July 15, 2023

40. In the same pay period, Plaintiff earned three hours of meal premium pay. This "Gratuity" payment is an automatic charge distinct from the actual gratuities left by customers denoted in the "Tips" section. Nevertheless, Defendants failed to include the amount of "Gratuity" payments into Plaintiff's regular rate of pay in the payment of meal premiums. Rather, Defendants only paid Plaintiff her at her base rate of pay, not her regular rate of pay:

41. Plaintiff and other similarly-situated employees were not able to take their rest periods due to the volume of work and insufficient staffing. Moreover, Defendants never informed Plaintiff and other similarly-situated employees of their right to take rest periods.

42. The “Lunch and Breaks” section of Defendants’ written policies makes brief mention of “10-minute breaks” but does not specify that these 10-minute rest periods are in addition to the 30-minute meal periods, nor does it make clear that employees are to have a 10-minute rest period for every four hours or major fraction thereof. Rather, the policies simply say – in a confusing and seemingly contradictory fashion, “You get one 10-minute break” and “You get two 10-minute breaks.” See Fig. 4 below.

Lunch and Breaks

- If you work 6 hours or less, you do not need to take a lunch break, HOWEVER you must clock out before you hit the 6th hour. You get one 10-minute break.
- If you work more than 6 hours, you MUST take a 30-minute break before your 5th hour.
- You must check in with the manager on duty prior to taking lunch to make sure it is an appropriate time. You get two 10-minute breaks.

Fig. 4, excerpt from Defendant’s written policies.

43. Despite failing to provide employees with all legally-compliant rest periods, Defendants failed to pay all rest premium wages owed. Defendants did provide any avenue for employees to report their missed rest periods and did not otherwise record rest periods. As a result, Defendants failed to pay all premium wages owed when employees were deprived of their opportunity to take rest periods.

44. Defendants maintained an unlawful policy and practice of failing to pay split shift premiums when employees worked split shifts. Defendants occasionally assigned Plaintiff and other similarly-situated employees to work multiple shifts in a single day separated by a period longer than a bona fide meal period but failed to pay them split shift premiums.

45. For example, on January 11, 2024, Plaintiff worked briefly from 4:35 p.m. to 5:14 p.m. and returned to work at 10:50 p.m. However, Defendants did not pay her a split shift premium.

P	Thu	01/11/2024	04:35 PM - 05:14 PM	0:39	000600
E	Thu	01/11/2024	10:50 PM -	0:00	000600

Fig. 5, Plaintiff’s time records for Jan. 11, 2024

46. Defendants maintained an unlawful policy and practice of failing to pay reporting time wages to the class. Plaintiff and other class members were sometimes sent home after completing less than half of their scheduled shifts but were not paid any reporting time wages. For example, on November 29, 2023, Plaintiff was sent home after clocking in for five minutes. *See Fig. 6 below.*

Timecard Report with Notes

Date Range: 06/15/2022 - 01/15/2024 and Employee Effective As Of : 01/12/2024

Company Code: IGH

Last Name		First Name		Position ID	
Date In		Time In - Out	Hours	Pay Code	Worked Department
Martiny		Sarah		IGH005817	
P Thu	11/23/2023	02:14 PM - 09:45 PM	7:31		000600
P Fri	11/24/2023	04:31 PM - 04:34 PM	0:03		000600
P Fri	11/24/2023	05:09 PM - 11:25 PM	6:16		000600
P Sat	11/25/2023	04:31 PM - 04:35 PM LP	0:04		000600
P Sat	11/25/2023	05:07 PM - 11:37 PM	6:30		000600
P Wed	11/29/2023	04:32 PM - 04:37 PM	0:05		000600
P Thu	11/30/2023	04:32 PM - 04:37 PM LP	0:05		000600
P Thu	11/30/2023	05:16 PM - 11:05 PM	5:49		000600

Fig. 6, time records for Nov 29, 2023

47. Nevertheless, Plaintiff's wage statement for the pay period of November 16, 2023 to November 30, 2023 shows that Defendants paid her no reporting time wages for this period. *See Fig. 7 below.*

CO. FILE DEPT. CLOCK VCHR. NO. 070 IGH 005817 000600 0000490063 1	Earnings Statement	
THE LOT LIBERTY STATION 2620 TRUXTON RD SAN DIEGO, CA 92160	Period Beginning: 11/16/2023 Period Ending: 11/30/2023 Pay Date: 12/07/2023	
	SARAH MARTINY	
Social Security Number: 		
Earnings	rate hours this period year to date	Other Benefits and Information this period total to date
Regular	16.3000 47.72 777.84 13,971.74	Sick Available 16.00
Holiday2	32.6000 7.75 252.65 252.65	Total Hrs Worked 55.47
Paid Meal	16.3000 2.00 32.60 406.20	
Tips		1,371.14 21,498.24
Overtime		51.35
Service Charge		2,296.38
Sick		391.20
Gross Pay	\$2,434.23	38,867.76
		BASIS OF PAY: HOURLY

Fig. 7, wage statement ending Nov. 30, 2023

1 48. Defendants maintain and maintained an unlawful policy and practice of deducting
2 wages and earnings from Plaintiff and the other employees. For example, when Plaintiff and other
3 similarly-situated employees worked special events, they were entitled to have the service charges
4 split between themselves. However, the event manager regularly withheld a portion of the service
5 charge and distributed only a fraction of the amounts owed to Plaintiff and other similarly-situated
6 employees.

7 49. Defendants maintain and maintained an unlawful policy and practice with respect to
8 the gratuities employees earned. Even though Defendant maintained a written tip-sharing policy,
9 Defendants did not enforce this policy in practice. Rather, Defendants left tip sharing to managers'
10 discretion, and allowed managers to illegally make deductions from Plaintiff and other similarly-
11 situated employees' tips. Because of these illegal deductions, Plaintiff and other employees often only
12 received a fraction of the amounts they were owed under the written tip-sharing policy.

13 50. Because Defendants failed to pay all wages and premiums in each pay period in which
14 such wages were earned, Defendants violated Labor Code section 204 and/or 204b (for weekly
15 employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay
16 all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar
17 days of the close of the payroll period, as a result of the policies and practices set forth in this notice.
18 As described above, Defendants failed to pay Plaintiff and other similarly-situated employees for the
19 time that they worked off the clock as well as all overtime wages, reporting time wages, split shift
20 premiums, sick leave pay, tips, gratuities, service charges, and meal and rest premium wages owed.
21 These payments were not made in time periods set forth in Labor Code section 204 and remain owing
22 to this day.

23 51. Because Defendants have not paid all wages and premiums owed to class members to
24 this day, even after they separated from employment, Defendants are also liable for waiting time
25 penalties under Labor Code section 203. However, Defendants have not paid all waiting time penalties
26 owed.

27 52. Defendants failed to provide accurate itemized wage statements to class members in
28 each pay period as a result of the policies and practices set forth above. 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.

53. 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.

54. As described above, Defendants did not properly record all hours that Plaintiff and other employees worked, or the payments owed as a result of their off-the-clock work. Defendants also did not list the proper rates of pay owed to Plaintiff and other similarly-situated employees for their overtime, meal and rest period premiums, reporting time pay, split shift premiums, or full amount of “Service Charge” and “Gratuities” owed. Moreover, Defendants failed to record and set forth the proper number and amount of meal and rest period premiums owed.

55. Plaintiff and other similarly-situated employees cannot and could not promptly and easily determine from their wage statements alone the wages paid or earned without reference to other documents or information, and therefore could not determine what amounts they were actually owed.

56. Additionally, Plaintiff reported a manager for smoking with a vaporizer or “vaping” in the workplace and attempting to solicit another employee to transport prescription drugs from Mexico. Since making the report, Defendants have subjected Plaintiff to retaliatory conduct including diminished scheduled working hours, verbal and emotional abuse, and a hostile working environment. For example, after making her complaints, Defendants cut her hours so that she can only work two days per week.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

1 58. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§
2 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
3 Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
4 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
5 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
6 liquidated damages).

7 59. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
8 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
9 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
10 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
11 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
12 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
13 Code § 1194.2.

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY ALL OVERTIME WAGES**

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

22 61. All outside paragraphs of this Complaint are incorporated into this section.

23 62. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§
24 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages
25 all overtime hours worked, and which further provide a private right of action for an employer’s failure
26 to pay all overtime compensation for overtime hours worked.

27 63. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
28 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess

1 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
2 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
3 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
4 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
5 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

6 64. Plaintiff and class members are entitled to recover the full amount of the unpaid
7 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
8 extent permitted by law.

9 **THIRD CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

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

12 65. All outside paragraphs of this Complaint are incorporated into this section.

13 66. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§
14 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
15 meal period premiums in lieu thereof), and which further provide a private right of action for an
16 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
17 regular rate of compensation.

18 67. Defendants willfully failed in their affirmative obligation to consistently provide
19 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
20 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
21 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
22 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods”
23 sections of the applicable orders).

24 68. Further, Defendants willfully failed in their affirmative obligation to consistently pay
25 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
26 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
27 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
28 applicable orders).

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

72. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (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).

73. 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 ALL PAID SICK LEAVE WAGES AND RETALATION FOR USE OF SICK LEAVE

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

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

75. 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*

1 *seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy*
2 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’
3 also include those benefits to which an employee is entitled as a part of his or her compensation,
4 including money, room, board, clothing, vacation pay, and sick pay”].)

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

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

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

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

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

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

21 78. Further, Labor Code section 246.5 prohibits employees from retaliating against
22 employees who use or attempt to use sick leave. As described above, Defendants engaged in retaliatory
23 conduct against Plaintiff and other class members who used sick leave.

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

1 80. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
2 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
3 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
4 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
5 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
6 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
7 to September 30, 2022, and may be extended thereafter.

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

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

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

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

19 (III) The state minimum wage.

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

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

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

26 85. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
27 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.
28

1 in what is commonly called a “tip pool.” *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal. App. 3d
2 1062, 1069-70.

3 94. The gratuities left by patrons belonged to Plaintiff and class members at the time their
4 labor and services were provided to Defendants.

5 95. Defendants knowingly and intentionally interfered with Plaintiff and class members’
6 ownership, and right to possess gratuities left by patrons by: (1) keeping all cash tips and (2) unlawfully
7 distributing credit card tips to individuals who should not have been in the tip pool under California
8 law.

9 96. Defendants converted Plaintiff and class members gratuities as part of an intentional
10 and deliberate scheme to maximize their profits at the expense of employees. As a proximate result of
11 the conversion by Defendants, Plaintiff and class members are entitled to the return of owed gratuities
12 converted by Defendants, in an amount according to proof at trial. Plaintiff and class members were
13 injured by Defendants’ conversion and are entitled to all monies converted, with interest thereon, along
14 with interest, attorneys’ fees, and costs.

15 **EIGHTH CAUSE OF ACTION**

16 **UNPAID SPLIT SHIFT PREMIUMS**

17 **Violation of Labor Code § 1198; IWC Wage Orders**

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

19 98. Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of
20 the applicable IWC Wage Orders concerning split shift premium wages with respect to the class.

21 99. Section 4(C) of the applicable IWC Wage Orders requires that when “an employee
22 works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition
23 to the minimum wage for that workday.” According to the IWC Wage Orders’ definition sections, a
24 “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods
25 established by the employer, other than bona fide rest or meal periods.”

26 100. Labor Code section 1198 authorizes enforcement of the split shift provisions of the
27 IWC Wage Orders.

1 101. As described above, Defendants maintained an unlawful policy and practice of failing
2 to pay split shift premiums owed to Plaintiff and the class members. As such, Defendants are liable to
3 the class for all unpaid premiums, and associated penalties, interests, fees, and costs.

4 **NINTH CAUSE OF ACTION**

5 **UNPAID REPORTING TIME WAGES**

6 **Violation of Labor Code § 1198, IWC Wage Orders**

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

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

10 104. Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting
11 time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less
12 than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay
13 in the amount of the greater of two hours or half the scheduled shift length.

14 105. Section 5 further requires an employer to pay reporting time pay if an employee is
15 required to report to work for a second time and is furnished with less than two hours of work on the
16 second reporting. In this situation, the employer owes the employee reporting time pay in the amount
17 of the greater of two hours or half the scheduled shift length.

18 106. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions
19 of the IWC Wage Orders.

20 107. As described above, Defendants maintained an unlawful policy and practice of failing
21 to pay reporting time wages to class members when they were sent home after completing less than
22 half of their scheduled shifts. Thus, Defendants are liable to the class for all unpaid reporting time
23 wages, and associated penalties, interests, fees, and costs.

24 **TENTH CAUSE OF ACTION**

25 **UNTIMELY PAYMENT OF WAGES**

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

27 108. All outside paragraphs of this Complaint are incorporated into this section.
28

1 109. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§
2 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
3 period, and which further provide a private right of action for an employer's failure to comply with
4 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
5 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

17 **ELEVENTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

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

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

21 113. This cause of action is brought by a waiting time subclass pursuant to Labor Code
22 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
23 employment, and which further provide a private right of action to recover statutory waiting time
24 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
25 wages.

26 114. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
27 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
28 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his

1 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
2 Code sections 201 through 203 and the IWC Wage Orders.

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

5 **TWELFTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **Violation of Labor Code § 226**

8 116. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

25 **THIRTEENTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION**

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

28 121. All outside paragraphs of this Complaint are incorporated into this section.

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

123. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

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

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

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

FOURTEENTH CAUSE OF ACTION

WHISTLEBLOWER RETALIATION

Violation of Labor Code §§ 98.6 and 1102.5

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

1 128. Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any
2 adverse action against any employee or applicant for employment because the employee or applicant
3 engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k)
4 of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the
5 employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused
6 to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the
7 Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because
8 the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to
9 testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant
10 for employment on behalf of themselves or others of any rights afforded them.”

11 129. Section 1102.5 provides that no employer, or person acting on behalf of an employer,
12 shall “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing
13 information to a government or law enforcement agency, to a person with authority over the employee,
14 or to another employee who has authority to investigate, discover, or correct the violation or
15 noncompliance, or from providing information to, or testifying before, any public body conducting an
16 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information
17 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state,
18 or federal rule or regulation, regardless of whether disclosing the information is part of the employee's
19 job duties.”

20 130. Defendants violated Labor Code sections 98.6 and 1102.5 by retaliating against
21 Plaintiff for making complaints about workplace conditions.

22 **FIFTEENTH CAUSE OF ACTION**

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

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

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

26 131. All outside paragraphs of this Complaint are incorporated into this section.
27
28

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

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

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

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

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

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

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

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

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

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

10 141. On or about February 16, 2024, Plaintiff filed and served a PAGA Notice Amendment
11 stating additional Labor Code violations.

12 142. A true and correct copy of Plaintiff's PAGA Notice Amendment letter is attached
13 hereto as Exhibit 2.

14 143. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
15 written PAGA notice from the LWDA.

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

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

23 146. As set forth in the PAGA notice attached as Exhibit 1 and Exhibit 2 and incorporated
24 into this Complaint, Defendants committed the following violations and are liable for all
25 corresponding civil penalties:

26 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
27 1197, 1198; IWC Wage Orders.

28 b. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.

- 1 c. **Unpaid Overtime.** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
2 Orders.
- 3 d. **Unpaid Paid Sick Leave and Retaliation for Use of Sick Leave.** Violation of
4 Labor Code §§ 246, 246.5 through 248.7.
- 5 e. **Unpaid Split Shift Premium Wages.** Violation of Labor Code § 1198; IWC
6 Wage Orders.
- 7 f. **Unpaid Reporting Time Wages.** Violation of Labor Code § 1198; IWC Wage
8 Orders.
- 9 g. **Unpaid Gratuities.** Violation of Labor Code §§ 350 *et seq.*
- 10 h. **Unpaid Meal Period Premium Wages.** Violation of Labor Code §§ 226.7, 512,
11 1198; IWC Wage Orders.
- 12 i. **Unpaid Rest Period Premium Wages.** Violation of Labor Code §§ 226.7, 516,
13 1198; IWC Wage Orders.
- 14 j. **Untimely Payment of Wages During Employment.** Violation of Labor Code
15 §§ 204, 204b, 210.
- 16 k. **Untimely Payment of Wages Upon Separation of Employment.** Violation of
17 Labor Code §§ 201, 202, 203, 256.
- 18 l. **Non-Compliant Wage Statements.** Violation of Labor Code §§ 226, 226.3.
- 19 m. **Failure to Maintain Accurate Records.** Violation of Labor Code § 1174; IWC
20 Wage Orders.
- 21 n. **Retaliation.** Violation of Labor Code §§ 98.6 and 1102.5.

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

26 **PRAYER**

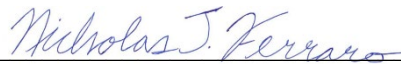
27 Plaintiff prays for judgment as follows:

- 28 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 recovery of damages in amount according to proof;
- i. For all recoverable pre- and post-judgment interest;
- j. For this action to be maintained as a representative action under the PAGA;
- k. 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;
- l. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

Dated: April 22, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Sarah Whisper Martiny

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

February 6, 2024

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

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

Boffo Cinemas, LLC
7611 Fay Avenue
La Jolla, CA 92037

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

Additional Addressees Listed on Last Page

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SARAH WHISPER MARTINY** ("Plaintiff") and all other "aggrieved employees" of the following "Defendants":

**BOFFO CINEMAS, LLC;
BOFFO CINEMAS BEVERLY HILLS, LLC
BOFFO CINEMAS LA JOLLA, LLC
BOFFO CINEMAS POINT LOMA, LLC
BOFFO CINEMAS SCRIPPS, LLC
THE LOT BISHOP RANCH, LLC
THE LOT DEL MAR, LLC
THE LOT FASHION ISLAND, LLC
THE LOT WATERMARK, LLC
BOFFO GROWTH, LLC
BOFFO F&B, LLC
BOFFO PROMOTE, LLC
BOFFO INVESTORS, LLC
BOFFO MANAGER, LLC
ADOLFO FASTLICHT**

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 Server from about June 15, 2022 to the present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants compelled Plaintiff and other aggrieved employees to clock out for meal periods but continue working off-the-clock and/or clock out as they approached a shift length of six hours and continue working so that they could avoid providing legally-mandated meal periods. Additionally, Defendants also altered Plaintiff and other aggrieved employees’ timekeeping records to deduct time for meal periods that Plaintiff and other aggrieved employees were not actually able to take. Defendants pressured Plaintiff and other aggrieved employees to write in a time clock adjustment log (“TCA”) to adjust their time. Those employees who refused to comply with these time clock manipulations were punished by having their hours and shifts reduced. Defendants told the aggrieved employees that they would add the lost time back into their records but did not do so. As a result, Defendants deprived Plaintiff and other aggrieved employees wages for all of the hours that they worked.

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 in the foregoing section, Defendants compelled Plaintiff and other aggrieved employees to work off-the-clock. Many of these off-the-clock hours would have and should have counted towards overtime pay had they been properly documented. Therefore, Defendants’ illegal practices and procedures deprived Plaintiff and other aggrieved employees of all overtime wages earned.

Additionally, when Defendants did pay Plaintiff and other aggrieved employees overtime wages, they failed to do so at the proper rate of pay because they failed to include all forms of remuneration into the regular rate of pay for overtime purposes. For example, Plaintiff’s wage statement for the pay period ending July 31, 2023, shows that Plaintiff earned a “Gratuity” payment of \$178. *See Fig. 1 below.* Plaintiff’s wage statement for the pay period ending September 30, 2023, shows that Plaintiff earned a “Service Charge” payment of \$408. *See Fig. 2 below.* These “Gratuity” and “Service Charge” payments are distinct from the true gratuities she received from guests, which are denoted as “Tips” on Plaintiff’s wage statements. Rather, they are automatic charges applied to customers’ checks whenever there is a table of six or

more individuals in the case of a “Gratuity” and whenever there is a special event in the case of a “Service Charge.” Nevertheless, Defendants failed to include these forms of remuneration into Plaintiff’s regular rate of pay for overtime purposes. Rather, Defendants only paid Plaintiff 1.5 times her base rate of pay, not her regular rate of pay:

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	070
IGH	005817	000600		0000320075	1

THE LOT LIBERTY STATION
2620 TRUXTON RD
SAN DIEGO, CA 92160

Earnings Statement 

Period Beginning: 07/16/2023
Period Ending: 07/31/2023
Pay Date: 08/07/2023

SARAH MARTINY

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	16.3000	45.32	738.72	9,083.02
Overtime	24.4500	1.62	39.61	39.61
Gratuity			178.00	1,578.79
Tips			1,654.81	14,459.57
Paid Meal				292.10
Gross Pay			\$2,611.14	25,453.09

Other Benefits and Information

	this period	total to date
Sick Available	40.00	
Total Hrs Worked	46.94	

Important Notes

619.566.0069

BASIS OF PAY: HOURLY

Fig. 1, wage statement ending July 31, 2023

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	070
IGH	005817	000600		0000400061	1

THE LOT LIBERTY STATION
2620 TRUXTON RD
SAN DIEGO, CA 92160

Earnings Statement 

Period Beginning: 09/16/2023
Period Ending: 09/30/2023
Pay Date: 10/06/2023

SARAH MARTINY

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	16.3000	56.84	926.49	11,913.69
Overtime	24.4500	.48	11.74	51.35
Paid Meal	16.3000	3.00	48.90	341.00
Service Charge			408.76	1,987.55
Tips			1,392.75	18,579.54
Sick				391.20
Gross Pay			\$2,788.64	33,264.33

Other Benefits and Information

	this period	total to date
Sick Available	16.00	
Total Hrs Worked	57.32	

Important Notes

619.566.0069

BASIS OF PAY: HOURLY

Fig. 2, wage statement ending September 30, 2023

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.”

Further, Labor Code section 246.5 prohibits employers from retaliating against employees who use or attempts to use sick leave.

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. As noted above, Defendants failed to include all forms of remuneration, including “Gratuity” and “Service Charge” pay in Plaintiff and the aggrieved employees’ regular rate. As such, they paid Plaintiff and other aggrieved employees’ sick leave at their base pay rate rather than at their regular rate of pay as required under California law.

Additionally, Defendants retaliated against employees who used sick leave by reducing their scheduled hours and shifts.

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

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and other aggrieved employees were often unable to take meal periods due to the volume of work and insufficient staffing to allow for legally-compliant meal periods. However, despite failing to provide employees with all legally-compliant meal periods, Defendants failed to pay all meal premium wages owed. As described above, Defendants compelled Plaintiff and other aggrieved employees to clock out prior to their sixth hour of work yet continue working, and edited Plaintiff's and other aggrieved employees' timekeeping records to reflect meal

periods that were never taken. Due to these illegal practices and procedures, Defendants failed to pay Plaintiff and other aggrieved employees all meal premium wages owed.

Additionally, when Defendants did pay Plaintiff and other aggrieved employees meal period premiums, they failed to do so at the proper rate of pay because they failed to include all forms of remuneration into the regular rate of pay for meal premiums. For example, Plaintiff's wage statement for the pay period ending July 15, 2023, shows that Plaintiff earned a "Gratuity" payment of \$146.28. *See Fig. 3 below.* In the same pay period, Plaintiff earned three hours of meal premium pay. This "Gratuity" payment is an automatic charge distinct from the actual gratuities left by customers denoted in the "Tips" section. Nevertheless, Defendants failed to include the amount of "Gratuity" payments into Plaintiff's regular rate of pay in the payment of meal premiums. Rather, Defendants only paid Plaintiff her at her base rate of pay, not her regular rate of pay:

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	070
IGH	005817	000600		0000290067	1

THE LOT LIBERTY STATION
2620 TRUXTON RD
SAN DIEGO, CA 92160

Earnings Statement 

Period Beginning: 07/01/2023
Period Ending: 07/15/2023
Pay Date: 07/21/2023

SARAH MARTINY

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	16.3000	50.50	823.15	8,344.30
Gratuity			146.28	1,400.79
Paid Meal	16.3000	3.00	48.90	292.10
Tips			1,306.09	12,804.76
Gross Pay			\$2,324.42	22,841.95

Other Benefits and Information	this period	total to date
Sick Available	40.00	
Total Hrs Worked	50.50	

Important Notes
619.566.0069

Deductions **Statutory**

Federal Income Tax 22.84

BASIS OF PAY: HOURLY

Fig 3, wage statement ending July 15, 2023

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 able to take their rest periods due to the volume of work and insufficient staffing to allow for legally-compliant rest periods. Moreover, Defendants never informed Plaintiff and the aggrieved employees of their right to take rest periods. The "Lunch and Breaks" section of Defendants' written policies makes brief mention of "10-minute breaks" but does not specify that these 10-minute rest periods are *in addition* to the 30-minute meal periods, nor does it make clear that employees are to have a 10-minute rest period for every four hours or major fraction thereof. Rather, the policies simply say – in a confusing and seemingly contradictory fashion, "You get one 10-minute break" and "You get two 10-minute breaks."

Lunch and Breaks

- If you work 6 hours or less, you do not need to take a lunch break, HOWEVER you must clock out before you hit the 6th hour. You get one 10-minute break.
- If you work more than 6 hours, you MUST take a 30-minute break before your 5th hour.
- You must check in with the manager on duty prior to taking lunch to make sure it is an appropriate time. You get two 10-minute breaks.

Fig. 4, excerpt from Defendants' written policies

Despite failing to provide employees with all legally-compliant rest periods, Defendants failed to pay all rest premium wages owed. Defendants did provide any avenue for employees to report their missed rest periods and did not otherwise record rest periods, and therefore did not pay premium wages when employees were deprived of their rest periods.

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

Unpaid Split Shift Premium Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the aggrieved employees.

Section 4(C) of the applicable IWC Wage Orders requires that when “an employee works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition to the minimum wage for that workday.” According to the IWC Wage Orders’ definition sections, a “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to the aggrieved employees. Defendants occasionally assigned Plaintiff and other aggrieved employees who work multiple shifts in one day separately by a period longer than a bona fide meal period but failed to pay required split shift premiums. For example, on January 11, 2024, Plaintiff worked briefly from 4:35 p.m. to 5:14 p.m. and returned to work at 10:50 p.m. However, Defendants did not pay her a split shift premium.

P	Thu	01/11/2024	04:35 PM - 05:14 PM	0:39	000600
E	Thu	01/11/2024	10:50 PM -	0:00	000600

Fig. 5, time records for Jan 11, 2024

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 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 other aggrieved employees were sometimes sent home after completing less than half of their scheduled shifts but were not paid any reporting time wages. For example, on November 29, 2023, Plaintiff was sent home after clocking in for five minutes. *See Fig. 6 below*. Nevertheless, Plaintiff's wage statement for the pay period of November 16, 2023 to November 30, 2023 shows that Defendants paid her no reporting time wages for this period. *See Fig. 7 below*.

Timecard Report with Notes

Date Range: 06/15/2022 - 01/15/2024 and Employee Effective As Of : 01/12/2024

Company Code: IGH

<u>Last Name</u>		<u>First Name</u>		<u>Position ID</u>	
Date In		Time In - Out		Hours	Pay Code
				Worked Department	
Martiny		Sarah		IGH005817	
P	Thu 11/23/2023	02:14 PM - 09:45 PM		7:31	000600
P	Fri 11/24/2023	04:31 PM - 04:34 PM		0:03	000600
P	Fri 11/24/2023	05:09 PM - 11:25 PM		6:16	000600
P	Sat 11/25/2023	04:31 PM - 04:35 PM LP		0:04	000600
P	Sat 11/25/2023	05:07 PM - 11:37 PM		6:30	000600
P	Wed 11/29/2023	04:32 PM - 04:37 PM		0:05	000600
P	Thu 11/30/2023	04:32 PM - 04:37 PM LP		0:05	000600
P	Thu 11/30/2023	05:16 PM - 11:05 PM		5:49	000600

Fig. 6, time record for Nov 29, 2023

CO. FILE DEPT. CLOCK VCHR. NO. 070
IGH 005817 000600 0000490063 1

THE LOT LIBERTY STATION
2620 TRUXTON RD
SAN DIEGO, CA 92160

Earnings Statement



Period Beginning: 11/16/2023
Period Ending: 11/30/2023
Pay Date: 12/07/2023

SARAH MARTINY

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	16.3000	47.72	777.84	13,971.74	Sick Available	16.00	
Holiday2	32.6000	7.75	252.65	252.65			
Paid Meal	16.3000	2.00	32.60	406.20	Total Hrs Worked	55.47	
Tips			1,371.14	21,498.24			
Overtime				51.35			
Service Charge				2,296.38			
Sick				391.20			
Gross Pay			\$2,434.23	38,867.76			

Important Notes

619.566.0069

BASIS OF PAY: HOURLY

Fig. 7, wage statement ending Nov 30, 2023

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.

Unlawful Wage Deductions Violation of Labor Code §§ 221 through 225

Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment. Labor Code section 223 states "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. For example, when Plaintiff and other aggrieved employees worked special events, they were entitled to have the service charges split between themselves. However, the event manager regularly withheld a portion of the service charge

and distributed only a fraction of the amounts owed to Plaintiff and other 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 225.5 (\$100/\$200), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Gratuities
Violation of Labor Code §§ 350 *et seq.*

Defendants failed to properly distribute and keep records of tips left for Claimant and the aggrieved employees, in violation of Labor Code sections 351, 353, and 354. Defendants also violated Labor Code section 351, which prohibited Defendants from collecting, taking or receiving any gratuity that is paid to, given to, or left for Claimant and other aggrieved employees.

Labor Code section 351 states that no “employer” shall take any gratuity “left for an employee by a patron” and that “[e]very gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.” Labor Code section 350, subdivisions (a) and (d), specifically define “employer” and “agent” to include “every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees. Only employees who are involved in the line of service are entitled to participate in what is commonly called a “tip pool.” *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal. App. 3d 1062, 1069-70. Labor Code section 353 requires employers to “keep accurate records of all gratuities received” and that “[s]uch records shall be open to inspections at all reasonable hours[.]” Labor Code section 354 makes renders violation of this statute a misdemeanor.

Defendants maintained an unlawful gratuity policy and practice with respect to the aggrieved employees. Even though Defendant maintained a written tip-sharing policy, Defendants did not enforce this policy in practice. Rather, Defendants left tip sharing to managers’ discretion, and allowed managers to illegally make deductions from Plaintiff and other aggrieved employees tips. Because of these illegal deductions, Plaintiff and other aggrieved employees often only received a fraction of the amounts they were owed under the written tip-sharing policy.

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 the time that they worked off the clock as well as all overtime wages, reporting time wages, split shift premiums, sick leave pay, tips, gratuities, service charges, and meal and rest premium wages 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, and Labor Code section 210 (\$100/\$200) per violation per pay period, 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. As described above, Defendants did not properly record all hours that Plaintiff and other employees worked, or the payments owed as a result of their off-the-clock work. Defendants also did not list the proper rates of pay owed to Plaintiff and other aggrieved employees for their overtime, meal and rest period premiums, reporting time pay, split shift premiums, or full amount of “Service Charge” and “Gratuities” owed. Moreover, Defendants failed to record and set forth the proper number and amount of meal and rest period premiums owed.

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.

Retaliation **Violation of Labor Code §§ 98.6 and 1102.5**

Defendants violated Labor Code sections 98.6 and 1102.5 by retaliating against Plaintiff for making complaints about workplace conditions.

Section 98.6 provides that an employer shall not “discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”

Section 1102.5 provides that no employer, or person acting on behalf of an employer, shall “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.”

Here, Plaintiff reported a manager for smoking with a vaporizer or “vaping” in the workplace and attempting to solicit another employee to transport prescription drugs from Mexico. Since making the report, Defendants have subjected Plaintiff to retaliatory conduct including diminished scheduled working hours, verbal and emotional abuse, and a hostile working

environment. For example, after making her complaints, Defendants cut her hours so that she can only work two days per week.

Sections 98.6 and 1102.5 each provide for \$10,000 in civil penalties in addition to whatever other remedies Plaintiff may recover. Labor Code §§ 98.6(b)(3), 1102.5(e)(1). Plaintiff will seek recovery of civil penalties under each section as well as other compensatory, statutory, and punitive damages.

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 Lin". The signature is fluid and cursive, with a large initial "D" and a stylized "L".

David Lin

Cc Plaintiff Sarah Whisper Martiny

Additional Addressees

Boffo Cinemas Beverly Hills, LLC

7611 Fay Avenue
La Jolla, CA 92037

The Lot Watermark, LLC

7611 Fay Avenue
La Jolla, CA 92037

Boffo Cinemas La Jolla, LLC

7611 Fay Avenue
La Jolla, CA 92037

Boffo Growth, LLC

7611 Fay Avenue
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Boffo Cinemas Point Loma, LLC

7611 Fay Avenue
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Boffo F&B, LLC

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Boffo Investors, LLC

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The Lot Del Mar, LLC

7611 Fay Avenue
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Boffo Manager, LLC

7611 Fay Avenue
La Jolla, CA 92037

The Lot Fashion Island, LLC

7611 Fay Avenue
La Jolla, CA 92037

Adolfo Fastlicht

7611 Fay Avenue
La Jolla, CA 92037

EXHIBIT 2

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

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

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

February 16, 2024

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

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

Boffo Cinemas, LLC
7611 Fay Avenue
La Jolla, CA 92037

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

Additional Addressees Listed on Last Page

Dear LWDA Officer and Company Representatives:

This letter serves as amendment to the written notice under Labor Code section 2699.3 which Plaintiff Sarah Whisper Martiny (“Plaintiff”) submitted on February 6, 2024. Plaintiff hereby incorporates by reference all facts, theories, and allegations set forth in her original February 6, 2024 notice letter, and amends his previously filed notice to include the following additional facts and claims:

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 in Plaintiff's February 6, 2024 notice letter, Defendants failed to pay Plaintiff and other aggrieved employees for all of the time that they worked off the clock as well as all overtime wages, reporting time wages, split shift premiums, sick leave pay, tips, gratuities, service charges, and meal and rest premium wages owed. 60. Because Defendants have not paid all wages and premiums owed to class members to this day, even after they separated from employment, Defendants are also liable for waiting time penalties under Labor Code section 203. Nevertheless, Defendants have not paid all waiting time penalties owed.

As a result, Plaintiff may recover 30 days of wages as a waiting time penalty under Labor Code section 256, and/or 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.

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 Lin", with a stylized flourish at the end.

David Lin

Cc Plaintiff Sarah Whisper Martiny

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