

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

Clerk of the Superior Court
By B. Ramirez ,Deputy Clerk

Attorneys for Plaintiffs Nick De Vera, Benito Bavarella, and Angel Ramirez

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

NICK DE VERA, BENITO BAVARELLA, and
ANGEL RAMIREZ, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

LEICA BIOSYSTEMS IMAGING, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00035127-CU-OE-CTL

CLASS ACTION

**SECOND 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. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Unfair Competition
11. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiffs NICK DE VERA, BENITO BAVARELLA, and ANGEL RAMIREZ individually
2 and on behalf of all others similarly situated and the State of California under the Private Attorneys
3 General Act (“Plaintiffs”) bring this SECOND AMENDED CLASS AND REPRESENTATIVE
4 ACTION COMPLAINT against Defendants LEICA BIOSYSTEMS IMAGING, INC. and DOES 1
5 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure section 382 for
8 Defendants’ violations of the California Labor Code and Business and Professions Code.

9 2. Defendants underpaid the class members’ wages by failing to include all forms of
10 remuneration, including bonuses, into the regular rate of pay calculation (or other appropriate lawful
11 method) for overtime, sick pay, and premiums.

12 3. Defendants failed to pay all regular and overtime house due to off-the-clock work.

13 4. Defendants also failed to reimburse class members for necessary expenses the class
14 members incurred in furtherance of job duties.

15 5. Defendants’ employment policies, practices, and payroll administration systems
16 enabled and facilitated these violations on a company-wide basis with respect to the class members.

17 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiffs

10. Plaintiff Nick De Vera is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2021 to July 2023. Plaintiff worked as a Shipping Coordinator.

11. Plaintiff Benito Bavarella is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 2021 to April 2024. Plaintiff worked as a Technician I.

12. Plaintiff Angel Ramirez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2021 to November 2023. Plaintiff worked as an Assembler.

13. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

14. Defendant Leica Biosystems Imaging, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

CLASS ALLEGATIONS

19. 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.

20. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

21. 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: Plaintiffs' 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 Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiffs are adequate class representatives; 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.

22. 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

23. Defendants failed to pay Plaintiffs and the class members for all hours worked, resulting in unpaid minimum wages.

1 24. Specifically, Plaintiff and the aggrieved employees routinely worked through their
2 unpaid meal periods and otherwise engaged in required off-the-clock work, resulting in unpaid hours
3 worked.

4 25. To the extent Plaintiffs' and the aggrieved employees' off-the-clock work resulted in
5 unpaid off-the-clock work over 8 hours in a day or 40 hours in a week, this policy and practice resulted
6 in unpaid overtime.

7 26. Defendants failed to pay overtime at the regular rate of pay.

8 27. Plaintiffs and class members worked for Defendants and were compensated on an
9 hourly basis as nonexempt employees. In addition to earning hourly compensation, Defendants paid
10 Plaintiffs and class members other forms of remuneration, including bonuses and incentives. When
11 Defendants paid these additional earnings to Plaintiffs and class members, Defendants failed to include
12 those amounts in the statutory rates due for overtime, sick pay, and premiums.

13 28. For example, in the pay period November 20, 2022, to December 3, 2022, Plaintiff De
14 Vera earned a bonus of \$135 in addition to his base hourly wages. Plaintiff De Vera also earned
15 overtime in this pay period, which Defendants only paid at 1.5x Plaintiff De Vera's base hourly rate.
16 Instead of paying the regular rate inclusive of all forms of nondiscretionary income, like the bonus,
17 Defendants underpaid Plaintiff's overtime wages.

18 29. Similarly, in the pay period from November 6, 2022 to November 19, 2022 Plaintiff
19 Bavarella worked 18.55 overtime hours and also earned a non-discretionary bonus of \$135.00.
20 However, Plaintiff's overtime rate was paid at a straight 1.5x multiple of Plaintiff's base hourly rate.

21 30. Likewise, in the pay period February 12, 2023, to February 25, 2023, Plaintiff De Vera
22 earned a bonus and sick pay in the same pay period. However, Defendants only paid Plaintiff's sick
23 leave at Plaintiff's base hourly rate, instead of the regular rate of pay inclusive of all non-discretionary
24 income.

25 31. Defendants also failed to consistently provide compliant meal and rest periods to
26 Plaintiffs and class members. For example, due to production demands and deadlines, Plaintiff De
27 Vera suffered four late meal periods from August 3, 2022, to August 17, 2022. Likewise, time
28

1 restraints, short staffing, and job responsibilities also prevented Plaintiffs and class members from
2 enjoying compliant rest periods.

3 32. Defendants did not pay Plaintiffs or class members any premiums for deficient meal or
4 rest periods. Defendants' records demonstrate meal period violations, where class members' meal
5 periods were often late and short and missed. However, to the extent paid, Defendants underpaid the
6 premiums due to Defendants' policy and practice of excluding some forms of non-discretionary
7 income from the regular rate of pay.

8 33. Further, Defendants failed to reimburse Plaintiffs and class members for costs the class
9 members personally incurred in furtherance of job duties. Defendants regularly expected Plaintiffs and
10 class members to use their personal cell phones to engage in communications with carriers, coworkers,
11 and supervisors due to insufficient landline access. Plaintiffs and class members were required as a
12 direct consequence of their work duties to use their personal cell phones for this purpose, but were not
13 reimbursed the reasonable value of the cell phone on a monthly basis in accordance with California
14 law.

15 34. Additionally, Defendants did not provide Plaintiffs or class members with a uniform.
16 As a direct result of their duties Plaintiffs' and class members' personal clothes including shirts and
17 pants often became damaged.

18 35. Specifically, as a Shipping Coordinator Plaintiff loaded and unloaded medical crates
19 weighing up to 200 pounds on and off trucks. Plaintiff also was responsible for spray painting these
20 crates.

21 36. Each day Plaintiff wore a t-shirt, jeans, and company issued steel toe boots and gloves.
22 Plaintiff's shirts and pants often would get torn from the crates, worn out, and covered with spray paint
23 as a necessary and reasonable result of completing his assigned job duties.

24 37. Plaintiff De Vera spent his own money every two weeks to replace his torn and paint
25 covered shirts and pants which were damaged as a direct and necessary consequence of his
26 employment.

27 38. Plaintiff Ramirez and other class members in his department used their cell phones to
28 communicate with their supervisors and with each other.

39. Defendants did not reimburse Plaintiffs or class members for either the cell phone use or the damage to personal clothing.

40. Because of the aforementioned violations, Defendants failed to provide accurate, itemized wage statements that included the accurate gross or net wages. Overtime, sick pay, and premiums were all listed at incorrect rates, based on Plaintiffs' *base hourly wage* instead of the regular rate or other permissible statutory rate. These incorrect rates violate the wage statement requirement to include the correct hourly rate in effect each pay period along with the correct number of hours. Therefore, Defendants have provided inaccurate and non-compliant wage statements to class members.

41. These violations create derivative liability for failure to timely pay all wages owed each payday or upon separation of employment.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

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

44. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all

1 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
2 Code § 1194.2.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

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

11 46. All outside paragraphs of this Complaint are incorporated into this section.

12 47. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
13 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
14 wages all overtime hours worked, and which further provide a private right of action for an employer's
15 failure to pay all overtime compensation for overtime hours worked.

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

23 49. Plaintiffs and class members are entitled to recover the full amount of the unpaid
24 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
25 extent permitted by law.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4

5
6
7
8
9

10
11
12
13
14
15

16
17
18
19
20

21
22
23

24

25

26

27

1 56. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
3 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
4 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
5 regular rate of compensation.

6 57. Defendants willfully failed in their affirmative obligation to consistently authorize and
7 permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten
8 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
9 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
10 applicable orders).

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

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

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

25 61. Labor Code section 246(l) governs how Defendants were required to calculate paid sick
26 leave:
27
28

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

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

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

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

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

63. Furthermore, for sick pay paid to Plaintiffs and/or class members during the class period which constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.* based on the common policy and practice of failing to calculate sick pay at the lawful hourly rate.

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

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

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

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

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

12 (III) The state minimum wage.

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

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

16 68. On information and belief, Defendants failed to pay sick pay in the manner described
17 above because Defendants failed to include in their sick leave calculation under each of the applicable
18 statutes the additional remuneration received by class members.

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

21 **SIXTH CAUSE OF ACTION**

22 **UNTIMELY PAYMENT OF WAGES**

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

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

25 71. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
27 period, and which further provide a private right of action for an employer's failure to comply with
28

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

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

18 75. This cause of action is brought by a wage statement subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

22 76. Defendants knowingly and intentionally failed in their affirmative obligation to provide
23 accurate itemized wage statements to Plaintiffs and class members resulting in injury to Plaintiffs and
24 class members. Specifically, the wage statements issued to Plaintiffs and class members did not
25 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

26 77. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of
27 accurate itemized wage statements, causing confusion and concealing wage and premium
28 underpayments.

1 78. As a result, Plaintiffs and class members are entitled to recover the statutory penalty of
2 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
3 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
4 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
5 Code section 226(e).

6 **EIGHTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

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

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

10 80. This cause of action is brought by a waiting time subclass pursuant to Labor Code
11 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
12 employment, and which further provide a private right of action to recover statutory waiting time
13 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
14 wages.

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

20 82. Plaintiffs and class members are entitled to recover a waiting time penalty for a period
21 of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

22 **NINTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 **Violation of Labor Code § 2802**

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

26 84. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs and a
27 reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them
28 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

85. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the amount unreimbursed expenses of Plaintiffs and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

87. 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.

88. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiffs 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.*

89. Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as individuals 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.

90. Plaintiffs do 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.

91. Plaintiffs and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiffs and class members have

1 an ownership interest and to prevent future damage and the public interest under Business and
2 Professions Code § 17200 *et seq.* Plaintiffs and class members are further entitled to recover interest,
3 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
4 § 1021.5.

5 **ELEVENTH CAUSE OF ACTION**

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

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

8 **(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)**

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

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

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

16 94. Plaintiffs reserve the right to amend, supplement, or add to this description of the
17 aggrieved employees, according to proof.

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

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

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

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

10 99. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
11 penalties under the PAGA.

12 100. On or about **August 2, 2023**, Plaintiff De Vera paid the requisite PAGA filing fee and
13 provided written notice (by online electronic filing with the LWDA and by certified mail to
14 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
15 the alleged violations.

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

19 102. To date, neither Plaintiff De Vera nor Plaintiffs’ counsel has received a response to
20 Plaintiff De Vera’s written PAGA notice from the LWDA.

21 103. Within 33 calendar days of the postmark date of the notice sent by Plaintiff De Vera,
22 neither Plaintiff De Vera nor Plaintiffs’ counsel has received written notice by certified mail from any
23 defendant providing a description of any actions taken to cure the alleged violations.

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

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

4 106. To date, neither Plaintiffs Bavarella and Ramirez nor Plaintiffs' counsel has received a
5 response to Plaintiffs Bavarella and Ramirez's written PAGA notice from the LWDA.

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

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

14 109. As set forth in the PAGA notice attached as Exhibit 1 and Exhibit 2 and incorporated
15 into this Complaint, Defendants committed the following violations and are liable for all
16 corresponding civil penalties:

- 17 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
18 1197, 1198; IWC Wage Orders.
- 19 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
20 Orders.
- 21 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 22 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
23 1198; IWC Wage Orders.
- 24 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
25 1198; IWC Wage Orders.
- 26 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
27 §§ 204, 204b, 210.

- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiffs pray for judgment as follows:

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

- 1 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
3 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
4 n. For such other relief the Court deems just and proper.

5
6 Dated: October 7, 2024,

Ferraro Vega Employment Lawyers, Inc.

7 
8 _____
9 Nicholas J. Ferraro
10 Lauren N. Vega
11 *Attorneys for Plaintiffs Nick De Vera, Benito Bavarella,*
12 *and Angel Ramirez*

EXHIBIT 1

Plaintiff De Vera's 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

August 2, 2023

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

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

Leica Biosystems Imaging, Inc.
1360 Park Center Dr.
Vista, California 92081

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

Dear LWDA Officer and Company Representatives:

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

LEICA BIOSYSTEMS IMAGING, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations

during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Shipping Coordinator from about September 2021 to July 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff and aggrieved employees earned various forms of compensation in addition to their regular hourly earnings, including bonuses, throughout their employment with Defendants. However, when Plaintiff and the aggrieved employees earned these bonuses or other forms of extra remuneration in the same pay periods as overtime wages, Defendants did not consistently or fully adjust the aggrieved employees’ overtime rates to reflect the regular rate of pay, inclusive of all forms of non-discretionary income. Instead, Defendants either only partially applied the correct overtime rate, or Defendants based overtime rate on only the aggrieved employees *base hourly rate*. Below is an example of Defendants’ regular rate of pay overtime violations.

As one illustrative example, Plaintiff earned a \$135 bonus in the pay period of 11/20/2022 to 12/03/2022 and worked overtime. Instead of paying Plaintiff at the regular rate of pay multiple, inclusive of his bonuses and all earnings, Plaintiff’s 0.76 overtime hours were paid at an hourly rate of \$33.99, which reflects a 1.5x multiple of his base rate of \$22.66—an underpayment.

Earnings	rate	hours	this period	year to date
Regular	22.6600	47.40	1,074.08	36,349.45
Overtime	33.9900	.76	25.83	1,562.36
Holiday Pay	22.6600	16.00	362.56	1,962.40
Other Comp	22.6600	1.00	22.66	45.32
Paid Time Off	22.6600	14.00	317.24	2,386.12
Bonus Other				135.00
Commute Elig				210.00
Icp				587.00
Leave Of Abs				1,056.00
Sick Pay				543.84
Gross Pay			\$1,802.37	44,837.49

Plaintiff’s wage statement for the pay period 11/20/2022 to 12/03/2022

Earnings	rate	hours	this period	year to date
Bonus Other			135.00	270.00
Regular				36,349.45
Overtime				1,562.36
Commute Elig				210.00
Holiday Pay				1,962.40
Icp				587.00
Leave Of Abs				1,056.00
Other Comp				45.32
Paid Time Off				2,386.12
Sick Pay				543.84
Gross Pay			\$135.00	44,972.49

Plaintiff's second wage statement for the pay period 11/20/2022 to 12/03/2022 showing the Bonus

Plaintiff and other aggrieved employees earned many different forms of bonuses during the respective period, which were not consistently and accurately factored into the overtime rate, resulting in overtime violations.

Because Defendants maintained a policy and practice of excluding some forms of non-discretionary income from the regular rate of pay for purposes of overtime calculation, Defendants underpaid Plaintiff and aggrieved employees their due overtime 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 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay,

by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available ... for use on either the employee's itemized wage statement ... or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. When Plaintiff and the aggrieved employees earned supplemental remuneration and sick pay in the same period, Defendants failed to factor in some forms of non-discretionary income to the aggrieved employees' sick leave. For example, in Plaintiff's wage statement below, Plaintiff earned additional earnings in the "Other Comp" wage category, however, Defendants only paid sick leave at Plaintiff's base hourly rate rather than the regular rate of pay inclusive of all forms of non-discretionary income.

Earnings	rate	hours	this period	year to date
Regular	22.6600	58.09	1,316.32	7,170.98
Holiday Pay	22.6600	8.00	181.28	1,087.68
Other Comp	22.6600	.50	11.33	147.29
Sick Pay	22.6600	11.00	249.26	249.26
Overtime				108.09
Bonus Other				1,000.00
Paid Time Off				90.64
Gross Pay			\$1,758.19	9,853.94

Plaintiff's wage statement for the pay period 2/12/2023 to 2/25/2023 showing sick leave paid at Plaintiff's base hourly rate of \$22.60 despite Plaintiff earning other forms of nondiscretionary income in the pay period.

Defendants maintained a policy and practice of excluding some forms of non-discretionary income from the regular rate of pay for the purpose of calculating sick leave wages.

Therefore, Defendants underpaid Plaintiff and the aggrieved employees in every pay period where the employees simultaneously earned sick leave and extra remuneration.

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.

Due to short staffing, employee job responsibilities, and intensive production deadlines, Plaintiff and the aggrieved employees experienced short, late, missed, and/or interrupted meal periods. Plaintiff's time records below provide examples of the deficient meal periods he suffered due to production demands.

08/03/2022	08:43 AM - 01:46 PM	Time Pair Entry
	02:16 PM - 05:24 PM	Time Pair Entry
08/04/2022	08:34 AM - 12:17 PM	Time Pair Entry
	12:47 PM - 04:34 PM	Time Pair Entry
08/05/2022	08:55 AM - 01:40 PM	Time Pair Entry
	02:12 PM - 03:30 PM	Time Pair Entry
08/06/2022		
08/07/2022		
08/08/2022	08:45 AM - 01:35 PM	Time Pair Entry
	02:05 PM - 05:15 PM	Time Pair Entry
08/09/2022	08:53 AM - 01:32 PM	Time Pair Entry
	02:02 PM - 05:31 PM	Time Pair Entry
DATE	TIME	PAY CODE
08/10/2022	08:49 AM - 02:01 PM	Time Pair Entry
	02:31 PM - 04:13 PM	Time Pair Entry
08/11/2022	08:47 AM - 02:33 PM	Time Pair Entry
	03:03 PM - 05:23 PM	Time Pair Entry
08/12/2022	8.00 HRS	D2M CA Sick
08/13/2022		
08/14/2022		
08/15/2022	08:50 AM - 01:34 PM	Time Pair Entry
	02:06 PM - 06:03 PM	Time Pair Entry
08/16/2022	09:06 AM - 01:44 PM	Time Pair Entry
	02:15 PM - 05:43 PM	Time Pair Entry
08/17/2022	08:42 AM - 02:02 PM	Time Pair Entry
	02:32 PM - 05:44 PM	Time Pair Entry

Plaintiff's time records from 8/3/2022 to 8/17/2022 showing four late meal periods.

When Plaintiff and the aggrieved employees suffered these deficient meal periods, Defendants did not pay meal period premiums. The facial violations are apparent by comparison of the wage statements to the time records. To the extent Defendants ever paid any meal period premiums, such amounts were underpaid due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay, as discussed in the overtime and sick leave sections above.

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

Unpaid 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.

For the same reasons as the meal period section above, Plaintiff and the aggrieved employees also suffered late, short, missed, and/or interrupted rest periods. When Plaintiff or the aggrieved employees experienced these deficient rest periods, Plaintiff believes and alleges that Defendants did not pay aggrieved employees their due rest period premiums. To the extent Defendants ever paid any rest period premiums, such amounts were underpaid due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay, as discussed in the overtime and sick leave sections above.

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

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

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

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

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to include all forms of nondiscretionary income in the wage rates for overtime, sick pay, and premiums. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

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

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

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

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

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to include all forms of nondiscretionary income in the wage rates for overtime, sick pay, and premiums. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Additionally, in violation of Labor Code section 226(a)(2), Defendants failed to list the total hours worked each pay period on Plaintiff and the aggrieved employees’ 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 at the correct rates and hours. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants expected Plaintiff and aggrieved employees to use their personal cell phones to complete calls to carriers and to be available for carriers to call. Throughout Plaintiff’s employment, it was reasonably necessary for him to conduct all work communications through his personal cell phone because while Plaintiff was working on the floor, there was no easy access to the company’s landline phone. Defendants never reimbursed Plaintiff or aggrieved employees for their personal cell phone use or provided a company-sponsored cell phone to complete these necessary communications.

Further, Defendants did not provide Plaintiff or the aggrieved employees a uniform to perform their job duties. However, when Plaintiff or the aggrieved employees completed their work assignments, their personal clothes often became damaged from the conditions in the workplace and the nature of their job. Defendants did not reimburse Plaintiff or the aggrieved employees for these damaged clothes.

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro".

Nicholas J. Ferraro

REJ

Cc Plaintiff Nick De Vera

Alissa Bordeaux, HR Manager

Alissa.Bordeaux@leicabiosystems.com

EXHIBIT 2

Plaintiff Bavarella and Ramirez's 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

March 27, 2024

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

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

Leica Biosystems Imaging, Inc.
1360 Park Center Dr.
Vista, California 92081

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

Dear LWDA Officer and Company Representatives:

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

LEICA BIOSYSTEMS IMAGING, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiffs. 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, Plaintiffs intend 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. Plaintiffs maintain standing to pursue these claims against Defendants, as Plaintiffs 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, Plaintiffs request 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. Plaintiffs attempt 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 Plaintiffs' counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. Plaintiffs advise 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 Bavarella during the PAGA Period in the position of Technician 1 from about July 2021 to the present. Defendants employed Plaintiff Ramirez during the PAGA Period in the position of Assembler from about August 2021 to the present. During their employment Plaintiffs 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, Plaintiffs inform the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiffs 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").

Plaintiffs reserve the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiffs seek 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 Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiffs and the aggrieved employees routinely worked through their unpaid meal periods and otherwise engaged in off-the-clock work, resulting in unpaid hours 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 Plaintiffs and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as discussed in the unpaid minimum wages section above, Plaintiffs and the aggrieved employees engaged in unpaid off-the-clock work. To the extent Plaintiffs and the aggrieved employees worked over 8 hours in a day or 40 hours in a week because of off-the-clock work, this policy and practice resulted in unpaid overtime wages.

Second, Defendants failed to pay overtime at the regular rate of pay. For each overtime hour worked during the period in which Plaintiffs and the aggrieved employees earned bonuses or other forms of non-excludable remuneration, Defendants should have (but failed to) pay overtime “at the rate of no less than one **and one-half times the regular rate of pay** for an employee” and “**twice the regular rate of pay**” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. Instead, Defendants improperly paid overtime and double-time to Plaintiffs and the aggrieved employees at 1.5x and 2x their straight hourly rate or some other deficient rate.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to Plaintiffs and the aggrieved employees. Moreover, Defendants failed to maintain the records required by Labor Code § 246 et seq. with respect to the paid sick leave.

Defendants failed to pay sick leave at the lawful rate because they failed to factor in all forms of non-excludable remuneration, like bonuses, as required by section 246. Instead, Defendants paid sick leave to aggrieved employees at a deficient rate, resulting in an underpayment of sick wages.

As a result, Plaintiffs 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.

Defendants failed to provide all compliant meal periods to Plaintiffs and the aggrieved employees.

Plaintiffs and the aggrieved employees experienced missed, short, late, and interrupted meal periods in order to keep up with the demands of the job. When Defendants failed to provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

As a matter of policy and practice, Defendants failed to pay meal period premiums to Plaintiff and the aggrieved employees. To the extent Defendants did pay meal period premiums, the premiums were not paid at the lawful regular rate of pay because the premiums did not factor in all forms of remuneration. Instead, Defendants paid these premiums at a deficient rate.

As a result, Plaintiffs 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 Plaintiffs 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.

For the same reasons as the meal period section above, Plaintiffs and the aggrieved employees also suffered late, short, missed, and/or interrupted rest periods. When Plaintiffs or the aggrieved employees experienced these deficient rest periods Defendants failed to pay aggrieved employees their due rest period premiums.

To the extent Defendants ever paid any rest period premiums, such amounts were underpaid due to Defendants' policy and practice of excluding all forms of non-discretionary income from the regular rate of pay, as discussed in the overtime and sick leave sections above.

As a result, Plaintiffs 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 Plaintiffs 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). Specifically, Defendants failed to include all forms of nondiscretionary income in the wage rates for overtime, sick pay, and premiums. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

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

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

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

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

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing

employees upon separation of employment. Specifically, Defendants failed to include all forms of nondiscretionary income in the wage rates for overtime, sick pay, and premiums. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Additionally, in violation of Labor Code section 226(a)(2), Defendants failed to list the total hours worked each pay period on Plaintiffs and the aggrieved employees’ 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 at the correct rates and hours. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

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

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

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

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

Defendants required Plaintiffs and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiffs and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Plaintiffs were required to use their phones on a daily basis for work purposes and without reimbursement.

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

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

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiffs 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, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

Plaintiffs has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiffs 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 Plaintiffs 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, Plaintiffs intend 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 Plaintiffs' counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Benito Bavarella
Plaintiff Angel Ramirez

Counsel for Defendant

Timothy M. Rusche, Esq. - trusche@seyfarth.com

Romtin Parvaresh, Esq. - rparvaresh@seyfarth.com

David J. Kim, Esq. - dakim@seyfarth.com