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Superior Court of California,
County of San Diego

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

MARTHA BRITO, on behalf of all others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

READY AMERICA, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2024-00016167-CU-OE-CTL

Hon. Wendy M. Behan
Dept. 66

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff MARTHA BRITO, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants READY AMERICA, INC. and
4 DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings the instant class action complaint against Defendants for systemic
7 0violations of the California Labor Code and IWC Wage Orders committed against her and other
8 similarly-situated employees of Defendants.

9 2. Plaintiff and similarly-situated employees were deprived of all wages owed because
10 Defendants failed to properly incorporate all forms of qualifying remuneration in their rates of pay for
11 the purposes of overtime, sick leave, vacation, and premium pay. Moreover, Defendants failed to
12 provide Plaintiff and similarly-situated employees all meal and rest periods to which they were entitled
13 and failed to pay all meal and rest period premiums owed for such violations.

14 3. Therefore, Plaintiff seeks all unpaid wages, premiums, penalties, interest, and
15 restitution on behalf of herself and all other similarly-situated employees for Defendants’ Labor Code
16 and IWC Wage Order violations.

17 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Martha Brito

8. Plaintiff Brito is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 8, 2018 to March 25, 2024. Plaintiff worked as a Warehouse Employee.

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

10. Defendant Ready America, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. 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.

12. 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.

13. 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.

14. 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

15. 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.

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

- 1 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
2 steps to protect the class members' interests adequately and fairly; has no
3 interest antagonistic to other class members; and is represented by attorneys
4 who have substantial experience prosecuting, defending, resolving, and
5 litigating wage and hour class, collective, and representative actions in
6 California state and federal courts.
- 7 d. Superiority: A class action is superior to other means for adjudicating this
8 dispute. Individual joinder is impractical. Class treatment will allow for
9 common issues to be resolved in a single forum, simultaneously, and without
10 duplication of effort and expense.
- 11 e. Public Policy Considerations: Certification of this lawsuit as a class action
12 advances the State of California's strong public interest in ensuring its
13 approximately millions of employed residents are properly paid the wages they
14 earned for the hours they worked. Class actions provide a mechanism for
15 enforcement of labor laws and allow for vindication of employee rights by
16 unnamed class members.

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

21 **GENERAL ALLEGATIONS**

22 19. Defendant failed to pay Plaintiff and the other class members all overtime wages owed
23 because they failed to include all forms of qualifying remuneration in class members' regular rate of
24 pay for the purposes of overtime pay.

25 20. For example, Defendant provided Plaintiff and other class members gift cards as
26 incentives to work overtime. However, the value of these gift cards were not included in the class
27 members' wage statements and were not incorporated into their regular rate of pay for overtime
28 purposes.

21. Similarly, the value of the gift cards and other forms of non-discretionary compensation were not incorporated into class members' sick leave pay rate even though Plaintiff and other class members earned the gift cards and other compensation within 90 days prior to taking sick leave. Because of this, Defendant did not pay class members all sick leave wages owed.

22. Nor did Defendant incorporate the value of its incentive-based gift cards or other qualifying non-discretionary compensation into the class members' final rate of pay for the payment of unused vacation wages upon separation of employment. As a result, class members who earned compensation beyond their base pay in their last pay period received a depreciated and underpayment amount for their unused vacation time.

23. Defendant failed to provide compliant meal periods to Plaintiff and other class members. On occasion, Defendant would not relieve Plaintiff and other class members of their duties for compliant meal periods, resulting in the class members working more than five hours without a meal period. Defendant did not pay meal period premiums when Plaintiff and other class members suffered noncompliant meal periods. For example, Plaintiff's records show that even when she took late or otherwise noncompliant meal periods, Defendant paid no meal period premiums.

11/09/2023	Work	05:56 AM	11:02 AM	5.10	5.10	5.10	
11/09/2023	Meal	11:02 AM	11:34 AM	0.53			0.53
11/09/2023	Work	11:34 AM	02:31 PM	2.95	2.90	0.05	2.95
11/10/2023	Work	05:58 AM	11:20 AM	5.37	5.37	5.37	
11/10/2023	Meal	11:20 AM	11:53 AM	0.55			0.55
11/10/2023	Work	11:53 AM	02:31 PM	2.63	2.63	2.63	

Excerpt from Plaintiff's time records for the week of 11/6/2023 showing non-compliant meal periods taken after the fifth hour of work.

PERSONAL AND CHECK INFORMATION				EARNINGS					YTD		
Martha Brito				BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE	CURRENT (\$)	HRS/UNITS		YTD (\$)
Employee ID: 79300354					Regular	87.8800	18.0000	1581.84	1451.6500		26079.93
Home Department: 105 RA Assembly / 100 Ready America					Unpaid Time Off				180.0000		
Pay Period: 11/01/23 to 11/15/23					Overtime	0.3500	27.0000	9.45	36.1700		974.01
Check Date: 11/20/23 Check #: 8332					Holiday				32.0000		568.00
NET PAY ALLOCATIONS					Paid Sick Leave				3.0000		54.00
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)			PTO				80.0000		1416.00
Check Amount	0.00	0.00			Total Hours	88.2300			1682.8200		
Chkg 518	1138.60	21042.33			Total Hrs Worked	88.2300					
NET PAY	1138.60	21042.33			Gross Earnings			1591.29			29091.94
TIME OFF (Based on Policy Year)				WITHHOLDINGS	DESCRIPTION	FILING STATUS		CURRENT (\$)			YTD (\$)
DESCRIPTION	CURR DEDUCT	AMT TAKEN	AVAIL BAL		Social Security			98.66			1803.70
Paid Sick	0.00 hrs	3.00 hrs	21.00 hrs		Medicare			23.07			421.83
DESCRIPTION	BEG BAL	CURR ACQ	CURR DEDUCT		Fed Income Tax	SMS +\$50		143.44			2439.84
Vacation	30.81 hrs	3.33 hrs	0.00 hrs		CA Income Tax	SMI2 2 0		14.07			213.18
					CA Disability			14.32			261.84
					TOTAL			293.56			5140.39
				DEDUCTION	DESCRIPTION			CURRENT (\$)			YTD (\$)
					TO-PX401 EEPR			159.13			2909.22
					TOTAL			159.13			2909.22

Excerpt from Plaintiff's wage statement for the pay period of 11/1/2023 to 11/15/2023 showing that she was not paid meal period premiums despite suffering non-compliant meal periods identified in the figure above.

24. To the extent that Defendant paid meal period premiums, Plaintiff alleges, on information and belief, that such amounts were underpaid due to Defendant's failure to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay.

25. Defendant also failed to provide Plaintiff and other class members with all full, timely, off-duty rest periods. Often, Plaintiff and other class members worked for more than four hours without a rest period due to their job duties. Defendant would not relieve class members of their duties so that they could take compliant rest periods.

26. Defendant maintained a policy and practice of not pay rest period premiums when it denied Plaintiff and other class members compliant rest periods. To the extent that Defendant paid rest period premiums, on information and belief, those amounts were underpaid due to Defendant's failure to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay.

27. Because Defendant failed to correctly calculate the regular rate of pay for overtime, paid sick leave, vacation wages, and meal and rest period premiums, Defendant failed to pay all wages and premiums within seven days of the close of the pay period in which such wages were earned in violation of California law.

28. Defendant failed to provide accurate itemized wage statements to the class members each pay period as a result of the policies and practices set forth in this notice. Defendant violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendant 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 Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

29. Plaintiff and other class members 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 class members 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 underpayments of employee wages.

30. On information and belief, the violations Plaintiff and other class members suffered were part of common, systemic patterns, practices, and procedures utilized by Defendant.

31. Moreover, Defendant failed to produce all of Plaintiff's employee records within 30 days of Plaintiff's written request.

32. Therefore, Plaintiff seeks all general and special damages available under the law for Defendant's violations of the California Labor Code and IWC Wage Orders on behalf of herself and all other similarly-situated employees, including unpaid wages, premiums, and penalties, interest, and attorneys' fees and costs.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

1 34. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
3 wages all overtime hours worked, and which further provide a private right of action for an employer's
4 failure to pay all overtime compensation for overtime hours worked.

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

12 36. Plaintiff and class members are entitled to recover the full amount of the unpaid
13 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
14 extent permitted by law.

15 **SECOND CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

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

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

19 38. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
21 meal period premiums in lieu thereof), and which further provide a private right of action for an
22 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
23 regular rate of compensation.

24 39. Defendants willfully failed in their affirmative obligation to consistently provide
25 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
26 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
27 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
28

violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

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

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

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer’s failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

27 50. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
28 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.*

51. 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.

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

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

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

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

(III) The state minimum wage.

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

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

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

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

3 **FIFTH CAUSE OF ACTION**

4 **UNPAID VACATION WAGES**

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

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

7 58. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor
8 Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be
9 timely paid all vested vacation wages at their final rate of pay upon separation of employment, and
10 which further provide a private right of action for an employer's timely failure to pay all vacation
11 compensation upon termination.

12 59. Defendant offered Plaintiff and class members an employment contract or policy
13 providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued
14 vacation and/or PTO pursuant to the contract or policy.

15 60. Upon separation of Plaintiff and class members, Defendants willfully failed in their
16 affirmative obligation to timely pay Plaintiff and class members all accrued but unused vacation at
17 their final rate during their employment with Defendants, in violation of Labor Code sections 201(a),
18 202(a), and 227.3.

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

22 **SIXTH CAUSE OF ACTION**

23 **UNTIMELY PAYMENT OF WAGES**

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

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

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

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 64. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff 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 65. Plaintiff 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 66. All outside paragraphs of this Complaint are incorporated into this section.

18 67. 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 68. Defendants knowingly and intentionally failed in their affirmative obligation to provide
23 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
24 class members. Specifically, the wage statements issued to Plaintiff and class members did not
25 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

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

1 70. As a result, Plaintiff 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 71. All outside paragraphs of this Complaint are incorporated into this section.

10 72. 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 73. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
16 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
17 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
18 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
19 Code sections 201 through 203 and the IWC Wage Orders.

20 74. Plaintiff 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 PROVIDE RECORDS**

24 **Violation of Labor Code §§ 226, 432, and 1198.5**

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

26 76. Plaintiff brings this cause of action in an individual capacity.

27 77. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to
28 the obtaining or holding of employment, he shall be given a copy of the instrument upon request."

78. Labor Code section 226(b) grants employees the right to inspect or receive “a copy of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750 for an employer’s failure to comply with a request for records made under section 226.

79. Labor Code section 1198.5 requires employers to provide an employee’s “personnel records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750 for an employer’s failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l) allows an employee to seek injunctive relief to obtain an employer’s compliance with this section and authorizes the recovery of attorneys’ fees and costs.

80. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, requires that employers maintain time records of when an employee begins and ends each work period and when the employee takes meal periods, among other required employment and payroll records. Section 7(C) states that “[a]n employee’s records shall be made available for inspection by the employee upon reasonable request.”

81. Plaintiff requested from Defendants all records due under the IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5. However, Defendant failed to produce the requested records within 30 days.

82. Defendants' unlawful acts and omissions deprived Plaintiff of the ability review the documents they received during their employment and to inspect and reconcile their actual time worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover the penalties and injunctive relief, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

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

18 88. Plaintiff and class members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

24 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

3 97. On or about **March 26, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

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

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

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

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

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

- 22 a. **Unpaid Overtime.** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
23 Orders.
- 24 b. **Unpaid Paid Sick Leave.** Violation of Labor Code §§ 246 through 248.7.
- 25 c. **Unpaid Vacation Wages.** Violation of Labor Code § 227.3.
- 26 d. **Unpaid Meal Period Premium Wages.** Violation of Labor Code §§ 226.7, 512,
27 1198; IWC Wage Orders.
- 28

- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 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. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802.
- i. For recovery of damages in amount according to proof;

- 1 j. For all recoverable pre- and post-judgment interest;
- 2 k. For this action to be maintained as a representative action under the PAGA;
- 3 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
- 4 the action were brought by the State of California or the California Division of Labor
- 5 Enforcement;
- 6 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 7 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 8 permitted by law, including (without limitation) under Labor Code § 2699, and Code
- 9 of Civil Procedure section 1021.5; and
- 10 o. For such other relief the Court deems just and proper.

11 Dated: June 3, 2024

Ferraro Vega Employment Lawyers, Inc.

13 

14 Nicholas J. Ferraro

15 Lauren N. Vega

16 Mariela R. Romo

17 *Attorneys for Plaintiff Martha Brito*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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March 26, 2024

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

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

Ready America, Inc.
1399 Specialty Drive
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 **MARTHA BRITO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

READY AMERICA, 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 Defendant 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 Defendant, 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 Defendant 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). Defendant is 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 Defendant 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 -

Defendant employed Plaintiff during the PAGA Period in the position of Warehouse Employee from about July 8, 2018, to March 25, 2024. During her 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 Defendant’s 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

Defendant 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.

Defendant 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. Specifically, Defendant failed to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay calculation for overtime, paid sick leave, vacation wages, and meal and rest period premiums. When Plaintiff and the aggrieved employees worked overtime, Defendant occasionally paid employees an additional sum in the form of \$25 Amazon or Walmart gift cards. However, the value of these gift cards was not included in any of Plaintiff or the aggrieved employees’ wage statements. These gift cards are forms of qualifying remuneration that were not, but should have, been included in the regular rate of pay calculation for overtime wages, paid sick leave, vacation wages, and meal and rest period premiums. Therefore, by omitting these gift cards in employees’ wage statements, Defendant failed to compensate employees at the correct rate of pay.

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**

Defendant 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.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Plaintiff alleges, on information and belief, that Defendant failed to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay calculation for paid sick leave. As a result, any employee who earned a gift card in the same pay period they took paid sick leave, received a depreciated and underpaid payment of paid sick leave.

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

Unpaid Vacation Wages **Violation of Labor Code § 227.3**

Defendant violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendant maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Defendant failed to include non-discretionary bonuses and

other forms of qualifying remuneration in the regular rate of pay calculation for vacation wages upon separation of employment. As a result, any employee who earned a gift card by Defendant in their last pay period, received a depreciated and underpaid payment of vested vacation time.

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

Defendant 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.

Defendant failed to provide compliant meal periods to Plaintiff and the aggrieved employees. On occasion, Defendant would not relieve Plaintiff and the aggrieved employees of their

duties for compliant meal periods, resulting in Plaintiff and the aggrieved employees working more than five hours without a meal period. Defendant did not pay meal period premiums when Plaintiff and the aggrieved employees suffered noncompliant meal periods. An illustrative example of a meal period violation is shown below.

11/09/2023	Work	05:56 AM	11:02 AM	5.10	5.10	5.10	
11/09/2023	Meal	11:02 AM	11:34 AM	0.53			0.53
11/09/2023	Work	11:34 AM	02:31 PM	2.95	2.90	0.05	2.95
11/10/2023	Work	05:58 AM	11:20 AM	5.37	5.37		5.37
11/10/2023	Meal	11:20 AM	11:53 AM	0.55			0.55
11/10/2023	Work	11:53 AM	02:31 PM	2.63	2.63		2.63

Excerpt from Plaintiff's time records for the week of 11/6/2023 showing non-compliant meal periods taken after the fifth hour of work.

PERSONAL AND CHECK INFORMATION				EARNINGS				
Martha Brito				BASIS OF DESCRIPTION	HRS/UNITS	RATE	CURRENT (\$)	YTD (\$)
Employee ID: 79300354				PAY				
Home Department: 105 RA Assembly / 100 Ready America				Regular	87.8800	18.0000	1581.84	1451.6500
Pay Period: 11/01/23 to 11/15/23				Unpaid Time Off				M80.0000
Check Date: 11/20/23 Check #: 8332				Overtime	0.3500	27.0000	9.45	36.1700
NET PAY ALLOCATIONS				Holiday				32.0000
DESCRIPTION THIS PERIOD (\$) YTD (\$)				Paid Sick Leave				3.0000
Check Amount 0.00 0.00				PTO				80.0000
Chkg 518 1138.60 21042.33				Total Hours	88.2300			1682.8200
NET PAY 1138.60 21042.33				Total Hrs Worked	88.2300			
TIME OFF (Based on Policy Year)				Gross Earnings			1591.29	29091.94
DESCRIPTION CURR DEDUCT AMT TAKEN AVAL BAL				WITHHOLDINGS	DESCRIPTION	FILING STATUS	CURRENT (\$)	YTD (\$)
Paid Sick 0.00 hrs 3.00 hrs 21.00 hrs					Social Security		98.66	1803.70
DESCRIPTION BEG BAL CURR ACCRUE CURR DEDUCT AVAL BAL					Medicare		23.07	421.83
Vacation 30.81 hrs 3.33 hrs 0.00 hrs 34.14 hrs					Fed Income Tax	SMS +\$50	143.44	2439.84
					CA Income Tax	SMI2 2 0	14.07	213.18
					CA Disability		14.32	261.84
					TOTAL		293.56	5140.39
				DEDUCTION	DESCRIPTION		CURRENT (\$)	YTD (\$)
					TO-PX401 EEPR		159.13	2909.22
					TOTAL		159.13	2909.22

Excerpt from Plaintiff's wage statement for the pay period of 11/1/2023 to 11/15/2023 showing that she was not paid meal period premiums despite suffering non-compliant meal periods identified in the figure above.

Plaintiff's records show that, despite suffering two noncompliant meal periods, Defendant did not pay her a meal period premium.

Additionally, to the extent that Defendant paid meal period premiums, Plaintiff alleges, on information and belief, that such amounts were underpaid due to Defendant's failure to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay.

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

Defendant 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.

Defendant did not provide Plaintiff and the aggrieved employees with compliant rest periods. Often to due job duties, Plaintiff and the aggrieved employees worked for more than four hours without a rest period. Defendant would not relieve Plaintiff and the aggrieved employees of their duties so that they could take compliant rest periods. Defendant did not pay rest period premiums when Plaintiff and the aggrieved employees suffered noncompliant rest periods.

Additionally, to the extent that Defendant paid rest period premiums, on information and belief, those amounts were underpaid due to Defendant's failure to include non-discretionary bonuses and other forms of qualifying remuneration in the regular rate of pay.

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

Defendant 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 Defendant failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Further, as a result of the policies and practices set forth in this notice, Defendant violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days within seven calendar days of the close of the payroll period. Moreover, because Defendant failed to correctly calculate the regular rate of pay for overtime, paid sick leave, vacation wages, and meal and rest period premiums, Defendant failed to pay all wages and premiums in the pay period in which such wages were earned.

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

Defendant 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.

Defendant failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and failed to timely pay those amounts to departing employees upon separation of employment. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant violated Labor Code sections 201, 202, and 203. Specifically, Defendant did not fully compensate Plaintiff and the aggrieved employees for overtime, paid sick leave, vacation wages, and meal and rest period premiums. Consequently, any employee who received a gift card and worked overtime, took paid sick leave, received vested vacation wages, or a meal or rest period premium in their final pay period, received a depreciated and underpaid final payment of wages.

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**

Defendant 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.

Defendant 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. Defendant violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendant 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 Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underpayments of employee wages.

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

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

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

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendant failed to provide all records upon Plaintiff’s request. Despite Plaintiff’s written request, Defendant did not provide all records within 30 days.

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

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

Defendant 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, Defendant 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 Defendant 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, Defendant’s 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. Defendant may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela Romo". The signature is stylized with a large initial "M" and a long, sweeping underline.

Mariela Romo

Cc Plaintiff Martha Brito

Human Resources Department
hr@readyamerica.com