

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

Attorneys for Plaintiffs Alexis Keiner and Mayra Bolanos

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/28/2024 at 09:26:21 AM

Clerk of the Superior Court
By Yuan Chiang, Deputy Clerk

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

ALEXIS KEINER and MAYRA BOLANOS,
individually and on behalf of all others similarly
situated and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

WORLDWIDE FLIGHT SERVICES, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00024689-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

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

1 Plaintiffs ALEXIS KEINER and MAYRA BOLANOS, individually and on behalf of all others
2 similarly situated and the State of California under the Private Attorneys General Act (“Plaintiffs”)
3 bring this REPRESENTATIVE ACTION COMPLAINT against Defendants WORLDWIDE FLIGHT
4 SERVICES, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action complaint brought under the California Private Attorneys
7 General Act (Labor Code sections 2968 *et seq.*)

8 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to include
9 shift differentials and all other forms of non-excludable remuneration into the regular rate of pay
10 calculations.

11 3. Defendants failed to pay all regular and overtime hours due to unlawful practices
12 requiring off-the-clock work.

13 4. Defendants failed to provide, authorize, and/or permit the aggrieved employees to take
14 all meal and rest periods to which they were entitled.

15 5. As set forth in the PAGA notice, Defendants failed to maintain lawful meal and periods,
16 regular, overtime and paid sick leave policies. Defendants’ employment policies, practices, and
17 payroll administration systems enabled and facilitated these violations on a company-wide basis with
18 respect to the aggrieved employees.

19 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiffs Alexis Keiner and Mayra Bolanos

10. Plaintiff Keiner is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2023 to January 2024. Plaintiff Keiner worked as a Customer Service Representative.

11. Plaintiff Bolanos is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2021 to January 2024. Plaintiff Bolanos worked as a Customer Service Representative/Team Lead.

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

B. Defendants

13. Defendant Worldwide Flight Services, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

17. 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.

GENERAL ALLEGATIONS

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

19. Defendants engaged in an unlawful policy and practice of requiring off-the-clock work.

20. First, Defendants regularly mandated online training but failed to provide Plaintiffs and the aggrieved employees time to complete them during their shift due to understaffing and the high demands of the job.

21. As a result, Plaintiffs and the aggrieved employees were forced to complete these trainings at home while off-the-clock. The Plaintiffs and the aggrieved employees were not compensated for this time.

22. An illustrative example of this violation is shown in a text message conversation between Plaintiff Keiner and her supervisor where her supervisor sent Plaintiff Keiner a link to the training and promised her, she would get paid for it. Defendants never compensated Plaintiff Keiner for these hours.

23. Despite knowing how many hours were spent completing each training, Defendants failed to compensate Plaintiffs and the aggrieved employees for all hours worked, resulting in unpaid minimum wages.

24. Second, Plaintiffs and the aggrieved employees regularly worked off-the-clock and without the ability to clock-in when they began work due to an error in the timekeeping system.

1 25. Defendants' timekeeping system only allowed Plaintiffs and the aggrieved employees
2 to clock-in if they were scheduled at that time. However, due to constant changes in the flight
3 schedule, Plaintiffs and the aggrieved employees would often be called in earlier than their scheduled
4 time.

5 26. Specifically, this resulted in Plaintiff Bolanos working over 2 hours before the
6 timekeeping system allowed her to clock in. Defendants never paid Plaintiff Bolanos or the other
7 aggrieved employees for these hours.

8 27. Third, Defendants engaged in an unlawful policy and practice of editing employees'
9 time records to insert false meal period entries and avoid paying for all hours worked.

10 28. Plaintiffs and the aggrieved employees were often unable to take compliant meal
11 periods due to understaffing and the pressures to keep up with the high demands of the job. Each time
12 Plaintiffs and the aggrieved employees worked through their unpaid meal periods and Defendants
13 added a meal period where one was not taken, this resulted in unpaid hours worked.

14 29. Defendants failed to pay Plaintiffs and the aggrieved employees for all overtime hours
15 worked, resulting in unpaid overtime wages.

16 30. First, as stated in detail above Defendants had unlawful policies and practices of
17 requiring off-the-clock work and engaging in time editing.

18 31. Second, Defendants failed to pay overtime at the regular rate of pay. Plaintiffs and the
19 aggrieved employees earned commissions and other forms of non-discretionary compensation into
20 Plaintiffs' and the aggrieved employees' regular rate of pay. Instead, Defendants paid overtime at a
21 deficient rate.

22 32. Similarly, Defendants failed to factor these additional forms of non-discretionary
23 compensation into Plaintiffs' and the aggrieved employees' regular rate of pay with respect to paid
24 sick leave.

25 33. An illustrative example of this violation is shown on Plaintiff Keiner's wage statement
26 with a pay date of January 5, 2024. Here, Plaintiff Keiner earned 8 hours of paid sick leave and a
27 commission of \$553.00, yet her sick leave hours were improperly paid at Plaintiff Keiner's base rate
28 of \$17.00.

1 34. Plaintiffs and the aggrieved employees experienced missed, late, short, and interrupted
2 meal periods in order to keep up with the high demands of the job and understaffing.

3 35. For example, as a Customer Service Representative Plaintiff Keiner managed the ticket
4 counter and boarded flights. Due to lack of coverage and her inability to leave the ticket counter
5 unattended or miss boarding a flight, Plaintiff Keiner and other aggrieved employees often missed or
6 otherwise experienced non-compliant meal periods.

7 36. Additionally, Defendants engaged in a policy and practice of editing time records to
8 make it appear as if a compliant meal period was taken and avoid paying all meal period premiums,
9 regardless of the Plaintiffs' and the aggrieved employees' ability to take one.

10 37. Each time Defendants added a meal period where one was not taken, Defendants should
11 have paid Plaintiffs and the aggrieved employees meal period premiums.

12 38. To the extent Defendants paid meal period premiums, these were underpaid because
13 Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular
14 rate of pay.

15 39. An illustrative example of these underpayments is shown on Plaintiff Keiner's wage
16 statement with a pay date of January 5, 2024. Here, Plaintiff Keiner earned a commission of \$553.00
17 in the same pay period she earned a meal period premium, however, Defendants paid the meal period
18 premium at Plaintiff's base rate of \$17.00.

19 40. For the same reasons including understaffing and the high demands of the job, Plaintiff
20 and the aggrieved employees experienced non-compliant meal periods, they also experienced non-
21 compliant rest periods. Defendants further failed to pay rest period premiums as required by Labor
22 Code section 226.7 each time Plaintiff and the aggrieved employees experienced a non-compliant rest
23 period.

24 41. To the extent Defendant paid any rest period premiums in the same pay period that the
25 aggrieved employees earned shift differential or other forms of non-excludable remuneration,
26 Defendant underpaid these premiums by failing to properly factor all forms of non-discretionary
27 income into the regular rate of pay.

42. Because of these violations, Defendants failed to provide accurate, itemized wage statements to employees that included accurate gross or net wages earned as employees earned overtime, sick leave, and premiums which were not paid at the lawful rate due to the regular rate violations as well as the off-the-clock violations.

43. 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 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.

44. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendants' policy and practice of editing time records to reflect meal periods that were not taken.

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

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

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

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

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

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

20 53. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
21 penalties under the PAGA.

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

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

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

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

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

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

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

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 21 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
22 1198; IWC Wage Orders.
- 23 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
24 1198; IWC Wage Orders.
- 25 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
26 §§ 204, 204b, 210.
- 27 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
28 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 Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

61. 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 prays for judgment as follows:

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

Dated: May 28, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiffs

Alexis Keiner and Mayra Bolanos

EXHIBIT 1

Plaintiff Keiner'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
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

March 20, 2024

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

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

Worldwide Flight Services, Inc.
151 E Hangar Road
Suite 361
Jamaica, NY 11430

- 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 **ALEXIS KEINER** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

WORLDWIDE FLIGHT SERVICES, 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 Customer Service Representative from about September 12, 2023 to January 25, 2024. 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 Defendant 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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

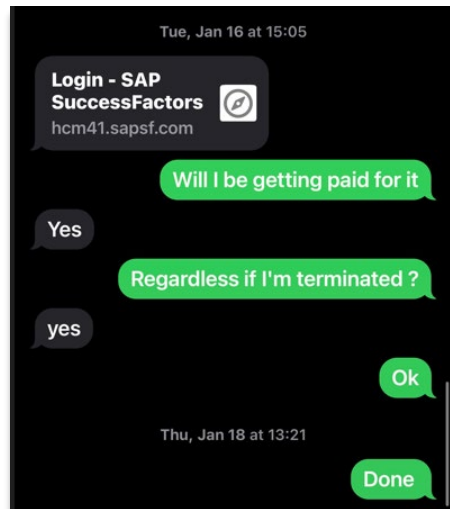
Defendant violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

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.

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

Defendant engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock, resulting in unpaid minimum wages. Specifically, Defendant required Plaintiff and the aggrieved employees to complete training while off-the-clock. Due to the high demands of the job and understaffing, Plaintiff and the aggrieved employees were unable to complete the training modules during their scheduled shift. Plaintiff and the aggrieved employees were not provided with additional time to complete these training modules, and as a result, were forced to complete them at home while off-the-clock resulting in unpaid hours worked. Defendant further failed to retroactively input the hours spent completing each training or otherwise compensate Plaintiff and the aggrieved employees.

Below is an example of a text message conversation between Plaintiff and her supervisor, where the training website link was sent to Plaintiff’s personal phone. Plaintiff responded “Done” on January 18th reporting to her supervisor that the training had been completed.



Despite knowing that this training was completed off-the-clock, and Defendant's ability to determine how many hours were spent on each training Defendant failed to compensate Plaintiff for the hours spent completing this training. On information and belief, this was a matter of common policy and practice.

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**

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 and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as a result of off-the-clock work, Defendant failed to compensate Plaintiff and the aggrieved employees for all overtime hours worked. As discussed above, Defendant engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete training modules while off-the-clock and not compensating them for those hours. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Second, to the extent Plaintiff and the aggrieved employees earned overtime in the same pay period they earned commissions or other non-excludable remuneration, based on Defendant’s failure to pay all meal period premiums and paid sick leave at the regular rate of pay as discussed in the respective sections below, Plaintiff believes and alleges Defendant failed to pay overtime at the regular rate of pay.

For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have (but failed to) pay overtime “at a rate 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.

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 provide paid sick leave in accordance with California law, rendering Defendant liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, as illustrated on Plaintiff’s wage statement below, Defendant improperly paid sick leave at his base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering the paid sick leave underpaid:

Earnings	Rate	Hours/ Units	This Period	Year-to-Date
Comm			553.00	553.00
MealPrem	17.00	1.00	17.00	0.00
MealPrem	33.19	3.00	99.57	116.57
Reg time	17.00	54.55	927.35	927.35
SICK	17.00	8.00	136.00	136.00
Gross Pay			1,732.92	1,732.92

Extract from Plaintiff’s Wage Statement with a Pay Date of January 5, 2024

Here, Plaintiff earned 8 hours of paid sick leave in the same pay period that she earned a \$553.00 commission, yet Plaintiff’s sick leave hours were paid at Plaintiff’s base rate of \$17.00. Defendant failed to properly factor in commissions and all other forms of non-excludable, non-discretionary remuneration into Plaintiff’s and, on information and belief, the other aggrieved employees paid sick leave rate when paid sick leave was earned in the same pay period as the commissions. Commissions were earned based on sales Plaintiff and the aggrieved employees would make at the ticket counter (i.e. seat upgrades and fees on overweight luggage).

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 et seq. was applied as a matter of common policy and practice to

aggrieved employees in those periods where they earned additional payments, commissions, bonuses, or other forms of non-excludable remuneration, such as the commission and also received 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 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. As a matter of common policy and practice, Defendant failed to pay Plaintiff and the other aggrieved employees meal periods at the regular rate of pay.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to the pressures to keep up with the high demands of the job and understaffing. Specifically, as a Customer Service Representative, Plaintiff managed the main ticket counter, boarded planes, and assisted customers constantly according to the flight schedule. Due to lack of coverage as a result of understaffing their inability to leave the ticket counter unattended or miss boarding a flight, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods.

When Defendant did not provide compliant meal periods, Defendant failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular rate of pay. An illustrative example of these underpayments is shown on Plaintiff's wage statement below:

CO 000000-000000 4BH SANW: SANW - WFS1 Z001: On-Site worker Worldwide Flight Services, Inc. 151 E HANGAR RD Jamaica NY 11430		Earnings Statement Employee ID 003026450 Page 001 of 001 Period Beg/End: 12/16/2023 - 12/29/2023 Advice Date: 01/05/2024 Advice Number: 0264500008 Batch Number: 000000002480 ALEXIS N KEINER 4440 TWAIN AVE 181 SAN DIEGO, CA 92120		
For inquiries on this statement please call: 888-421-2353 Total Hours Worked: 54.55 Basis of Pay: Hourly Pay Rate: 17.00				
Earnings	Rate	Hours/ Units	This Period	Year-to-Date
Comm			553.00	553.00
MealPrem	17.00	1.00	17.00	0.00
MealPrem	33.19	3.00	99.57	116.57
Reg time	17.00	54.55	927.35	927.35
SICK	17.00	8.00	136.00	136.00
Gross Pay			1,732.92	1,732.92
Tax Deductions				
FED Withholding Tax			186.94	186.94
Social Security Tax			107.44	107.44
Medicare Tax			25.13	25.13
CA Withholding Tax			42.50	42.50
CA Disability Tax			19.06	19.06
Tax Deduction Total			381.07	381.07

Other Deductions	This Period	Year-to-Date
Net Pay	1,351.85	1,351.85

Direct Deposit Summary	
XXXXXXXX5992	1,351.85

Time Off Balances	
Sick Balance	5.72

Extract from Plaintiff's Wage Statement from the Pay Period 12/16/2023-12/29/2023

Here, Plaintiff earned a commission of \$553.00 in the same pay period as he earned a meal period premium, however, Defendant failed to pay all meal period premiums at the regular rate of pay which would have factored in the non-excludable additional remuneration resulting in an increased rate. Defendant however, paid the meal period premium at Plaintiff's base rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code 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 failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated in the above sections, due to a high volume of customers, the high demands of the job, and understaffing Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant has a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

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). Defendant 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. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

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, sick leave, 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. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant 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

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, sick leave, 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, sick leave, and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. 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.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring employees to complete unpaid training.

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**

Defendant 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.”

Defendant 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. Defendant expected Plaintiff and aggrieved employees to utilize their personal cell phone to complete necessary work tasks. For example, Plaintiff was required to use her personal cell phone to complete trainings and access an application to track her daily procedures, such as taking photographs of the jet bridge to show that it was properly aligned with the aircraft door each time the plane was boarded as well as time stamp each part of the procedure as required by company policy.

Defendant did not provide reimbursement for the use of personal cell phones. Instead, Plaintiff and aggrieved employees bore the cost of these requirements, without reimbursement.

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 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. On January 26, 2024, Plaintiff, through her attorneys requested from Defendant a copy of his personnel records, time records, payroll records, and other various employment policies. Defendant’s deadline to produce the records was February 29, 2024. As of the date of this filing, Defendant has failed to produce time records. Defendant’s failure to provide Plaintiff’s time records violates Section 7(c) of the applicable IWC Wage Order.

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

Nicholas J. Ferraro

Cc Plaintiff Alexis Keiner

Counsel for Defendant

James C. Fessenden, Esq. - jfessenden@fisherphillips.com

Steven D. Eheart, Esq. - seheart@fisherphillips.com

Lauren M. Guggisberg, Esq. - lguggisberg@fisherphillips.com

EXHIBIT 2

Plaintiff Bolanos' 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
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

March 20, 2024

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

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

Worldwide Flight Services, Inc.
151 E Hangar Road
Suite 361
Jamaica, NY 11430

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

WORLDWIDE FLIGHT SERVICES, INC.

Defendant 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 Customer Service Representative/Team Lead from about June 2021 to January 2024. 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 Defendant 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 Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendant 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.

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

Specifically, Defendant engaged in an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to complete work while off-the-clock, resulting in unpaid minimum wages. Specifically, Defendant required Plaintiff and the aggrieved employees to complete training while off-the-clock. Due to the high demands of the job and understaffing, Plaintiff and the aggrieved employees were unable to complete the training modules during their scheduled shift. Plaintiff and the aggrieved employees were not provided with additional time to complete these training modules, and as a result, were forced to complete them at home while off-the-clock resulting in unpaid hours worked. Defendant further failed to retroactively input the hours spent completing each training or otherwise compensate Plaintiff and the aggrieved employees.

Additionally, Plaintiff and the aggrieved employees often worked without the ability to clock in when they began work due to an error in the timekeeping system. Due to constantly changing flight schedules, Plaintiff and the aggrieved employees would often be called in earlier or later than their scheduled shift, but the timekeeping system only allowed them to clock-in according to the pre-determined schedule. At times, Plaintiff worked over 2 hours before being able to clock in. These off-the-clock hours were never added later or compensated.

Second, Defendant had an unlawful practice of editing employees’ time records to insert false meal period entries. Plaintiff and the aggrieved employees often were unable to take compliant meal periods due to understaffing and the pressures to keep up with the high demands of the job. Each time Plaintiff and the aggrieved employees worked through their unpaid meal period and a meal period was added where one was not taken, this resulted in unpaid hours worked.

As a result, Plaintiff and, on information and belief, the other aggrieved employees were not compensated for all 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**

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 and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as a result of off-the-clock work, Defendant failed to compensate Plaintiff and the aggrieved employees for all overtime hours worked. When Plaintiff and aggrieved employees worked more than 8 hours, as a result of these policies and practices, this resulted in unpaid overtime wages.

Second, Defendant failed to pay overtime and double time at the “regular rate of pay.” When Defendant paid aggrieved employees commissions, bonuses, and other forms of remuneration. Defendant failed to include non-discretionary income in the overtime and double time rates in the pay periods when employees worked overtime hours.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate 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.

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 provide paid sick leave in accordance with California law, rendering Defendant liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, as illustrated on the below wage statement from Plaintiff, Defendant paid sick leave at the base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering the paid sick leave underpaid:

Earnings	Rate	Hours/ Units	This Period	Year-to-Date
GFTCGSRE				23.86
BONUS AE				100.00
Comm				15,947.00
DBL TIM	36.50	3.50	127.75	1,335.73
HOLIDAY				276.00
PNALTY	18.25	9.00	164.25	2,852.29
Reg time	17.25	78.79	1,359.13	15,955.67
LeadPrem	1.00	97.07	97.07	1,041.68
OT15	27.38	14.78	404.68	7,242.42
VACA				414.00
SICK	17.25	8.00	138.00	276.00
Gross Pay			2,290.88	45,464.65

Extract from Plaintiff's Wage Statement with a Pay Date of July 7, 2023

Here, Plaintiff earned a shift differential for being a Lead in the same pay period she earned paid sick leave hours. Defendant failed to properly factor in commissions and all other forms of non-excludable, non-discretionary remuneration into Plaintiff's and, on information and belief, the other aggrieved employees paid sick leave rate when earned in the same pay period.

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 et seq. was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, commissions, bonuses, or other forms of non-excludable remuneration, such as the commission and also received 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 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.

First, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with understaffing and the high demand of the job, such as constant flight scheduling changes. Defendant had a policy and practice of failing to pay all meal period premiums at the regular rate of pay to Plaintiff and, on information and belief, other aggrieved employees.

To the extent Defendant paid meal period premiums in the same pay period that the aggrieved employees earned bonuses, commissions, or other forms of non-excludable remuneration, Plaintiff believes and alleges that Defendant underpaid these premiums by failing to factor all forms of non-discretionary income into the regular rate of pay.

Second, as stated in the "Unpaid Hours Worked" section above, Defendant engaged in a policy and practice of unlawfully editing Plaintiff's and, on information and belief, other aggrieved employees' time records to make it appear as if a compliant meal period was taken, even when they were unable to take a compliant 30-minute meal break. Each time a meal period was added where one was not taken, Plaintiff and the aggrieved employees should have earned a meal period premium.

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 failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated in the above sections, due to a high volume of customers and understaffing, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant has a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

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). Defendant 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. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

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 also failed to timely pay those amounts to departing employees upon separation of employment. Additionally, Plaintiff’s final wages were not paid immediately upon termination. Plaintiff did not receive her final wages until about a week after termination. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant 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

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 statement.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring employees to complete unpaid training, unlawfully adjusting time records to inaccurately reflect meal breaks, and not properly adjusting time records to accurately reflect the hours worked due to the timekeeping system not registering schedule changes due to flight changes.

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**

Defendant 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.”

Defendant 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, and costs, and as a matter of policy and practice.

First, Defendant expected Plaintiff and aggrieved employees to utilize their personal cell phones to complete necessary work tasks. For example, Plaintiff was required to use her personal cell phone to complete training and take work calls. Defendant did not provide reimbursement for the use of personal cell phones. Instead, the Plaintiff and aggrieved employees bore the cost of these requirements, without reimbursement.

Second, Plaintiff was erroneously paying union dues from her paycheck due to an error in the system which listed her in a position that was covered by the union. As a Customer Service Representative, Plaintiff was not covered by the union and did not receive all reimbursements on her wage statements.

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

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,



Nicholas J. Ferraro

Cc Plaintiff Mayra Bolanos

Counsel for Defendant

James C. Fessenden, Esq. - jfessenden@fisherphillips.com

Steven D. Eheart, Esq. - seheart@fisherphillips.com

Lauren M. Guggisberg, Esq. - lguggisberg@fisherphillips.com