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Attorneys for Plaintiff Fernanda Benevides

Assigned for All Purposes
Judge Lon F. Hurwitz
Dept. CX103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

FERNANDA BENEVIDES, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

S.I. MANAGEMENT, LLC; STOR-IT COSTA
MESA, LLC; STOR-IT DOWNEY MANAGER,
LLC; STOR-IT LONG BEACH, LLC; STOR-IT
PROPERTIES, INC; STOR-IT PROPERTIES,
LLC; STOR-IT VAULT, LLC; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2024-01400577-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff FERNANDA BENEVIDES, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants S.I. MANAGEMENT, LLC; STOR-IT COSTA MESA,
4 LLC; STOR-IT DOWNEY MANAGER, LLC; STOR-IT LONG BEACH, LLC; STOR-IT
5 PROPERTIES, INC; STOR-IT PROPERTIES, LLC; STOR-IT VAULT, LLC; and DOES 1 through
6 50, inclusive (collectively “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. Plaintiff brings this representative action under the Private Attorney Generals Act of
9 2004 (“PAGA”) for Defendants’ systemic violations of the California Labor Code and IWC Wage
10 Orders against herself and other aggrieved employees.

11 2. Defendants violated the aggrieved employees’ rights under California labor law by
12 failing to pay all overtime, sick leave, and unused vacation wages owed, failing to timely pay all wages
13 during and upon separation of employment, failing to reimburse all necessary business expenses,
14 failing to maintain accurate records, and failing to furnish accurate, itemized wage statements.

15 3. In particular, Defendants failed to include all nondiscretionary forms of compensation
16 into aggrieved employees’ regular rate of pay for overtime, sick leave, and vacation purposes.

17 4. Aggrieved employees incurred business expenses for the use of their personal cell
18 phones but Defendants did not fully reimburse them.

19 5. Plaintiff therefore seeks all civil penalties recoverable under PAGA for Defendants’
20 violations against her and other aggrieved employees.

21 **JURISDICTION & VENUE**

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

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

26 8. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
28

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

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

6 **PARTIES**

7 **A. Plaintiff Fernanda Benevides**

8 10. Plaintiff Benevides is an individual over 18 years of age who worked for Defendants
9 in California as a non-exempt employee from about October 20, 2021 to the present. Plaintiff worked
10 and works as a Relief Manager.

11 11. The State of California, via the Labor and Workforce Development Agency
12 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
13 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
14 in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
15 *Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024,
16 *as modified* Apr. 18, 2024), this PAGA claim is brought as a representative action.

17 **B. Defendants**

18 12. Defendant S.I. Management, LLC is a California limited liability company that
19 maintains operations and conducts business throughout the State of California, including in this
20 county.

21 13. Defendant Stor-It Costa Mesa, LLC is a California limited liability company that
22 maintains operations and conducts business throughout the State of California, including in this
23 county.

24 14. Defendant Stor-It Downey Manager, LLC is a Delaware limited liability company that
25 maintains operations and conducts business throughout the State of California, including in this
26 county.

1 15. Defendant Stor-It Long Beach, LLC is a California limited liability company that
2 maintains operations and conducts business throughout the State of California, including in this
3 county.

4 16. Defendant Stor-It Properties, Inc. is a California corporation company that maintains
5 operations and conducts business throughout the State of California, including in this county.

6 17. Defendant Stor-It Properties, LLC is a California limited liability company that
7 maintains operations and conducts business throughout the State of California, including in this
8 county.

9 18. Defendant Stor-It Vault, LLC is a California limited liability company that maintains
10 operations and conducts business throughout the State of California, including in this county.

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

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

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

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

GENERAL ALLEGATIONS

23. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to pay Plaintiff and other aggrieved employees at the proper rate of pay because they failed to include all non-discretionary bonuses, commissions, and other forms of qualifying remuneration in employees' regular rate of pay for overtime purposes.

24. For example, in Plaintiff's wage statement for the period of June 1 to June 16, 2023, Plaintiff earned a rental commission of \$37.50 and worked one hour of overtime. However, Defendants did not factor Plaintiff's commission into her overtime rate whatsoever. Rather, Defendants simply paid her 1.5 times her base hourly rate.

SI MANAGEMENT LLC 4100 Newport Place, Suite 810 Newport Beach, CA 92660	Period Beginning Date 6/1/2023	Pay Date 6/22/2023	Co. ZJI	Clock P	Home Dept 003
Fernanda Benevides [REDACTED]	Period Ending Date 6/16/2023	WGPS Advance Pay Date	File # 003075	Number 00240008	Worked In Dept 003
Gross Pay					\$ 828.00
Regular	Rate: 17.0000		Hours: 45.00		\$ 765.00
Overtime	Rate: 25.5000		Hours: 1.00		\$ 25.50
RENTAL COMM (field 3)					\$ 37.50
Total Hours Worked: 46					

Fig. 1, wage statement for the period of June 1 to June 16, 2023.

25. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As demonstrated above, Defendants failed to incorporate aggrieved employees' earned bonuses and other qualifying forms of remuneration into their regular rate of pay for overtime purposes. Similarly, Defendants failed to incorporate all forms of compensation into aggrieved employees' rate of pay for sick leave and meal and rest premiums.

26. Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. As described above, Defendants failed to incorporate aggrieved employees' earned bonuses, commissions, and other qualifying forms of remuneration into their

overtime and sick leave rates of pay. Similarly, Defendants failed to incorporate all compensation into aggrieved employees' final rate of pay for vacation pay.

27. Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable).

28. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this Complaint. As described above, Defendants failed to pay overtime and sick leave wages at the proper rate of pay and did not timely pay all wages owed within seven days of the close of payroll. The underpaid amounts remain owing to this day.

29. Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this Complaint, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. As described above, Defendants failed to pay overtime and sick leave wages at the proper rate of pay and did not timely pay all wages to aggrieved employees upon separation of employment. These amounts remain owing to this day. Nevertheless, Defendants have also failed to pay all waiting time penalties owed.

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

31. Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this Complaint. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

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

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

13 34. Defendants required Plaintiff and the aggrieved employees to incur costs for work-
14 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and
15 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
16 as a matter of policy and practice. For example, Plaintiff and other aggrieved employees incurred
17 travel expenses when they had to work at different locations other than their home facilities, and used
18 their personal cell phones for work purposes but were not reimbursed for all required work expenses.

19 **FIRST CAUSE OF ACTION**

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

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

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

23 35. All outside paragraphs of this Complaint are incorporated into this section.

24 36. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
25 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
26 codified as Labor Code section 2698 *et seq.*:
27
28

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

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

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

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

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

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

25 42. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
26 penalties under the PAGA.

27 43. On or about **March 12, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
28 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of

Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- d. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- e. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- g. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

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

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For 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 Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- 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, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- g. For such other relief the Court deems just and proper.

Dated: May 17, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Lauren N. Vega
Attorneys for Plaintiff Fernanda Benevides

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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ATTORNEYS AT LAW
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619-693-7727
619-350-6855 fax
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March 12, 2024

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

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

S.I. Management, LLC
4100 Newport Place Dr
Suite 810
Newport Beach, CA 92660

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

Additional Addressees on Last Page

Dear LWDA Officer and Company Representatives:

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

**S.I. MANAGEMENT, LLC;
STOR-IT COSTA MESA, LLC;
STOR-IT DOWNEY MANAGER, LLC;
STOR-IT LONG BEACH, LLC;
STOR-IT PROPERTIES, INC;
STOR-IT PROPERTIES, LLC; and
STOR-IT VAULT, LLC**

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period as a non-exempt hourly employee in the position of Relief Manager from approximately October 20, 2021 to the present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for

Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Overtime

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants failed to pay Plaintiff and other aggrieved employees at the proper rate of pay because they failed to include all non-discretionary bonuses, commissions, and other forms of qualifying remuneration in employees' regular rate of pay for overtime purposes. For example, in Plaintiff's wage statement for the period of June 1 to June 16, 2023, Plaintiff earned a rental commission of \$37.50 and worked one hour of overtime. However, Defendants did not factor Plaintiff's commission into her overtime rate whatsoever. Rather, Defendants simply paid her 1.5 times her base hourly rate. *Fig. 1.*

SI MANAGEMENT LLC
4100 Newport Place, Suite 810
Newport Beach, CA 92660

Fernanda Benevides

Period Beginning Date
6/1/2023

Pay Date
6/22/2023

Co.
ZJI

Clock
P

Home Dept
003

Period Ending Date
6/15/2023

WGPS Advance Pay Date

File #
003075

Number
00240008

Worked In Dept
003

Gross Pay

\$ 828.00

Regular	Rate: 17.0000	Hours: 45.00	\$ 765.00
Overtime	Rate: 25.5000	Hours: 1.00	\$ 25.50
RENTAL COMM (field 3)			\$ 37.50

Total Hours Worked: 46

Fig. 1, wage statement for the period of June 1 to June 16, 2023.

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

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. As demonstrated above, Defendants failed to incorporate aggrieved employees’ earned bonuses and other qualifying forms of remuneration into their regular rate of pay for overtime purposes. Similarly, Defendants failed to incorporate all forms of compensation into aggrieved employees’ rate of pay for sick leave pay.

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

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

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

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

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. As described above, Defendants failed to incorporate aggrieved employees’ earned bonuses and other qualifying forms of remuneration into their overtime and sick leave rates of pay. Similarly, Defendants failed to incorporate all compensation into aggrieved employees’ final rate of pay for vacation pay.

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

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

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

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

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. As described above, Defendants failed to pay overtime and sick leave wages at the proper rate of pay and did not timely pay all wages owed within seven days of the close of payroll. The underpaid amounts remain owing to this day.

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

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

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

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

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. As described above, Defendants failed to pay overtime and sick leave wages at the proper rate of pay and did not timely pay all wages to aggrieved employees upon separation of employment. These amounts remain owing to this day. Nevertheless, Defendants have also failed to pay all waiting time penalties owed.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code sections 256 and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. For example, Plaintiff and other aggrieved employees incurred travel expenses when they had to work at different locations other than their home facilities, and used their personal cell phones for work purposes but were not reimbursed for all required work

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

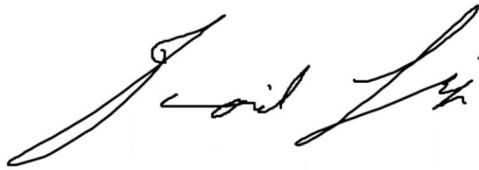
scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Lin", with a stylized flourish at the end.

David X. Lin

Cc Plaintiff Fernanda Benevides

ADDITIONAL ADDRESSEES

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