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

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

Plaintiffs,

vs.

CALIFORNIA CENTER FOR THE ARTS,
ESCONDIDO, FOUNDATION and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00021057-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff JACK BARNES, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED CLASS AND
3 REPRESENTATIVE ACTION COMPLAINT against Defendants CALIFORNIA CENTER FOR
4 THE ARTS, ESCONDIDO, FOUNDATION and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this class action on behalf of himself and all other similarly-situated
8 employees of Defendants for Defendants’ systematic California Labor Code and IWC Wage Order
9 violations.

10 2. As a result of Defendants’ policies, practices, and procedures, Defendants failed to pay
11 all minimum, regular, and overtime wages earned and owed, failed to provide Plaintiff and other
12 similarly-situated employees all meal and rest periods and pay associated premiums, failed to provide
13 all paid sick leave, failed to timely pay all wages during and upon separation of employment, failed to
14 pay waiting time penalties, failed to provide accurate, itemized wage statements, failed to reimburse
15 all necessary business expenses, failed to produce all employee records upon written request, and
16 engaged in unfair competition.

17 3. Defendants compelled Plaintiff and other similarly-situated employees to work off the
18 clock during meal periods and while completing online job training. Moreover, Defendants did not
19 include all service charges in employees’ regular rate of pay for the purposes of paying overtime,
20 premiums, and sick leave.

21 4. Therefore, Plaintiff seeks all available damages available to himself and other
22 similarly-situated employees for Defendants’ violations, including unpaid wages and premiums,
23 interest, penalties, attorneys’ fees and costs.

24 **JURISDICTION & VENUE**

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

27 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
28 the Superior Court.

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

8. 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 conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Jack Barnes

9. Plaintiff Barnes is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2017 to January 9, 2024. Plaintiff worked as a Bartender.

10. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiff brings the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

B. Defendants

11. Defendant California Center for the Arts, Escondido, Foundation is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. 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.

13. 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.

14. 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.

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

CLASS ALLEGATIONS

16. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of

class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

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

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

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

GENERAL ALLEGATIONS

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

21. Defendants 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. Furthermore, aggrieved employees were sometimes required to work off the clock during their meal periods but were not compensated for this time.

22. Defendants failed to retroactively input the hours spent working or training off the clock or otherwise compensate Plaintiff and the aggrieved employees for this time.

23. As a result of the work and training Plaintiff and other aggrieved employees had to do off the clock, Defendants failed to compensate the aggrieved employees for all overtime hours worked when they worked more than 8 hours in a day or 40 hours in a week.

24. When Defendants did pay overtime wages, they failed to pay overtime and double time at the proper “regular rate of pay.” Defendant failed to include all non-discretionary income in the overtime and double time rates in the pay periods when employees worked overtime hours.

25. Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate rather than at 1.5. 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.

26. For example, on August 27, 2021, Plaintiff received a \$500 bonus, worked 13.92 hours at his base rate of \$14.00/hour, and 1.73 hours of overtime at a rate of \$21.00/hour. During this pay period, Plaintiff earned a Bonus of \$500.00 that was not factored into Plaintiff’s overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate of \$14.00, rather than 1.5x the regular rate of pay which would have factored the \$500.00 bonus. To the extent other aggrieved employees earned

1 commissions, bonuses or other forms of remuneration each must be factored into the regular rate of
2 pay during the statutory period, Defendants violated the Labor Code accordingly.

3 27. Defendant failed to comply with California's paid sick leave laws with respect to the
4 aggrieved employees. To the extent aggrieved employees earned sick pay in the same pay period they
5 earned other forms of non-excludable remuneration, Defendant underpaid those wages due to the
6 regular rate of pay violations addressed above. Specifically, Defendant did not pay the aggrieved
7 employees sick leave "in the same manner as the regular rate of pay for the workweek in which the
8 employee uses paid sick leave, whether or not the employee actually works overtime in that
9 workweek," because the regular rate should have included bonuses, commission, and/or other forms
10 of non-discretionary remuneration.

11 28. Defendant maintained an unlawful policy and practice of failing to pay reporting time
12 wages to the aggrieved employees. Specifically, Plaintiff reported to work on several occasions and
13 was not put to work or was furnished with less than half of the scheduled shift. In these occasions,
14 Defendant failed to pay Plaintiff for half of the scheduled shift or two hours.

15 29. Defendant failed to provide all rest periods to which employees were entitled and failed
16 to pay rest period premiums to Plaintiff and other aggrieved employees. As discussed above, due to
17 understaffing and the high demands of the job, Plaintiff and other aggrieved employees were very
18 rarely, if at all, authorized or permitted to take all their rest periods.

19 30. As a matter of common policy and practice, Defendant failed to pay Plaintiff and the
20 aggrieved employees rest period premiums when they were unable to take rest periods. When Plaintiff
21 and other aggrieved employees experienced these missed and interrupted rest periods, Defendant
22 failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

23 31. Because Defendant failed to pay all wages and premiums in each pay period in which
24 such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b
25 (for weekly employees, as applicable). Defendant violated Labor Code sections 204 and 204b by
26 failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within
27 seven calendar days of the close of the payroll period, as a result of the policies and practices set forth
28

1 in this notice. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other
2 earnings on time each payday.

3 32. Defendant failed to pay all wages and premiums owed to aggrieved employees during
4 their employment as set forth in this notice, and also failed to timely pay those amounts to departing
5 employees upon separation of employment. Defendant did not pay waiting time penalties for the late
6 payments. As a result, Defendant violated Labor Code sections 201, 202, and 203.

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

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

18 35. Defendant required Plaintiff and the aggrieved employees to incur costs for work-
19 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and
20 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
21 as a matter of policy and practice. Plaintiff and the aggrieved employees were required to utilize their
22 personal cell phones and computers to complete necessary work tasks. For example, Plaintiff was
23 required to use his personal cell phone and computer to complete required training. Defendant did not
24 provide reimbursement for the use of personal cell phone or computer. Instead, the Plaintiff and
25 aggrieved employees bore the cost of these requirements, without reimbursement.

26 36. Finally, Plaintiff submitted a written request for his employee records to Defendants,
27 but Defendants failed to produce all records requested. Specifically, Defendants failed to produce
28 Plaintiff's wage statements for the years 2017 through 2022.

1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

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

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

6 38. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
8 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
9 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
10 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
11 liquidated damages).

12 39. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
13 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
14 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
15 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
16 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
17 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
18 Code § 1194.2.

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

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

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

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

11 56. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
12 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class
13 members, govern how Defendants were required to calculate paid sick leave.

14 57. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
15 of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their
16 sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the
17 regular rate of pay and/or calculated based on total wages earned).

18 58. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
19 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
20 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in
21 violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

22 59. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
23 members for underpaid sick leave wages, in addition to interest, attorneys’ fees, and costs.

24 **SIXTH CAUSE OF ACTION**

25 **UNTIMELY PAYMENT OF WAGES**

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

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

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

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

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

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

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

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

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

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

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

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

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

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

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

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

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

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

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

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE RECORDS

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

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

77. Plaintiff brings this cause of action exclusively *in an individual capacity*.

78. 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.”

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

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

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

82. Plaintiff requested from Defendants all records due under the IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.

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

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

88. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year

1 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
2 violations do not provide a private right of action.

3 89. Plaintiff and class members are entitled to injunctive relief against Defendants,
4 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
5 an ownership interest and to prevent future damage and the public interest under Business and
6 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
7 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
8 § 1021.5.

10 **TWELFTH CAUSE OF ACTION**

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

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

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

14 90. All outside paragraphs of this Complaint are incorporated into this section.

15 91. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
16 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
17 codified as Labor Code section 2698 *et seq.*:

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

21 92. Plaintiff reserves the right to amend, supplement, or add to this description of the
22 aggrieved employees, according to proof.

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

27 94. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,,
28 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor

1 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
2 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Section 2699.3. “

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

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

14 97. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
15 penalties under the PAGA.

16 98. On or about **April 29, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
17 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
18 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
19 violations.

20 99. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
21 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
22 forth herein (the “PAGA notice”).

23 100. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
24 written PAGA notice from the LWDA.

25 101. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
26 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
27 providing a description of any actions taken to cure the alleged violations.
28

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

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

- 8 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
9 1197, 1198; IWC Wage Orders.
- 10 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
11 Orders.
- 12 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 13 d. ***Unpaid Reporting Time Wages.*** Violation of Labor Code § 1198; IWC Wage
14 Orders.
- 15 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
16 1198; IWC Wage Orders.
- 17 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
18 §§ 204, 204b, 210.
- 19 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
20 Labor Code §§ 201, 202, 203, 256.
- 21 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 22 i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 23 j. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432,
24 1174, 1198.5; IWC Wage Orders.
- 25 k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
26 Wage Orders.

27 104. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
28 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants

pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

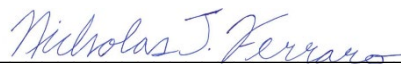
PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For recovery of damages in amount according to proof;
- i. For all recoverable pre- and post-judgment interest;
- j. For this action to be maintained as a representative action under the PAGA;
- k. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- l. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code §§ 218.5, 226, 1194, 2802, and 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- n. For such other relief the Court deems just and proper.

Dated: July 8, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Jack Barnes

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

April 29, 2024

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

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

**California Center for the Arts,
Escondido, Foundation**
340 N. Escondido Blvd
Escondido, CA 92025

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

CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO, FOUNDATION

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Bartender from about December 2017 to January 9, 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 Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

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

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

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

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

Defendants 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. Defendant further failed to retroactively input the hours spent completing each training or otherwise compensate Plaintiff and the aggrieved employees.

Furthermore, aggrieved employees were sometimes required to work off the clock during their meal periods but were not compensated for this time.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code 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.

First, as a result of off-the-clock training, 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 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.

For example, on August 27, 2021, Plaintiff received a \$500 bonus, worked 13.92 hours at his base rate of \$14.00/hour, and 1.73 hours of overtime at a rate of \$21.00/hour. During this pay period, Plaintiff earned a Bonus of \$500.00 that was not factored into Plaintiff’s overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate of \$14.00, rather than 1.5x the regular rate of pay which would have factored the \$500.00 bonus. To the extent other aggrieved employees earned commissions, bonuses or other forms of remuneration each must be factored into the regular rate of pay during the statutory period, Defendants violated the Labor Code accordingly.

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

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

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

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

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

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

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. To the extent aggrieved employees earned sick pay in the same pay period they earned other forms of non-excludable remuneration, Defendant underpaid those wages due to the regular rate of pay violations addressed above. Specifically, Defendant did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek,” because the regular rate should have included bonuses, commission, and/or other forms of non-discretionary remuneration.

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

Unpaid Reporting Time Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendant violated Labor Code sections 1198 and Section 5 (Reporting Time Pay) of the applicable IWC Wage Orders concerning reporting time wages with respect to the aggrieved employees.

Section 5 of the applicable IWC Wage Orders requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5 further requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Labor Code section 1198 authorizes enforcement of the reporting time pay provisions of the IWC Wage Orders.

Defendant maintained an unlawful policy and practice of failing to pay reporting time wages to the aggrieved employees. Specifically, Plaintiff reported to work on several occasions and was not put to work or was furnished with less than half of the scheduled shift. In these occasions, Defendant failed to pay Plaintiff for half of the scheduled shift or two hours.

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

Unpaid 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 discussed above, due to understaffing and the high demands of the job, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods.

As a matter of common policy and practice, Defendant failed to pay Plaintiff and the aggrieved employees rest period premiums when they were unable to take rest periods. When Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendant failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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. 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 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. Plaintiff and the aggrieved employees were required to utilize their personal cell phones and computers to complete necessary work tasks. For example, Plaintiff was required to use his personal cell phone and computer to complete required training. Defendant did not provide reimbursement for the use of personal cell phone or computer. Instead, the 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**

Defendants 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.

Defendants failed to provide all records upon Plaintiff’s request. Specifically, Defendant failed to provide Plaintiff’s wage statement for 2017-2022.

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 Jack Barnes

BriAnn Guillen - bguillen@artcenter.org
Defendant's Representative