

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

Attorneys for Plaintiff Tiare LaBistre

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

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

Plaintiffs,

vs.

CAREER SYSTEMS DEVELOPMENT
CORPORATION and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CU000135C

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff TIARE LABISTRE, 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 Defendant CAREER SYSTEMS DEVELOPMENT
4 CORPORATION and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action filed for wage and hour violations of the California Labor
7 Code.

8 2. Defendant underpaid the aggrieved employees’ wages by failing to compensate
9 Plaintiff and the aggrieved employees for all hours worked.

10 3. Plaintiff and the aggrieved employees were subjected to mandatory security and
11 COVID screenings while off-the-clock. Defendant did not compensate Plaintiff and the aggrieved
12 employees for off-the-clock time spent undergoing these security and COVID checks.

13 4. Plaintiff and the aggrieved employees were not always authorized or permitted to take
14 compliant meal and rest breaks, yet Defendant did not pay the aggrieved employees for meal or rest
15 period premiums.

16 5. Defendant did not reimburse Plaintiff and the aggrieved employees for necessary
17 expenses incurred in furtherance of the aggrieved employees’ job duties.

18 6. Defendant violated the Worker Adjustment and Retraining Notification (WARN) Act
19 by giving Plaintiff and the aggrieved employees less than 60 days’ notice of a mass layoff.

20 7. Defendant is further liable for derivative claims for wage statements, untimely
21 payment, and other associated violations.

22 8. Defendant’s employment policies and practices, as well as their payroll administration
23 systems, enabled and facilitated these violations on a company-wide basis with respect to the
24 aggrieved employees.

25 9. Plaintiff seeks to recover unpaid damages, plus associated penalties, interests,
26 attorney’s fees, and costs.

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

11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

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

A. Plaintiff Tiare LaBistre

15. 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.

1 **B. Defendants**

2 16. Defendant Career Systems Development Corporation is a Delaware corporation that
3 maintains operations and conducts business throughout the State of California, including in this
4 county.

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

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

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

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

23 **GENERAL ALLEGATIONS**

24 21. Plaintiff and the aggrieved employees worked for Defendant as non-exempt employees
25 compensated on an hourly basis.

26 22. Defendant maintained an unlawful policy and practice of requiring Plaintiff and
27 aggrieved employees to complete mandatory pre-shift security and COVID screenings while off-the-
28 clock. The screenings required Plaintiff and the aggrieved employees to wait in line, undergo a

1 temperature check, and pass through a metal detector, requiring them to arrive at least 20 minutes
2 before being permitted to clock in. This occurred every shift and pay period Plaintiff and the aggrieved
3 employees worked, resulting in unpaid regular and overtime wages across all aggrieved employees'
4 tenure. Additionally, if Plaintiff or the aggrieved employees clocked in before their scheduled time,
5 Defendant removed the overtime hours, or they would not approve the time card for that pay period.

6 23. Defendant further failed to pay Plaintiff and the aggrieved employees for all hours
7 worked, due to their unlawful policy and practice of requiring them to work through their unpaid meal
8 periods, but report a compliant meal period on their time card.

9 24. Defendant did not provide Plaintiff or the aggrieved employees with all sick leave
10 accrued based upon the actual hours that they worked. Plaintiff and the aggrieved employees worked
11 off-the-clock overtime hours that were not accounted for when calculating an employee's paid sick
12 leave.

13 25. Plaintiff and the aggrieved employees often suffered late, short, missed, and/or
14 interrupted meal periods due to staffing issues. Specifically, Plaintiff often worked through her meal
15 periods when she worked off-site to take students on shopping trips. On these occasions, Plaintiff was
16 forced to sign an unlawful meal period waiver for the day. Similarly, Plaintiff and the aggrieved
17 employees were not authorized or permitted to take all rest periods to which they were entitled.
18 Defendant failed to pay the aggrieved employees all meal and rest premiums owed when they
19 experienced such non-compliant meal and rest periods.

20 26. Plaintiff and the aggrieved employees were terminated without adequate prior notice
21 in violation of the Worker Adjustment and Retraining Notification (WARN) Act. The WARN Act
22 requires that employers provide employees with at least a 60-day notice before ordering a mass layoff,
23 relocation, or termination. However, Defendant notified Plaintiff and the aggrieved employees on
24 January 2, 2024, of a mass layoff that would be effective January 31, 2024. Plaintiff believes fifty or
25 more employees were also affected by the mass layoff and provided insufficient notice of the mass
26 layoff.

27 27. Defendant also required Plaintiff and the aggrieved employees to incur necessary,
28 work-related costs, without adequate reimbursement. Plaintiff and the aggrieved employees were

1 required to purchase their own classroom supplies. For example, Plaintiff was required to purchase a
2 \$400 projector that was needed for Defendant's program without reimbursement.

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

5 29. As a result of the foregoing issues, Defendant failed to provide accurate itemized wage
6 statements to the aggrieved employees each pay period as a result of the policies set forth above.
7 Defendant failed to list the correct "gross wages earned" as employees earned wages and premiums
8 that were not paid, resulting in an inaccurate reflection and recording of "gross wages earned" on those
9 wage statements. Likewise, Defendant failed to state on employee wage statements each pay period
10 the applicable hourly rates in effect and the number of hours worked at that rate as Defendant failed
11 to pay all wages and premiums owed to employees. The amounts are instead depreciated and underpaid
12 resulting in an inaccurate reflection on the paystub.

13 30. Further, Defendant's wage statements failed to accurately list employees' "total hours
14 worked" because they failed to account for the time Plaintiff and the aggrieved employees spent
15 undergoing Defendant's mandatory security and COVID screenings. Thus, Plaintiff and the aggrieved
16 employees cannot promptly and easily determine from the wage statement alone the wages paid or
17 earned without reference to other documents or information. These wage statement violations are
18 significant because they create confusion among Plaintiff and other aggrieved employees with respect
19 to what amounts were owed and paid, at what rate, the number of hours worked, and how those
20 amounts were or should be calculated. The wage statements reflect a false statement of earnings and
21 conceal the underpayments of employee wages.

22 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

3 39. On or about April 25, 2024, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendant) of
5 Defendant's alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

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

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

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

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

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

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
23 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
25 Orders.
- 26 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 27 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
28 1198; IWC Wage Orders.

- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Worker Adjustment and Retraining Notification (WARN) Act.*** Violation of Labor Code §§ 1402 and 1403.
- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

45. 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 Defendant 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

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

April 25, 2024

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

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

**Career Systems Development
Corporation**
75 Thruway Park Drive, Suite 100
West Henrietta, New York 14586

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

CAREER SYSTEMS DEVELOPMENT CORPORATION

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 Career Transition Readiness Specialist from about November 2006 to January 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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 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.

First, Plaintiff and the aggrieved employees were subject to unpaid security and Covid screenings before their shift. Defendants actively avoided paying all hours worked, by requiring they show up early to undergo screening and be at their post at their scheduled start time, at which point they were allowed to clock-in for the day. The screenings required Plaintiff and the aggrieved employees wait in line, undergo a temperature check, and pass through a metal detector, requiring they arrive *at least* 20 minutes of unpaid time before being permitted to clock-in..

The California Supreme Court has held “time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience was compensable as ‘hours worked’ within the meaning of wage order No. 7-2001” reasoning that “[a]ccording to the ‘hours worked’ control clause in the wage order, such employee[s] must be paid. *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038. Plaintiff and, on information and belief, other aggrieved employees were not properly compensated for the time it took them to undergo security checks, resulting in unpaid minimum wage for the associated hours worked.

If Plaintiff and, on information and belief, the aggrieved employees clocked in before their scheduled time, Defendants through their supervisors and Human Resources Department required they remove the overtime hours, or they would not approve the time card for that pay period.

Second, Defendants further failed to pay Plaintiff and the aggrieved employees for all hours worked, due to their unlawful policy and practice requiring them to work through their unpaid meal periods, but report a compliant meal period on their time card.

Each time Defendants added a 30-minute unpaid meal period where one was not taken, this resulted in unpaid off-the-clock 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 sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages for overtime hours worked, resulting in unpaid overtime wages.

To the extent Defendant’s unlawful policies and practices requiring off-the-clock work due to unpaid security screenings and working through unpaid meal periods resulted in unpaid off-the-clock work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime 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) (\$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.

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. On information and belief, Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendants failed to maintain the records required by Labor Code § 246 et seq. with respect to the paid sick leave. Defendants also failed to pay Plaintiff her sick leave that she was entitled to use for reasons stated under the statute.

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

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant meal periods. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods.

Specifically, Plaintiff often worked through her meal periods when off-site. For example, Plaintiff often took students on shopping trips where she was unable to take a duty-free meal period due to the lack of coverage. On these occasions, Plaintiff was forced to sign a meal

period waiver for the day. To the extent Plaintiff and the aggrieved employees were forced to sign a meal period waiver for shifts worked over 6 hours in a day, these were unenforceable and Plaintiff and the aggrieved employees were owed a meal period premium absent a compliant meal period.

When Plaintiff and aggrieved employees experienced these non-compliant meal periods, Defendants failed to pay all owed meal period premiums.

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

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Worker Adjustment and Retraining Notification (WARN) Act
Violation of Labor Code §§ 1402 and 1403

Defendants violated Labor Code sections 1402 and 1403 with respect to Plaintiff and the aggrieved employees.

Labor Code section 1402 requires an employer who failed to give notice before ordering a mass layoff, relocation, or termination is liable to each employee “back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee’s final rate of compensation, whichever is higher.” Labor Code section 1403 requires an employer who fails to give adequate notice be subject to a civil penalty of \$500 for each of the employer’s violations unless all employees are paid within three weeks from the date of the mass layoff.

In January 2024, Defendants terminated the employment of Plaintiff and all other aggrieved employees. Plaintiff and the aggrieved employees received notice there would be a layoff on January 2, 2024, effective January 31, 2024. Plaintiff and the aggrieved employees were given less than 60 days notice in violation of the California Worker Adjustment and Retraining Notification (WARN) Act. On information and belief, Plaintiff believed there were 50 or more employees at the time of the mass layoff.

Plaintiff and the aggrieved employees were terminated without adequate prior notice in violation WARN Act, codified as Labor Code sections 1400 through 1408 and are thus liable to Plaintiff and the aggrieved employees for penalties and wages pursuant to Labor Code sections 1402 and 1403.

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. Indeed, Defendants failed to pay all premiums, sick, regular, 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**

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

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

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

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

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

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of editing time records, requiring employees to work through their meal breaks and the unpaid time during the security screenings.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3

(\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants expected Plaintiff and aggrieved employees to purchase their own classroom supplies. For example, Plaintiff was required to purchase her own projector (approximately \$400) that was needed for the program. Defendants did not provide reimbursement for the classroom supplies Plaintiff and the aggrieved employees purchased. Instead, Plaintiff and aggrieved employees bore the cost of these requirements, without reimbursement.

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

Failure to 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,



Nicholas J. Ferraro

Cc Plaintiff Tiare LaBistre

Maggie Chernenkoff - mchernenkoff@careersystems.com
Defendant's HR Representative