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County of San Diego

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

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

Plaintiffs,

vs.

CALIFORNIA SPORTSERVICE, INC.;
DELAWARE NORTH COMPANIES
SPORTSERVICE, INC.; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2024-00028204-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT

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

REPRESENTATIVE ACTION COMPLAINT

Brown v. California Sportservice, Inc., et al.

1 Plaintiff AUDRA BROWN, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE ACTION
3 COMPLAINT against Defendants CALIFORNIA SPORTSERVICE, INC.; DELAWARE NORTH
4 COMPANIES SPORTSERVICE, INC.; and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

9 2. Defendants underpaid the aggrieved employees’ wages by failing to compensate the
10 Class Members for all hours worked.

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

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

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

19 6. Defendants are further liable for derivative claims for wage statements, untimely
20 payment, and other associated violations.

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

24 8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
25 attorney’s fees, and costs.

26 **JURISDICTION & VENUE**

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

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

11. 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.

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

PARTIES

A. Plaintiff Audra Brown

13. Plaintiff Brown is an individual over 18 years of age who has worked for Defendants in California as a non-exempt employee from about March 2023 to present. Plaintiff works as a Food and Beverage Concessions Stand Attendant

14. 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 to *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2d App. Dist.) ___ Cal. App. 5th ___ (Mar. 20, 2024, as modified Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

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

16. Defendant Delaware North Companies Sportservice, Inc. is a New York corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

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

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

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

19 **GENERAL ALLEGATIONS**

20 21. Plaintiff and the aggrieved employees work for Defendants as non-exempt employees
21 compensated on an hourly basis.

22 22. Defendants maintained an unlawful policy and practice of requiring Plaintiff and
23 aggrieved employees to complete mandatory pre-shift security checks while off-the-clock. This
24 occurred every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid
25 regular and overtime wages across all aggrieved employees' tenure. Employees were also periodically
26 required to undergo post-shift security checks while off the clock.

27 23. Defendants did not provide Plaintiff and the aggrieved employees with all sick leave
28 accrued based upon the actual hours that they worked. Plaintiff and the aggrieved employees worked

1 off-the-clock overtime hours that were not accounted for when calculating an employee's accrued paid
2 sick leave. Further, Defendants did not accrue Plaintiff and the aggrieved employees' paid sick leave
3 at the lawful rate. For example, during the pay period from December 25, 2023 to December 30, 2023,
4 Plaintiff worked 17.02 hours, but did not accrue any paid sick leave. Likewise, Plaintiff's worked
5 17.85 hours during the pay period from January 8, 2024 to January 14, 2024, but did not accrue any
6 paid sick leave.

7 24. Plaintiff and the aggrieved employees often suffered late, short, missed, and/or
8 interrupted meal periods due to employee responsibilities, tight scheduling, and the constant flow of
9 business. Similarly, Plaintiff and the aggrieved employees were not authorized and permitted to take
10 all rest periods to which they were entitled. Defendants failed to pay the aggrieved employees all meal
11 and rest premiums owed when they experienced such non-compliant meal and rest periods.

12 25. Defendants also required Plaintiff and the aggrieved employees to incur necessary,
13 work-related costs, without adequate reimbursement. Plaintiff and other aggrieved employees were
14 required to use their personal cell phones for work-related purposes without reimbursement.
15 Defendants also required Plaintiff and other aggrieved employees to purchase a clear purse in order to
16 bring their personal belongings with them to work and a company-approved jacket without
17 reimbursement.

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

20 27. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
21 statements to the aggrieved employees each pay period as a result of the policies set forth above.
22 Defendants failed to list the correct "gross wages earned" as the employees earned wages and
23 premiums that were not paid, resulting in an inaccurate reflection and recording of "gross wages
24 earned" on those wage statements. Likewise, Defendant failed to state on employee wage statements
25 each pay period the applicable hourly rates in effect and the number of hours worked at that rate as
26 Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead
27 depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

28. Further, Defendants' wage statements failed to accurately list employees' "total hours worked" because they failed to account for the time Plaintiff and other aggrieved employees spent undergoing Defendants' mandatory security checks. Thus, 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. These wage statement violations are significant because they create confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rate, the numbers of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underpayments of employee wages.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

32. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to this cause of 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.”])

33. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,, 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 34. 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 35. 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 36. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
15 penalties under the PAGA.

16 37. On or about **April 10, 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 38. 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 39. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
24 written PAGA notice from the LWDA.

25 40. 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 41. 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 42. 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, 1197,
9 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 Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
14 1198; IWC Wage 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. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 20 h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 21 i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
22 Wage Orders.

23 43. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
24 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
25 pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the
26 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, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- g. For such other relief the Court deems just and proper.

Dated: June 14, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Audra Brown

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

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April 10, 2024

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

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

California Sportservice, Inc.
250 Delaware Ave
Buffalo, NY 14202

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

Delaware North Companies Sportservice, Inc.
250 Delaware Ave
Buffalo, NY 14202

Dear LWDA Officer and Company Representatives:

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

CALIFORNIA SPORTSERVICE, INC.; DELAWARE NORTH COMPANIES SPORTSERVICE, INC.

Defendants(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 Stand Attendant from on or about March 2023 to present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid 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.

Specifically, Plaintiff and other aggrieved employees were subjected to mandatory security checks every time they arrived for their shift. Plaintiff was required to wait in a line before going through a metal detector and then having a security guard inspect her bag. Depending on how many employees were in line for the security check, the checks could take anywhere from five to fifteen minutes each time. Defendants did not provide Plaintiff and the aggrieved employees access to the machine used to clock in and out prior to these checks. Thus, these security checks were completed off-the-clock. This occurred every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid wages across all aggrieved employees’ tenure.

Additionally, on occasion, upon exiting the stadium at the end of their shift, Plaintiff and the aggrieved employees were randomly selected for an additional security check to inspect employees’ bags. These random checks occurred after Plaintiff and the aggrieved employees had clocked out. At no point in time were Plaintiff and the aggrieved employees compensated for time spent in these security checks.

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

To the extent Plaintiff and the aggrieved employees would have exceeded the daily or weekly overtime thresholds but artificially did not on account of Defendants’ failure to pay for time spent in security checks, Defendants underpaid overtime wages to aggrieved employees in those pay periods, resulting in a separate and distinct form of overtime violation.

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 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.

Due to employee responsibilities, tight scheduling, and the constant flow of business, Plaintiff and the aggrieved employees suffered late, short, missed, and/or interrupted meal periods. On information and belief, Defendants failed to pay employees all meal premiums owed when they experienced non-compliant meal 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.

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.

Plaintiff and the aggrieved employees experienced interrupted and missed rest periods due to employee responsibilities, tight scheduling, and the constant flow of business. Defendants failed to pay all rest premiums owed when employees did not receive compliant 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.

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. Specifically, Plaintiff and the aggrieved employees were required to use their personal cell phone devices to download and use the Oka

application in order to request time off and adjust timesheets. Defendants did not reimburse Plaintiff or the aggrieved employees for expenses incurred while using their personal devices. Plaintiff and, on information and belief, the aggrieved employees were only provided with a single t-shirt and nothing to wear on colder nights. If they wanted to wear a jacket, they were required to purchase one for \$40.00. Plaintiff and other employees were also required to purchase a clear purse so that they would be able to bring their personal belongings (e.g., wallet, phone, etc.) with them to work.

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

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.

First, employees did not accrue paid sick leave according to any of the accrual methods authorized by Labor Code section 246(b)(1). For example, as shown in the wage statement excerpts below, Plaintiff was not awarded any accrued sick leave time or fraction thereof despite working those pay periods.



Delaware North

California Sportservice, Inc

250 Delaware Ave

Buffalo, NY 14202-2285

Pay Begin Date

Dec 25, 2023

Pay End Date

Dec 31, 2023

Pay Group:

Weekly Hourly

Audra Brown

Emplid: 525703

Absence Plans

Description	Accrued	Reduced	Available
Sick Time Off Plan	0	0	9

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	17.02	537.94		80.83	11.00	446.11
YTD	17.02	537.94		80.83	11.00	446.11

Earnings

Description	Begin Date	End Date	Hours	Rate	Amount	YTD
CA Break Premium	12/25/23	12/31/23	1	18.81	18.81	18.81
Charge Tips	12/25/23	12/31/23	0	0	212.60	212.60
Overtime at 1.5	12/25/23	12/31/23	0.55	28.215	15.53	15.53
Regular	12/25/23	12/31/23	15.47	18.81	291.00	291.00
Earnings					537.94	537.94

Employee Taxes

Description	Amount	YTD
OASDI	33.35	33.35
Medicare	7.80	7.80
Federal Withholding	26.40	26.40
State Tax - CA	7.36	7.36
CA SDI - CASDI	5.92	5.92
Employee Taxes	80.83	80.83

Excerpt of Plaintiff's wage statement from the pay period of 12/25/2023 to 12/30/2023 wherein she worked 17.02 hours but did not accrue any sick leave time.



Delaware North

California Sportservice, Inc

250 Delaware Ave

Buffalo, NY 14202-2285

Pay Begin Date

Jan 8, 2024

Pay End Date

Dec 31, 2023

Pay Group:

Weekly Hourly

Audra Brown

Emplid: 525703

Absence Plans

Description	Accrued	Reduced	Available
Sick Time Off Plan	0	0	9

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	17.58	590.97		93.29	16.50	481.18
YTD	43.23	1,485.63		216.31	27.50	1,241.82

Earnings

Description	Begin Date	End Date	Hours	Rate	Amount	YTD
CA Break Premium					18.81	18.81
CA Meal Premium	1/8/24	1/14/24	1	18.81	18.81	37.62
Charge Tips	1/8/24	1/14/24	0	0	241.48	529.68
Holiday Worked At 1.50						243.50
Overtime at 1.5						15.53
Regular	1/8/24	1/14/24	17.58	18.81	330.68	621.68
Split Shift Xtra Hour Pay						18.81
Earnings					590.97	1,485.63

Employee Taxes

Description	Amount	YTD
OASDI	36.64	92.11
Medicare	8.57	21.54
Federal Withholding	32.76	66.76
State Tax - CA	8.82	19.56
CA SDI - CASDI	6.50	16.34
Employee Taxes	93.29	216.31

Excerpt of Plaintiff's wage statement from the pay period of 01/08/2024 to 01/14/2024 wherein she worked 17.58 hours but did not accrue any sick leave time.

Second, Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off the clock and overtime hours when they were required to undergo mandatory security checks that were not accounted for when calculating an employee's accrued paid sick leave. Thus, Plaintiff and aggrieved employees were not awarded the full amount of sick leave time they were owed based on actual hours worked.

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

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

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

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not

more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

As 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.

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 account for time Plaintiff and other aggrieved employees spent undergoing Defendants' mandatory security checks.

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.

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for

violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela Romo".

Mariela Romo

Cc Plaintiff, Audra Brown

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