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Attorneys for Plaintiff Daniel Bannon

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
7/22/2024 9:23:41 AM

Clerk of the Superior Court
By J. Siharath ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiffs,

vs.

ANAERGIA SERVICES LLC and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU002176C

REPRESENTATIVE ACTION COMPLAINT

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

Plaintiff DANIEL BANNON, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants ANAERGIA SERVICES LLC and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. Defendant failed to compensate Plaintiff and the aggrieved employees for all hours suffered or permitted to work in violation of the applicable IWC Wage Order

2. Defendant underpaid the aggrieved employees' wages by failing to include all forms of remuneration, including bonuses and on call pay, into the regular rate of pay calculation for overtime, sick pay, and premiums.

3. Defendant did not reimburse Plaintiff and the aggrieved employees for necessary expenses incurred in furtherance of the aggrieved employees' job duties.

4. Defendant's employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

5. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

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

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

8. 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.

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

PARTIES

A. Plaintiff Daniel Bannon

10. Plaintiff Bannon is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2018 to July 2023. Plaintiff worked as a Station Operator.

11. 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), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

12. Defendant Anaergia Services LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

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

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

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

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

GENERAL ALLEGATIONS

17. Plaintiff and the aggrieved employees worked for Defendant as non-exempt employees and were compensated on an hourly basis.

18. Defendant repeatedly underpaid Plaintiff and the aggrieved employees by not accounting for all hours they worked. Defendant required Plaintiff and the aggrieved employees to be on-call, however, Defendant did not compensate Plaintiff and the aggrieved employees for all time spent on-call. Additionally, Defendant employed an unlawful time shaving practice where it edited employees' timesheets to show less hours worked despite requiring Plaintiff and the aggrieved employees to complete those tasks they were not compensated for.

19. Similarly, Defendant required Plaintiff and the aggrieved employees to complete work off-the-clock. Consequently, Plaintiff and the aggrieved employees' time records did not reflect all hours worked. This practice resulted in unpaid minimum, regular, and overtime wages for Plaintiff and the aggrieved employees.

20. In addition to their hourly wages, Defendant paid Plaintiff and the aggrieved employees other forms of non-discretionary remuneration, including bonuses. However, when Defendant paid overtime to Plaintiff and the aggrieved employees, Defendant failed to include the employees' additional remuneration into the regular rate of pay. For example, during the pay period from December 4, 2022, to December 17, 2022, Plaintiff earned a bonus in the amount of $5,584.57 and

earned overtime wages. However, his bonus was not factored into his overtime rate. Instead, Plaintiff was paid at a rate of 1.5x his base rate of $49.16, rather than the 1.5x regular rate of pay which would have factored in the $5,584.57 bonus.

21. Plaintiff and the aggrieved employees routinely experienced missed or non-compliant rest periods due to job responsibilities. Defendant did not pay Plaintiff and the aggrieved employees due premiums for these deficient rest periods. However, to the extent paid, Defendant underpaid these premiums due to the regular rate miscalculation specified above. Thus, these practices resulted in an underpayment of regular wages.

22. Defendant also unlawfully deducted reimbursements from Plaintiff and the aggrieved employees' wages. For example, Plaintiff's wage statement with a pay date of June 23, 2023, shows that the Year-to-Date expense reimbursements deducted from Plaintiff's wages totaled $916.52. Rather than reimburse employees for work-related expenses, Defendant unlawfully deducted those costs.

23. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment as a result of the regular rate underpayments.

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)

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

25. 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.

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

27. 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."])

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

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

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

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

32. On or about **May 16, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

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

b. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.

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

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

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

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

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.

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

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: July 22, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorneys for Plaintiff Daniel Bannon

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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ATTORNEYS AT LAW
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619-693-7727
619-350-6855 fax
ferrarovega.com

May 16, 2024

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

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

Anaergia Services LLC
705 Palomar Airport Road, Suite 200
Carlsbad, CA 92011

- 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 **DANIEL BANNON** ("Plaintiff") and all other "aggrieved employees" of the following "Defendant":

ANAERGIA SERVICES LLC

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

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

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

- BACKGROUND -

Defendant employed Plaintiff during the PAGA Period in the position of Site Operator from about August 2018 to July 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendant failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendant violated the Labor Code and IWC Wage Order Minimum Wage sections in several ways.

First, upon information and belief, Defendant required Plaintiff and aggrieved employees to be on-call at all times. Specifically, Plaintiff was on-call any time he was off from a shift. During these on-call periods, Plaintiff was severely restricted from participating in personal activities because Defendant expected responses to its inquiries or requests to return to work within one hour of contact. When on-call, Plaintiff was regularly required to return to the plant facility. At times, he was called back to the job site up to three times in one day and even fifteen times during one week. Despite on-call at time he was off his shift, Plaintiff's wage statements do not show on-call pay. Upon information and belief, Defendant did not pay Plaintiff and aggrieved employees for all hours they were on-call or reported to work while on-call, resulting in unpaid minimum wages.

Second, Defendant also failed to pay Plaintiff and aggrieved employees for all, off-the-clock hours worked. As explained above, Defendant maintained a policy requiring a response to its inquiries within one hour. Therefore, to adhere to Defendant's policy of quick responses, Plaintiff was required to take phone calls and respond Defendant's questions about the site operations he managed while he was off-the-clock. Defendant failed to compensate Plaintiff and the aggrieved employees for the time spent completing this work while off-the-clock, resulting in unpaid minimum wages.

Third, Defendant further failed to pay Plaintiff and the aggrieved employees for all hours worked, due to their unlawful policy and practice of editing Plaintiff's time sheets to show less hours worked than Plaintiff had worked. Defendant justified its time shaving practice by stating that they did not approve of all work that Plaintiff had completed despite either instructing him or expecting him to complete those duties. Thus, due to its time shaving practice, Defendant underpaid Plaintiff and aggrieved employees for all hours worked to Defendant's benefit.

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.

Unlawful Wage Deductions
Violation of Labor Code §§ 221 through 225

Defendant violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment. Labor Code section 223 states "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

Upon information and belief, Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. Rather, than reimbursing Plaintiff and aggrieved employees for costs incurred in furtherance of their job duties, Defendant deducted reimbursements from Plaintiff's wage statements. An example of the unlawful deduction is illustrated below:

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	070
KID	010048	PLNTOP	XN50P	0000250035	1

Earnings Statement

ADP

ANAERGIA SERVICES LLC
705 PALOMAR AIRPORT ROAD,SUITE 200
CARLSBAD,CA 92011
619-322-6150

Period Beginning: 06/04/2023
Period Ending: 06/17/2023
Pay Date: 06/23/2023

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 1
CA: 1

DANIEL J BANNON

Social Security Number: XXX-XX-0440

Earnings	rate	hours	this period	year to date
Regular	50.8800	80.00	4,070.40	46,200.70
Overtime	76.3200	16.00	1,221.12	18,142.20
Dbl Time	101.7600	1.00	101.76	2,327.72
Prior Ot	76.3200	2.00	152.64	152.64
HOLIDAY				1,586.88
HOT				442.44
SICK				1,628.16
VAC 120				407.04
VACATION				2,359.68
Gross Pay			**$5,545.92**	73,247.46

Deductions		this period	year to date
Statutory			
	Federal Income Tax	-575.51	7,763.05
	Social Security Tax	-343.84	4,541.34
	Medicare Tax	-80.42	1,062.09
	CA State Income Tax	-213.93	2,953.48
	CA SDI Tax	-49.92	659.23
Other			
	Short Trm Disb	-78.28	
	Supp. Life/ADD	-13.62	
	Tax Levy	-1,070.58	5,976.37
	Vol Accident	-6.60	
	401K	-554.59*	7,324.76
	Exp Reimb		-916.52
	Net Pay	**$2,558.63**	
	CHECKING 1	-2,558.63	

Net Check $0.00

*** Excluded from federal taxable wages**

Your federal taxable wages this period are $4,991.33
Your CA taxable wages this period are $4,991.33

Other Benefits and Information	this period	total to date
Max Elig/Comp	5,545.92	73,247.46
Sick	0.00	
Vacation	98.19	
401K Comp	5,545.92	73,247.46
401K Match	221.84	2,929.94
Totl Hrs Worked	97.00	

Important Notes
ER BUSINESS CONTACT PH# (760) 436-8870

BASIS OF PAY: HOURLY

Extract from Plaintiff's wage statement with a pay date of June 23, 2023, showing that the Year-to-Date expense reimbursements deducted from Plaintiff's wages totaled $916.52.

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 225.5 ($100/$200), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

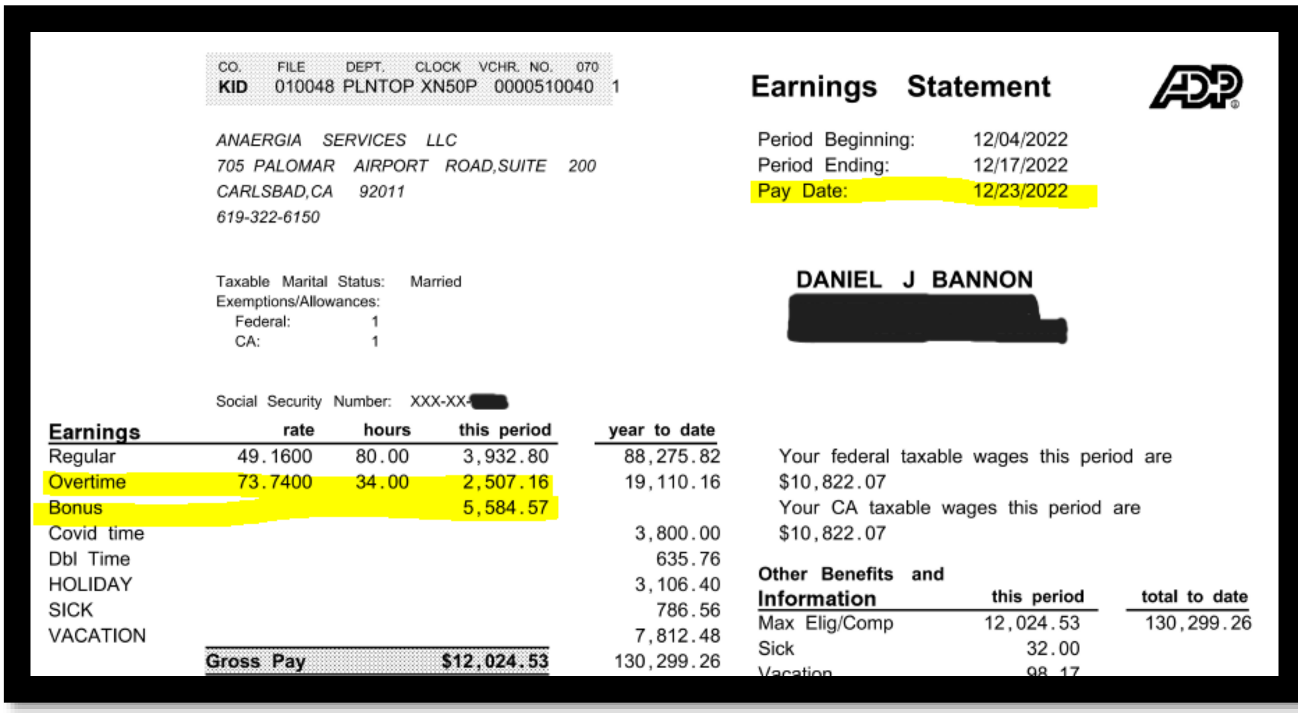
Defendant failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, to the extent Plaintiff and aggrieved employees' on-call time counts as hours worked, Defendant improperly excluded on-call time from Plaintiff and aggrieved employees' overtime-eligible hours each pay period. Due to the continuous support needed to operate the job site Plaintiff worked at, he was on-call at all hours outside his scheduled shifts. However, despite expecting that Plaintiff remain on-call at all hours he was off-duty, Defendant did not pay Plaintiff for all hours he was on-call. Moreover, Plaintiff was regularly called back to work more than once while he was on-call. Therefore, Plaintiff was entitled to call-back overtime pay for each time he was called back. However, Defendant failed to compensate him for those multiple call-backs, resulting in additional, unpaid overtime wages.

Second, as discussed in the "Unpaid Hours Worked" section above, Plaintiff and the aggrieved employees were required to be on-call at all hours and received phone calls to their personal cell phone while off-the-clock regarding work. To the extent the work-related communications resulted in work over eight (8) hours in a day or forty (40) hours in a week, this resulted in unpaid overtime hours.

Third, as discussed in the "Unpaid Hours Worked" section above, Defendant had an unlawful policy and practice of editing Plaintiff and, on upon information and belief, other aggrieved employees' time records to reduce the hours Plaintiff and aggrieved employees worked resulting in off the clock work. To the extent, this practice resulted in excluding work over eight (8) hours in a day or forty (40) hours in a week, this resulted in unpaid overtime hours.

Fourth, to the extent Defendant paid overtime wages, Defendant underpaid those wages. Defendant failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Specifically, Defendant paid aggrieved employees non-discretionary bonuses and other forms of remuneration that Defendant failed to include in the "regular rate of pay" when employees earned overtime. An illustrative example of the regular rate of pay violation is found on Plaintiff's wage statement for the pay period from December 4, 2022 to December 17, 2022.



CO. FILE DEPT. CLOCK VCHR. NO. 070
KID 010048 PLNTOP XN50P 0000510040 1

Earnings Statement

ANAERGIA SERVICES LLC
705 PALOMAR AIRPORT ROAD,SUITE 200
CARLSBAD,CA 92011
619-322-6150

Period Beginning: 12/04/2022
Period Ending: 12/17/2022
Pay Date: 12/23/2022

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 1
CA: 1

DANIEL J BANNON
[redacted]

Social Security Number: XXX-XX-[redacted]

Earnings	rate	hours	this period	year to date
Regular	49.1600	80.00	3,932.80	88,275.82
Overtime	73.7400	34.00	2,507.16	19,110.16
Bonus			5,584.57	
Covid time				3,800.00
Dbl Time				635.76
HOLIDAY				3,106.40
SICK				786.56
VACATION				7,812.48
Gross Pay			$12,024.53	130,299.26

Your federal taxable wages this period are $10,822.07
Your CA taxable wages this period are $10,822.07

Other Benefits and Information	this period	total to date
Max Elig/Comp	12,024.53	130,299.26
Sick	32.00	
Vacation	98.17	

Extract from Plaintiff's Wage Statement for the Pay Period from December 4, 2022, to December 17, 2022, showing he earned a bonus of $5,584.57 in the same pay period he earned overtime wages.

During this pay period, Defendant paid a non-discretionary bonus of $5,584.57 that was not factored into Plaintiff's overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate of $49.16, rather than 1.5x the regular rate of pay which would have factored the $5,584.57 bonus.

For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have (but failed to) pay overtime "at a rate no less than ***one and one-half times the regular rate of pay*** for an employee" and "***twice*** the regular rate of pay" for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

To the extent other aggrieved employees earned bonuses or other forms of remuneration that were not factored into the regular rate of pay during the statutory period for the overtime rate, Defendant violated the Labor Code accordingly.

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

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

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

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

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

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

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

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

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

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

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

Upon information and belief, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to the pressures to keep up with the high demands of the job and understaffing. Specifically, Plaintiff suffered missed and interrupted meal periods due to insufficient coverage. He was often the only employee on site and did not have coverage to take his meal periods. Therefore, he regularly worked through meal periods or missed them altogether.

Upon information and belief, when Defendant did not provide compliant meal periods, Defendant failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. To the extent Defendant paid any meal period premiums, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in bonuses or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

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

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

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

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

Defendant failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated above "Unpaid Meal Period Premium" section, due to the high demands of the job, and understaffing Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant has a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

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

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

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

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

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

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

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

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

Defendant failed to pay all wages 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. Specifically, Defendant did not pay Plaintiff his final wages until the end of the payroll period, which was more than 72 hours after providing notice of terminating employment with Defendant. Moreover, Defendant did not compensate Plaintiff for mileage he incurred as a result of his employment. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant violated Labor Code sections 201, 202, and 203.

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

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

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

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

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

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant's policy and practice of making unauthorized edits to Plaintiff's time records to reduce his hours worked.

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.

<u>Unreimbursed Employee Expenses</u>
Violation of Labor Code §§ 2802, 2804

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

<u>Labor Code section 2802</u> 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)).

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

Defendant required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. Upon information and belief, Defendant required Plaintiff and aggrieved employees to use their personal cellphones to communicate with coworkers regarding work at the job site. However, upon information and belief, Defendant did not adequately reimburse Plaintiff and aggrieved employees for expenses incurred with cellphone use.

Further, upon information and belief, Defendant did not reimburse Plaintiff and aggrieved employees for all mileage incurred as part of their employment.

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.

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.

<u>Failure to Maintain Accurate Records</u>
Violation of Labor Code § 1174; IWC Wage Orders

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

<u>Labor Code section 1174</u> 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." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

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

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

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(g)

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

- LITIGATION HOLD NOTICE –

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

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

- CONCLUSION -

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

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

Sincerely,

Mariela Romo

Cc Plaintiff, Daniel Bannon

Laura Vanevic, Contracts Counsel for Defendant
Laura.Vanevic@anaergia.com