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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By S. Felix ,Deputy Clerk

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

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

Plaintiffs,

vs.

APREVA CORPORATION and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00023575-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff ROBERT RICHARDSON (“Plaintiff”), individually and on behalf of all others
2 similarly situated and the State of California under the Private Attorneys General Act brings this
3 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 APREVA CORPORATION and DOES 1 through 50, inclusive (collectively “Defendants”), alleging
5 as follows:

6 **INTRODUCTION**

7 1. This is class action brought under the under the California Code of Civil Procedure
8 section 382 for Defendants violations of the California Labor Code and Business Professions Code.

9 2. Defendants failed to pay Plaintiff and the class members all minimum and overtime
10 wages due to unlawful policies and practices requiring off-the-clock work.

11 3. Defendants underpaid Plaintiff’s and the class members wages by failing to include to
12 include all forms of remuneration including non-discretionary bonuses and other forms of non-
13 excludable remuneration into the regular rate of pay calculation for overtime, sick, and premium
14 wages.

15 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members
16 to take all meal and rest periods to which they were entitled.

17 5. Defendants further failed to reimburse Plaintiff and class members for all work-related
18 incurred expenses, including mileage.

19 6. Defendants’ employment policies, practices and payroll administration systems
20 enabled and facilitated these violations on a company-wide bases with respect to the class members.

21 **JURISDICTION & VENUE**

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

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

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

10. 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 Robert Richardson

11. Plaintiff Richardson is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 2021 to March 2024. Plaintiff worked as a Nurse.

12. 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.”]) Plaintiff brings this claim exclusively in a representative capacity to the maximum extent permitted by law.

B. Defendants

13. Defendant Apreva Corporation is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

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

CLASS ALLEGATIONS

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

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

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

- 1 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
2 steps to protect the class members' interests adequately and fairly; has no
3 interest antagonistic to other class members; and is represented by attorneys
4 who have substantial experience prosecuting, defending, resolving, and
5 litigating wage and hour class, collective, and representative actions in
6 California state and federal courts.
- 7 d. Superiority: A class action is superior to other means for adjudicating this
8 dispute. Individual joinder is impractical. Class treatment will allow for
9 common issues to be resolved in a single forum, simultaneously, and without
10 duplication of effort and expense.
- 11 e. Public Policy Considerations: Certification of this lawsuit as a class action
12 advances the State of California's strong public interest in ensuring its
13 approximately millions of employed residents are properly paid the wages they
14 earned for the hours they worked. Class actions provide a mechanism for
15 enforcement of labor laws and allow for vindication of employee rights by
16 unnamed class members.

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

21 **GENERAL ALLEGATIONS**

22 22. Defendants failed to pay Plaintiff and the class members at the lawful minimum wage
23 for all hours worked.

24 23. Defendants engaged in an unlawful policy of requiring off-the-clock work.

25 24. Due to the high demands of the job and understaffing, Plaintiff and the class members
26 regularly worked through their unpaid meal periods.

27 25. Additionally, Defendant regularly contacted Plaintiff and, on information and belief,
28 the class members outside of their working hours and while off-the-clock to discuss assignments for

1 the day or complete patient notes.

2 26. These practices resulted in failure to pay Plaintiff and the class members for all hours
3 worked.

4 27. To the extent that Defendants' unlawful off-the clock work policies resulted in unpaid
5 hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

6 28. Defendants failed to pay overtime at the regular rate of compensation.

7 29. Plaintiff and the class members earned additional forms of non-excludable
8 remuneration such as non-discretionary bonuses which Defendants failed to include in the overtime
9 rate when earned in the same pay period.

10 30. An illustrative example of Defendant's regular rate of pay violation as it relates to
11 overtime is shown on Plaintiff's wage statement with a pay date of October 21, 2022. In this pay
12 period, Plaintiff earned a bonus of \$1,200.00 and worked 11.54 overtime hours. However, Defendants
13 failed to pay Plaintiff at 1.5x his regular rate of pay which would have factored in this bonus, instead
14 paying him at 1.5x his base hourly rate.

15 31. For each overtime hour worked during the period in which Plaintiff and the class
16 members earned the additional forms of remuneration, Defendants should have (but failed to) pay
17 overtime "at a rate no less than one and one half times the regular rate of pay for an employee" and
18 "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code
19 section 510 and the IWC Wage orders.

20 32. Plaintiff and the class members regularly experienced missed, late, short, and
21 interrupted meal periods due to the high demands of the job and understaffing.

22 33. When Defendants did not provide compliant meal periods, Defendants failed to pay
23 Plaintiff and the class members all owed meal period premiums.

24 34. To the extent that Defendants paid any meal period premiums, Defendants failed to pay
25 them at the regular rate of pay because the premiums did not factor in bonuses and other non-
26 excludable additional remuneration.

27 35. Instead, Defendants paid these at Plaintiff and the class members' base rate or an
28 otherwise deficient rate.

36. Similarly, Defendants were not authorized or permitted to take rest periods as a result of understaffing and the high demands of the job.

37. Defendants further failed to pay all owed rest period premiums.

38. To the extent Defendants ever paid a rest and meal period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to Plaintiff and class members, which would have factored in employees' additional compensation that they received each pay period.

39. Likewise, Defendant failed to include bonuses when paying sick leave in the same pay period the additional remuneration was earned, resulting in regular rate of pay violation.

40. Defendants required Plaintiff and class member to incur necessary, work-related costs without reimbursement.

41. Specifically, Plaintiff and class members used their personal vehicles for work-related duties (i.e. traveling from one site to another) and were not reimbursed for gas mileage expenses, and other necessary expenses needed to carry out their responsibilities as Defendant's employees. Plaintiff and the class members submitted their reimbursement forms through the proper channels, but Defendants failed to provide reimbursement.

42. Because of these violations, Defendants failed to provide accurate itemized wage statements to class members that included the accurate gross and net wages earned, as the employees earned sick leave wages, overtime, and premiums, which were not paid at the lawful rate in light of the regular rate of pay violations.

43. 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 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.

44. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other class members worked due to Defendants' policy requiring

1 off-the-clock work.

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

4 **FIRST CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

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

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

8 46. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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1 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
2 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
3 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
4 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods”
5 sections of the applicable orders).

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

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

14 **FOURTH CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **Violation of Labor Code §§ 226.7 and 516**

17 59. All outside paragraphs of this Complaint are incorporated into this section.

18 60. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
19 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
20 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
21 employer’s failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
22 regular rate of compensation.

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

28 62. Further, Defendants willfully failed in their affirmative obligation to consistently pay

1 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
2 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
3 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

4 **FIFTH CAUSE OF ACTION**

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

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

7 63. All outside paragraphs of this Complaint are incorporated into this section.

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

14 65. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
15 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class
16 members, govern how Defendants were required to calculate paid sick leave.

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

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

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

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

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

8 77. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
9 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
10 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 226(e).

13 **EIGHTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

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

16 78. All outside paragraphs of this Complaint are incorporated into this section.

17 79. This cause of action is brought by a waiting time subclass pursuant to Labor Code
18 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
19 employment, and which further provide a private right of action to recover statutory waiting time
20 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
21 wages.

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

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

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

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

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

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

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 85. All outside paragraphs of this Complaint are incorporated into this section.

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

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

26 88. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,

and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

89. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

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

ELEVENTH 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)

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

92. 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.

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

94. 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."])

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

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

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

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

18 99. On or about **May 9, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
19 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
20 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
21 violations.

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

25 101. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
26 written PAGA notice from the LWDA.

27 102. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
28 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.

103. 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.*

104. 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. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

105. 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).

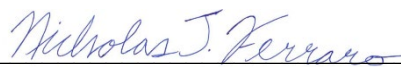
PRAYER

Plaintiff prays for judgment as follows:

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

Dated: July 15, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Robert Richardson

EXHIBIT 1

Notice of Labor Code Violations

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May 9, 2024

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

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

Apreva Corporation
805 N Whitthington Parkway
Ste 400
Louisville, KY 40222

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

APREVA CORPORATION

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

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Nurse from about July 2021 to March 2024. During their employment, Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

Due to the high demand of the job and understaffing, Plaintiff and the aggrieved employees routinely worked through their unpaid meal periods. For example, Defendants placed pressure on Plaintiff to continue working during his unpaid meal period in order to provide patient care, drive patients to and from comital hospitals, and continue triage nurse duties. On information and belief, other aggrieved employees were also required to perform work-related tasks during their unpaid meal period.

In addition, Defendants would call Plaintiff on his day off to complete nurse charting notes, this would take up to 20 min to over an hour of Plaintiff's time, uncompensated.

Lastly, Defendants regularly called Plaintiff two hours before his scheduled shift to discuss his assignment for the day. Defendants paid Plaintiff based on his scheduled hours not his actual hours worked resulting in unpaid wages.

Plaintiff and aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue. In other instances, Defendant compelled Plaintiff and aggrieved employees to clock back into work before their entitled meal period had concluded.

Each time Plaintiff and the aggrieved employees worked through their unpaid meal period of otherwise engaged in off-the-clock work, this resulted in unpaid 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 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. As discussed in the minimum wage section above, Defendants failed to pay Plaintiff and on information and belief, other aggrieved employees for the time completing nurse charting notes. First, as a result of Defendants’ timecard manipulation, Defendants failed to compensate Plaintiff and the aggrieved employees for all overtime hours worked. Defendant engaged in an unlawful policy and practice of editing Plaintiff and the aggrieved employees time records to move hours from one day to another to avoid paying Plaintiff and, on information and belief, the other aggrieved employees overtime and double time. Each time this practice resulted in unpaid overtime.

Second, Defendants failed to pay overtime and double time at the “regular rate of pay.” Defendants paid aggrieved employee’s bonuses and other forms of remuneration that Defendants failed to include in the overtime and double time rates in the pay periods when employees worked overtime hours.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of Defendants’ regular rate of pay violation as it pertains to overtime is shown below:

CO.	FILE	DEPT.	CLOCK	VCHR NO.
157	213405	739353		0000420067

Apreva Corporation
 805 N WHITTING PARKWAY
 LOUISVILLE, KY 40222

Filing Status: Head of Household

Earnings Statement
 Period Beginning: 10/02/2022
 Period Ending: 10/15/2022
 Pay Date: 10/21/2022

ROBERT D RICHARDSON


Earnings	rate	hours	this period	year to date	Continued	this period	year to date
Regular	36.0000	72.86	2,622.96		Net Check	\$	0.00
Overtime	54.0000	11.54	623.16		Important Notes		
CA WORKED LUNCH	0000	3.00	108.00		Rate Type: Hourly		
Bonus2			1,200.00				
Gross Pay			\$ 4,554.12	32,395.15			

Extract from Plaintiff's Wage Statement with a Pay Date of 10/21/2022

During this pay period, Plaintiff earned a bonus of \$1,200.00 that was not factored into Plaintiff's overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate of \$36.00, rather than 1.5x the regular rate of pay which would have factored in the \$1,200.00 bonus. To the extent other aggrieved employees earned bonuses or other forms of remuneration each must be factored into the regular rate of pay during the statutory period, Defendants violated the Labor Code accordingly.

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

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

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. Because Defendants failed to record and pay for all hours that Plaintiff and other aggrieved employees worked, Defendants failed to credit them all sick leave hours that they actually accrued.

To the extent Plaintiff and the aggrieved employees took paid sick leave in the same pay period they earned bonuses or additional remuneration, based on Defendants’ failure to pay overtime and premiums at the regular rate of pay, Plaintiff alleges and believes, Defendants failed to pay paid sick leave at the regular rate of pay.

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

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

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

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

Defendants failed to provide compliant meal periods. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the other aggrieved employees meal periods at the regular rate of pay.

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. Due to lack of coverage as a result of understaffing, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular rate of pay.

The extent that Defendants paid meal premiums, Defendants failed to pay them at the regular rate of pay because the premiums paid did not factor in bonuses, commissions, and other forms of remuneration like service charges and tips. Instead, Defendants only paid aggrieved employees for meal period premiums at their base hourly rate, in violation of California law. Plaintiffs' January 13, 2023 pay periods provides an illustrative example of Defendant's non-compliant policy and practice of underpaying meal period premiums:

CO.	FILE	DEPT.	CLOCK	VCHR. NO.
J57	213405	739353		0000020068

Apreva Corporation
805 N WHITTING PARKWAY
LOUISVILLE, KY 40222

Earnings Statement

Period Beginning: 12/25/2022
Period Ending: 01/07/2023
Pay Date: 01/13/2023

Filing Status: Head of Household

ROBERT D RICHARDSON

PO BOX 783

RAVENHILL, CA 94666

Earnings	rate	hours	this period	year to date	Continued	this period	year to date
Regular	36.0000	75.62	2,722.32		CHKDD1	4,452.28	
Overtime	56.9925	4.50	256.47		Net Check	\$ 0.00	
DOUBLE TIME	72.0000	19.58	1,409.76		Important Notes		
CA WORKED LUNCH	0000	2.00	72.00		Rate Type: Hourly		
PAID TIME OFF	36.0000	8.00	288.00		Other Benefits and		
Overtime	57.1260	15.10	862.60		Information		
DISC BONUS			800.00			this period	year to date
Gross Pay		\$	6,411.15	6,411.15			

Extract of Plaintiffs Wage Statement with the Pay Date 01/13/2023

Here, Plaintiff earned a bonus in the same period he earned overtime hours, however, Plaintiff's overtime rate was paid at less than the regular rate of pay. Defendants committed the same regular rate violation against the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

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.

Due to the reasons explained in the "Unpaid Meal Period" section above, including the high demand of the job and understaffing Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods. Defendants required Plaintiff and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. Defendants have 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**

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

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

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or

204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, 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.

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.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring employees to work off-the-clock.

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

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to use their personal vehicles for work-related purposes without reimbursement. Defendants required Plaintiff and the aggrieved employees to travel from one facility location to another when other facilities needed more staffing. The travel between locations occurred during a single shift. Plaintiff and the aggrieved employees drove from one facility to the next in their personal vehicles but were not reimbursed for all of their gas mileage. Plaintiff and other aggrieved employees would submit their mileage reimbursement request through Home Care Home based but would not receive full compensation for the mileage submitted.

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation

reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Robert Richardson

Jenesis Valentin - Jenesis.valentin@aprevahospice.com
Defendant's Representative