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Attorneys for Plaintiff Daniel Mejia-Camargo

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
7/9/2024 11:39:52 AM

Clerk of the Superior Court
By B. Ramirez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiffs,

vs.

SIX MARITIME INC., and DOES 1 through 50, inclusive,

Defendant.

Case No. 24CL000292C

REPRESENTATIVE ACTION COMPLAINT

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

Plaintiff DANIEL MEJIA-CAMARGO, 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 SIX MARITIME INC., and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

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

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

3. Plaintiff and the aggrieved employees were required to complete work while off-the-clock, resulting in unpaid minimum wages. Plaintiff and class members were required to arrive fifteen minutes early before every shift to receive "passdown" briefs. Defendant did not compensate Plaintiff and the aggrieved employees for the off-the-clock time spent receiving these "passdown" briefs.

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

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

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

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

JURISDICTION & VENUE

8. 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.

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

10. This Court has jurisdiction over Defendant because, upon information and belief, Defendant has 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.

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

PARTIES

A. Plaintiff Daniel Mejia-Camargo

12. Plaintiff Mejia-Camargo is an individual over 18 years of age who worked for Defendant in California as a non-exempt employee from about January 2022 to Present. Plaintiff worked as a Security Guard.

13. 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

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

15. 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.

16. 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.

17. 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.

18. 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

19. Plaintiff and the aggrieved employees work for Defendant as non-exempt employees compensated on an hourly basis.

20. Defendant maintained an unlawful policy and practice of requiring Plaintiff and aggrieved employees to complete mandatory pre-shift "passdown" briefs while off-the-clock. This occurred every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid regular and overtime wages across all aggrieved employees' tenure.

21. Defendant did not provide Plaintiff and the aggrieved employees with all sick leave accrued based upon the actual hours that they worked. Plaintiff and the aggrieved employees worked off-the-clock overtime hours that were not accounted for when calculating an employee's accrued paid sick leave. Further, Defendant failed to consistently provide employees with written notice of the amount of paid sick leave available. For example, during the pay period from July 16, 2023 to July 31, 2023, Defendant failed to identify any paid sick leave balance. As a result, once Defendant issued some wage statements with a paid sick leave balance, Plaintiff and the aggrieved employees were unable to verify if the sick leave balance was accurate.

22. Defendant failed to provide compliant meal and rest periods to Plaintiff and the aggrieved employees. Due to Defendant's understaffing issues, Plaintiff and the aggrieved employees were unable to be relieved from their work responsibilities to take a compliant meal or rest break. Further, Defendant required all employees to use the Deputy app on their personal cell phones to clock in and out for lunch and log rest breaks. However, the app required Plaintiff and the aggrieved employees to check that they had taken compliant meal and rest periods regardless of whether they had or not, in order to be able to clock out for the day. As such, Defendant did not pay Plaintiff and the aggrieved employees for meal or rest period premiums.

23. Defendant also required Plaintiff and the aggrieved employees to incur necessary, work-related costs, without adequate reimbursement. Plaintiff and the aggrieved employees were required to use their personal cell phones to download and use two applications to carry out their job duties. First, Plaintiff and the aggrieved employees were required to download the Deputy application for timekeeping purposes. Second, Plaintiff and the aggrieved employees were required to download the Podio application in order to submit site inspection reports.

24. These violations create derivative liability for failure to timely pay all wages owed each payday or upon separation of employment. Further, Defendant failed to pay Plaintiff and the aggrieved employees in a timely manner as required by Labor Code section 204(d). For example, in the pay period from May 1, 2023 to May 15, 2023, Defendant did not pay Plaintiff his wages until ten days after the end of the payroll period.

25. As a result of the foregoing issues, Defendant failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies set forth above. Defendant failed to list the correct "gross 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, 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.

26. Further, Defendant's wage statements failed to accurately list employees' "total hours worked" because they failed to account for the time Plaintiff and other aggrieved employees spent receiving Defendant's mandatory off-the-clock "passdown" briefs and off-the-clock work during uncompensated meal periods. Thus, Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. These wage statement violations are significant because they create confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rate, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and conceal the underpayments of employee wages.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

28. 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 Defendant in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

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

30. 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."])

31. 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. "

32. 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."

33. 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."

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

35. On or about **May 2, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendant) of Defendant's alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

38. 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.

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

40. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendant 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.

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

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

PRAYER

Plaintiff prays for judgment as follows:

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

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

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

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

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

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

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

Dated: July 9, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorney for Plaintiff Daniel Mejia-Camargo

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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May 2, 2024

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

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt

Six Maritime Inc.
1712 Logan Avenue
San Diego, California 92113

- 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 MEJIA-CAMARGO** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

SIX MARITIME INC.

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 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 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 -

Defendant employed Plaintiff during the PAGA Period in the position of Security Guard from about January 2022 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and

Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and aggrieved employees often suffered and were permitted to work while off-the-clock. Defendant required Plaintiff and the aggrieved employees to arrive to their scheduled shift fifteen minutes early to get the "passdown" brief from the last person on the shift. Despite requiring an earlier arrival, Plaintiff and aggrieved employees were not allowed to clock in more than five minutes before their scheduled shift start time. This practice resulted in off-the-clock work that Plaintiff and aggrieved employees were not compensated for, resulting in unpaid minimum 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 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 explained above in the "Unpaid Hours Worked/Minimum Wage" section, due to Defendant's practice of failing to compensate Plaintiff and the aggrieved employees for off-the-clock time spent working before their scheduled shift start time, Plaintiff and aggrieved employees who worked at least 8 hours in a workday, or 40 hours in a workweek, worked unpaid overtime.

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. Defendant failed to provide Plaintiff and aggrieved employees with an accurate count of accrued sick leave. Plaintiff and aggrieved employees worked off the clock, overtime hours that were not accounted for when calculating an employee's accrued paid sick leave. As a result, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

Additionally, Defendant failed to consistently provide employees with written notice of the amount of paid sick leave available. As illustrated below, Defendant provided Plaintiff and aggrieved employees with several wage statements that failed to identify any paid sick leave balance. As a result, once Defendant did issue some wage statements with a paid sick leave balance, Plaintiff and aggrieved employees were unable to verify if the sick leave balance was accurate.

PERSONAL AND CHECK INFORMATION

[redacted]

Soc Sec #: xxx-xx-xxxx **Employee ID:** 50076

Home Department: B Land / 1 Staff

Pay Period: 06/16/23 **to** 06/30/23
Check Date: 07/10/23 **Check #:** 13827

NET PAY ALLOCATIONS

DESCRIPTION	*THIS PERIOD ($)*	*YTD ($)*
Check Amount	0.00	0.00
Chkg 390	1244.30	20759.31
NET PAY	**1244.30**	**20759.31**

EARNINGS	*BASIS OF PAY*	*DESCRIPTION*	*HRS/UNITS*	*RATE*	*THIS PERIOD ($)*	*YTD HOURS*	*YTD ($)*
		Regular	72.0000	20.0000	1440.00	950.2500	21655.00
		Double-time				11.2500	540.00
		Holiday 1.5				10.0000	352.50
		Overtime				53.0000	1882.50
		Sick				16.0000	384.00
		Vacation				16.0000	320.00
		Total Hours	72.0000			1056.5000	
		Gross Earnings			1440.00		25134.00
		Total Hrs Worked	72.0000				

WITHHOLDINGS	*DESCRIPTION*	*FILING STATUS*	*THIS PERIOD ($)*	*YTD ($)*
	Social Security		89.28	1558.31
	Medicare		20.88	364.44
	Fed Income Tax	SMS	5.87	842.19
	CA Income Tax	SMI2 0 1	23.51	629.49
	CA Disability		12.96	226.23
	TOTAL		152.50	3620.66

DEDUCTION	*DESCRIPTION*	*THIS PERIOD ($)*	*YTD ($)*
	PX401 EEPRE	43.20	754.03
	TOTAL	43.20	754.03

Extract of Plaintiff's wage statement for check date July 10, 2023 with no paid sick leave accrual balance.

PERSONAL AND CHECK INFORMATION
Daniel Mejia-Camargo
[redacted]

Soc Sec #: xxx-xx-xxxx **Employee ID:** 50076

Home Department: B Land / 1 Staff

Pay Period: 07/16/23 **to** 07/31/23
Check Date: 08/10/23 **Check #:** 13993

NET PAY ALLOCATIONS

DESCRIPTION	*THIS PERIOD ($)*	*YTD ($)*
Check Amount	0.00	0.00
Chkg 390	1244.30	23414.75
NET PAY	**1244.30**	**23414.75**

EARNINGS

BASIS OF PAY	*DESCRIPTION*	*HRS/UNITS*	*RATE*	*THIS PERIOD ($)*	*YTD HOURS*	*YTD ($)*
	Regular	72.0000	20.0000	1440.00	1093.7500	24525.00
	Double-time				11.2500	540.00
	Holiday 1.5				18.0000	592.50
	Overtime				53.0000	1882.50
	Sick				16.0000	384.00
	Vacation				16.0000	320.00
	Total Hours	72.0000			1208.0000	
	Gross Earnings			1440.00		28244.00
	Total Hrs Worked	72.0000				

WITHHOLDINGS

DESCRIPTION	*FILING STATUS*	*THIS PERIOD ($)*	*YTD ($)*
Social Security		89.28	1751.13
Medicare		20.88	409.54
Fed Income Tax	SMS	5.87	880.70
CA Income Tax	SMI2 0 1	23.51	686.33
CA Disability		12.96	254.22
TOTAL		152.50	3981.92

DEDUCTION

DESCRIPTION	*THIS PERIOD ($)*	*YTD ($)*
PX401 EEPRE	43.20	847.33
TOTAL	43.20	847.33

Extract of Plaintiff's wage statement for check date August 10, 2023 with no paid sick leave accrual balance.

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>Unpaid Meal Period Premium Wages</u>
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.

<u>Labor Code section 512</u> 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. <u>Labor Code section 226.7</u> 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. <u>Labor Code section 1198</u> 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.

Defendant failed to provide compliant meal periods to Plaintiff and the aggrieved employees. Due to Defendant's staffing practices, Plaintiff and employees were unable to be relieved from their work responsibilities to take a compliant meal break. Due to understaffing, Plaintiff regularly worked through his meal periods. Due to this staffing failure, Plaintiff was also not allowed to leave the premises during his lunch because no one else was available to guard the area for him during meal periods.

Further, Defendant required all employees to use the Deputy app on their personal cell phone to clock in and clock out for lunch. However, the app required Plaintiff and the aggrieved employees to check that they had taken a compliant meal period, regardless of whether they had or not, in order to be able to clock out for the day. Despite the frequent meal period violations, Defendant did not pay Plaintiff and the aggrieved employees meal period premiums.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11

Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major 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 did not provide Plaintiff and the aggrieved employees with compliant rest periods. For similar reasons as their noncompliant meal periods, due to understaffing and work responsibilities, Plaintiff was required to work through rest periods. Defendant never provided Plaintiff with the adequate staffing to take a compliant rest period. Defendant did not pay Plaintiff and the aggrieved employees rest periods premiums when they suffered noncompliant rest periods.

In fact, Defendant's timekeeping software requires Plaintiff and aggrieved employees to select that they have taken a rest break, regardless of whether they were able to take that break, in order to clock out for the day.

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>Untimely Payment of Wages During Employment</u>
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 compensate Plaintiff and the aggrieved employees for all their hours worked, and meal and rest period premiums, therefore, Defendant failed to pay all wages and premiums in the pay period in which such wages were earned.

Further, Defendant failed to pay Plaintiff and aggrieved employees in a timely manner as required by Labor Code section 204(d). As illustrated in Plaintiff's wage statement below, Defendant did not pay Plaintiff his wages until ten days after the end of the payroll period.

PERSONAL AND CHECK INFORMATION
Daniel Mejia-Camargo
[redacted]
Soc Sec #: xxx-xx-xxxx **Employee ID:** 50076

Home Department: B Land / 1 Staff

Pay Period: 05/01/23 to 05/15/23
Check Date: 05/25/23 **Check #:** 13570

NET PAY ALLOCATIONS

DESCRIPTION	*THIS PERIOD ($)*	*YTD ($)*
Check Amount	0.00	0.00
Chkg 390	1363.98	16384.71
NET PAY	**1363.98**	**16384.71**

EARNINGS

BASIS OF PAY	*DESCRIPTION*	*HRS/UNITS*	*RATE*	*THIS PERIOD ($)*	*YTD HOURS*	*YTD ($)*
	Regular	32.2500	20.0000	645.00	712.2500	16895.00
	Regular	40.0000	24.0000	960.00		
	Double-time				11.2500	540.00
	Holiday 1.5				10.0000	352.50
	Overtime				48.7500	1755.00
	Sick				16.0000	384.00
	Total Hours	72.2500			798.2500	
	Gross Earnings			1605.00		19926.50
	Total Hrs Worked	72.2500				

WITHHOLDINGS

DESCRIPTION	*FILING STATUS*	*THIS PERIOD ($)*	*YTD ($)*
Social Security		99.51	1235.44
Medicare		23.27	288.93
Fed Income Tax	SMS	25.08	721.27
CA Income Tax	SMI2 0 1	30.56	518.99
CA Disability		14.45	179.36
TOTAL		192.87	2943.99

DEDUCTION

DESCRIPTION	*THIS PERIOD ($)*	*YTD ($)*
PX401 EEPRE	48.15	597.80
TOTAL	48.15	597.80

Extract of Plaintiff's wage statement for the pay period of May 1, 2023 to May 15, 2023 and a check date of May 25, 2023.

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 failed to accurately list employees' total hours worked, as the wage statement did not accurately include uncompensated time. Plaintiff and other aggrieved employees worked due to Defendants policy and practice of requiring employees to work off -the-clock during uncompensated meal periods.

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. As a supervisor, Plaintiff was required to drive to different sites, each ranging from four to twelve miles from each other, to perform site inspections. However, Defendant did not reimburse Plaintiff for mileage or gas expenses.

Moreover, Defendant required Plaintiff and aggrieved employees to use their personal cell phones to download and use two applications to carry out their job duties. First, Plaintiff and aggrieved employees were required to download the Deputy app for timekeeping purposes. Second, Plaintiff and aggrieved employees were required to download Podio in order to submit site inspection reports. Defendant did not reimburse Plaintiff and aggrieved employees for costs associated with personal cell phone usage to fulfill their job duties. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs 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.

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,

Mariela Romo

Cc Plaintiff Daniel Mejia-Camargo

Brook Barnes, Counsel for Defendant, bbarnes@swlaw.com
Kevin Brown, Counsel for Defendant, kmbrown@swlaw.com
Clint Engleson, Counsel for Defendant, cengleson@swlaw.com