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Attorneys for Plaintiff,
JAMES O’FALLIN on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By N. Argamosa ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JAMES O’FALLIN, an individual, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

FLUID COMPONENTS INTERNATIONAL
LLC, a Wyoming limited liability company,
and DOES 1-50, inclusive,

Defendant.

Case No.: 24CU007454N

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff JAMES O’FALLIN brings this PAGA representative action complaint on behalf
of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff JAMES O’FALLIN worked as an employee for Defendant FLUID COMPONENTS INTERNATIONAL LLC and Does 1-50 (collectively “Defendant”). Defendant manufactures thermal dispersion flow and level measurement instrumentation. Plaintiff JAMES O’FALLIN worked for Defendant work at its San Marcos, California, facility until April 2024. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly nonexempt employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendant failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of himself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of their claims pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours worked, including overtime hours worked; (2) failing to properly calculate overtime rate and failing to pay overtime wages; (3) failing to properly calculate and pay sick leave wages; (4) failing to pay all wages owed twice per month; (5) failing to pay minimum wage; (6) failing to provide rest breaks and cool-down rest periods; (7) failing to provide uninterrupted meal breaks; (8) failing to reimburse for required business expenses; (9) failing to pay wages due upon termination; (10) failing to provide safe working conditions; (11) failing to provide potable drinking water; (12) failing to provide accurate itemized wage statements. Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

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THE PARTIES

4. Plaintiff JAMES O'FALLIN is a resident of the State of California and worked as an employee for Defendant worked for Defendant work at its San Marcos, California, facility until April 2024.

5. Defendant FLUID COMPONENTS INTERNATIONAL LLC is a Wyoming limited liability company authorized to do business and doing business in California with the capacity to sue and to be sued, and doing business, in the county of San Diego, State of California.

6. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is legally responsible for the wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff will amend this complaint when their true names and capabilities are ascertained.

7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district because Defendant conducts business in this county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

1 10. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendant is qualified to do business in California and regularly conduct
3 business in California. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 11. During the relevant time-period, Defendant committed various violations of the
7 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 12. This representative action represents over one hundred current and former hourly,
10 nonexempt aggrieved employees.

11 13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 14. Plaintiff and all current and former employees within one year of filing this action to
15 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
16 code §2699(c).)

17 15. Defendant, and each of them, have committed the following violations of the California
18 Labor Code:

19 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

20 (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
21 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders)

22 16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 17. The Wage Orders define “hours worked” as “the time during which an employee is
25 subject to the control of an including all the time the employee is suffered or permitted to work,
26 whether or not required to do so.” Defendant has been engaged in many unlawful employment
27 practices which resulted in underpayment for hours worked each pay period.
28

1 18. Plaintiff and aggrieved employees worked an AWS schedule and were sometimes
2 required to communicate with their employer and perform other duties while off the clock. Plaintiff
3 and aggrieved employees were not paid any wages, including required overtime based on the labor
4 code, wages order, and AWS requirements, for this off the clock work.

5 19. Defendant's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197
6 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
7 226, 558, 1194 and 1194.2, Plaintiff and other Aggrieved Employees are entitled to recover
8 damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys'
9 fees, expenses, and costs of suit. As a result of these ongoing violations, Defendant is liable for,
10 among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq

11 **Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages**

12 (Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq*)

13 20. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
14 incorporate said paragraphs herein by reference.

15 21. Defendant pays nondiscretionary bonuses to its hourly, non-exempt employees. It is
16 well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase
17 the employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The
18 "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned
19 for that week. When an employee is later paid a bonus that is partly due to work performed in that
20 week, this additional pay must be added into the total compensation for the week, increasing the
21 employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

22 22. Defendant paid bonuses, including but not limited to nondiscretionary bonuses for
23 meeting quotas. These nondiscretionary bonuses were sometimes paid in cash, and
24 nondiscretionary bonuses were not incorporated into aggrieved employees' regular rate of pay for
25 purposes of calculating overtime, sick pay, or meal and rest period premium pay.

26 23. Defendant has failed to properly calculate and pay overtime compensation. Plaintiff
27 and other employees have been denied "the unpaid balance of the full amount of this... overtime
28 compensation" as required by Cal. Labor Code. §1194, and Defendant is liable for civil penalties

pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Defendant has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages- Regular Rate

(Cal. Labor Code §§246, 2698 *et seq.*)

24. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

25. Employers must calculate paid sick leave for non-exempt employees in one of two ways:

A. Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]

B. Paid sick time for nonexempt employees shall be calculated 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 of employment.

Labor Code § 246 (l)

26. Defendant paid bonuses, including but not limited to nondiscretionary bonuses for meeting quotas. These nondiscretionary bonuses were sometimes paid in cash, and nondiscretionary bonuses were not incorporated into aggrieved employees' regular rate of pay for purposes of calculating overtime, sick pay, or meal and rest period premium pay. Plaintiff and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

1 **Failure to Pay All Wages Owed Twice Per Month**

2 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

3 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 28. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
6 twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay all
7 wages earned to employees as a result of the unlawful employment policies and practices discussed
8 herein. As a result of these practices, aggrieved employees were underpaid for hours worked,
9 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
10 owed twice per month. Due to this failure, Defendant is liable under Labor Code §210 for failure
11 to pay wages as required by law.

12 **Failure to Pay Minimum Wage**

13 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

14 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 30. Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to
17 suffer or permit a California employee to work without paying wages at the proper minimum wage
18 for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage
19 Orders “hours worked” include “the time during which an employee is subject to the control of an
20 employer, and includes all the time the employee is suffered or permitted to work, whether or not
21 required to do so.”

22 31. During the applicable recovery period, Plaintiff and aggrieved employees were
23 suffered, permitted, and required to perform work by Defendant for which they received no pay.
24 The aforementioned acts by Defendant were undertaken with the intention of depriving aggrieved
25 employees of their earned wages. As a result of these ongoing violations, Defendant is liable for,
26 among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

1 **Failure to Provide Rest Breaks and Cool Down Rest periods**

2 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

3 32. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 33. Defendant has failed to maintain a compliant rest period policy and practice that
6 provides its employees with off-duty rest periods as required by California law.

7 34. Defendant did not authorize or permit all of its hourly employees to take at least a ten
8 minute timely rest period in which they were relieved of all duties, for every 4 hours of work, or
9 major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. Further,
10 Labor Code section 226.7, subdivision (c) provides:

11 A. If an employer fails to provide an employee a... recovery period in
12 accordance with a state, law, including, but not limited to an applicable statute
13 or applicable regulation, standard, or order of the Occupational Safety and
14 Health Standards Board, or the Division of Occupational Safety and Health, the
15 employer shall pay the employee one additional hour of pay at the employee's
16 regular rate of compensation for each workday that the meal or rest or recovery
17 period is not provided.

18 35. Plaintiff and aggrieved employees were not provided with sufficient cool-down
19 recovery periods when the workplace would get excessively hot. For example, Plaintiff describes
20 that the workplace would sometimes be excessively hot, well abot 85 degrees. On these hot days,
21 aggrieved employees did not receive sufficient cool down rest periods. Employers who fail to
22 provide required recovery periods are liable for damages under Labor Code 226.7.

23 36. When breaks were missed, late, or noncompliant, Defendant failed to pay the 1-hour
24 premium, as required. Plaintiff's wage statements do not show any rest period premium pay.
25 Because Defendant violated the Wage Order, Defendant is liable to Plaintiff and aggrieved
26 employees under Labor Code §1198. As a result of these violations, Defendant is liable for civil
27 penalties pursuant to Cal. Labor Code §2698 *et. Seq.*
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1 liable to Plaintiff and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698
2 et. seq

3 **Failure to Reimburse For Required Business Expenses**

4 (Cal. Lab. Code §§1198, 2802 and 2699 *et seq.*)

5 41. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 42. Labor Code §2802 requires employers to indemnify employees for necessary
8 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
9 Plaintiff and aggrieved employees were required to use their personal cell phones to communicate
10 with Defendant and Defendant's employees in furtherance of assigned tasks. Defendant failed to
11 reimburse employees for this necessary business expense and is therefore liable to Plaintiff and
12 aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

13 **Failure to Pay Wages Due Upon Termination**

14 (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*)

15 43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
16 incorporate said paragraphs herein by reference.

17 44. An employee who is discharged must be paid all of his or her wages, including accrued
18 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
19 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
20 Plaintiff at the time employment terminated.

21 45. Defendant willfully failed to pay employees who are no longer employed by it all
22 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
23 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
24 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
25 Cal. Lab. Code § 2698 *et. Seq.*

1 **Failure to Provide Safe Working Conditions – Excessive Heat**

2 (Cal. Labor Code §1198, Wage Orders)

3 46. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 47. Defendant’s workplaces would sometimes get unsafely hot.

6 48. The Wage Orders require:

7 A. The temperature maintained in each work area shall provide
8 reasonable comfort consistent with industry-wide standards for the nature of the
9 process and the work performed.

10 B. If excessive heat or humidity is created by the work process, the
11 employer shall take all feasible means to reduce such excessive heat or humidity
12 to a degree providing reasonable comfort.

13 49. As discussed above, Defendant’s facilities would sometimes become unsafely hot. By
14 violating the wage order, and therefore Labor Code §1198, Defendant is liable for civil penalties
15 pursuant to §2698 et. Seq.

16 **Failure to Provide Potable Drinking Water**

17 (Cal. Labor Code §2441.)

18 50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 51. California Labor Code §2441 requires employers to provide fresh, free, and pure
21 drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395
22 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and
23 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably
24 cool, and provided to employees free of charge.”8 CCR § 3457(c) further requires the provision
25 of potable drinking water and single-use cups. Plaintiff and aggrieved employees were not
26 provided with sufficient potable water within reasonable proximity to their workplace.

27 52. Pursuant to §2441, “Any violation of this section is punishable for each offense by a
28 fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by

1 imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal.
2 Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation
3 standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for
4 each violation.”

5 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
6 **Requirements**

7 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

8 53. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 54. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
11 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
12 and keep accurate records as required by §1174(d).

13 55. The statements provided to Plaintiff and aggrieved employees, and the records
14 maintained by Defendant, have not accurately reflected actual gross wages earned, including pay
15 for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay
16 at the correct rate, and pay for meal and rest period premium wages.

17 56. §226 (a) requires:

18 A. An employer, semimonthly or at the time of each payment of wages,
19 shall furnish to his or her employee, either as a detachable part of the check,
20 draft, or voucher paying the employee’s wages, or separately if wages are paid
21 by personal check or cash, an accurate itemized statement in writing showing
22 (1) gross wages earned, (2) total hours worked by the employee, except as
23 provided in subdivision (j), (3) the number of piece-rate units earned and any
24 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
25 deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the name of the
28 employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the
2 name and address of the legal entity that is the employer and, if the employer is
3 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
4 and address of the legal entity that secured the services of the employer, and (9)
5 all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee...

7 57. Such failures called injury to Plaintiff and others, by, among other things, impeding
8 them from knowing the true legal name of their employer, the total hours worked, and the amount
9 of wages to which they are and were entitled. Defendant knowingly and intentionally failed to
10 accurately itemize the gross wages earned, net wages earned, and total hours worked. Defendant
11 is liable for civil penalties pursuant to Labor Code § 2698 et seq.

12 58. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
13 employees to sign employment-related contracts and documents that contained unlawful terms of
14 employment.

15 **FIRST CAUSE OF ACTION**

16 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

17 **(California Labor Code §2698 et seq.)**

18 59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 60. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
21 during the applicable statutory period and suffered one or more of the Labor Code violations set
22 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
23 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
24 attorneys’ fees and costs.

25 61. Plaintiff seeks to recover the PAGA civil penalties through a representative action
26 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
27 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.
28

1 62. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
2 Code provisions:

- 3 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
4 Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558,
5 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders);
- 6 b. Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages (Cal.
7 Labor Code §§218, 510 *et. seq.*, 1194, 2698 *et seq.*);
- 8 c. Failure to Properly Calculate and Pay Sick Leave Wages- Regular Rate (Cal. Labor
9 Code §§246, 2698 *et seq.*);
- 10 d. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code §§204, 210,
11 and 2698 *et seq.*);
- 12 e. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
13 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- 14 f. Failure to Provide Rest Breaks and Cool-Down Rest Periods (Cal. Labor Code
15 §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- 16 g. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
17 558, 1198, 2699 *et seq.*);
- 18 h. Failure to Reimburse For Required Business Expenses (Cal. Lab. Code §§1198,
19 2802, 2699 *et seq.*);
- 20 i. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203,
21 256 and 2698 *et seq.*);
- 22 j. Failure to Provide Safe Working Conditions – Excessive Heat (Cal. Labor Code
23 §§1198);
- 24 k. Failure to Provide Potable Drinking Water (Cal. Labor Code §§2441);
- 25 l. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
26 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

27 63. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
28 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per

aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

64. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

65. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

66. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

67. At the time of each violation, Defendant employed one or more employees.

68. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

69. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

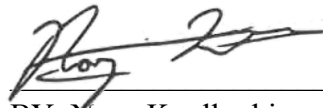
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
3 judgement against Defendant as follows:

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
5 determined at trial, but at least the jurisdictional amount of this Court;
- 6 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
7 and/or other applicable law;
- 8 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
9 law;
- 10 4. Pre-judgement and post-judgement interest as provided by law; and
- 11 5. Such other and further relief that the Court may deem just and proper.
- 12

13 DATED: August 19, 2024

KOUL LAW FIRM, APC

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16 BY: Nazo Koulloukian, Esq.
17 Attorneys for Plaintiff JAMES O'FALLIN, and all
18 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 13, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Fluid Components International LLC
1755 La Costa Meadows Drive
San Marcos, CA 92078

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: James O’Fallin
Employer: Fluid Components International LLC

Dear Sir or Madam:

Claimant and aggrieved employee James O’Fallin has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent him, and all other aggrieved employees in California, for wage and hour claims against his former employer, Fluid Components International LLC, (hereafter referred to as “Employer”). Employer hired, assigned, and paid Claimant to work at its San Marcos, California, facility. Mr. O’Fallin worked for Employer until April 2024.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit claimants to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2441, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by her, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Claimants need not have actually suffered all of the Labor Code violations that they alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those he may not have personally suffered.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders

The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Claimant and aggrieved employees worked an AWS schedule and were sometimes required to communicate with their employer and perform other duties while off the clock. Employees were not paid any wages, including required overtime based on the labor code, wages order, and AWS requirements, for this off the clock work.

Employer's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees, expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages

Cal. Lab. Code §§218, 510 *et. seq.*, 1194, 2698 *et seq*

Employer pays nondiscretionary bonuses to its hourly, non-exempt employees. It is well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase the employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer paid bonuses, including but not limited to nondiscretionary bonuses for meeting quotas. These nondiscretionary bonuses were sometimes paid in cash, and nondiscretionary bonuses were not incorporated into aggrieved employees' regular rate of pay for purposes of calculating overtime, sick pay, or meal and rest period premium pay.

Employer has failed to properly calculate and pay overtime compensation. Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194, and Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages- Regular Rate

Cal. Labor Code §§246, 2698 *et seq*

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated 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 of employment.

Labor Code § 246 (l)

Employer paid bonuses, including but not limited to nondiscretionary bonuses for meeting quotas. These nondiscretionary bonuses were sometimes paid in cash, and nondiscretionary bonuses were not incorporated into aggrieved employees' regular rate of pay for purposes of

calculating overtime, sick pay, or meal and rest period premium pay. Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Failure to Pay All Wages Owed Twice Per Month

Cal. Lab. Code §§204, 210, and 2698 *et seq.*

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage Orders “hours worked” include “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

During the applicable recovery period, Claimant and aggrieved employees were suffered, permitted, and required to perform work by Employer for which they received no pay. The aforementioned acts by Employer were undertaken with the intention of depriving aggrieved employees of their earned wages. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Provide Rest Breaks and Cool Down Rest periods

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute timely rest period in which they were relieved of all duties, for every 4 hours of work, or major

fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. Further, Labor Code section 226.7, subdivision (c) provides:

If an employer fails to provide an employee a... recovery period in accordance with a state, law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Employees were not provided with sufficient cool-down recovery periods when the workplace would get excessively hot. For example, Claimant describes that the workplace would sometimes be excessively hot, well about 85 degrees. On these hot days, aggrieved employees did not receive sufficient cool down rest periods. Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

When breaks were missed, late, or noncompliant, Employer failed to pay the 1-hour premium, as required. Claimant's wage statements do not show any rest period premium pay. Because Employer violated the Wage Order, Employer is liable to Claimant and aggrieved employees under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to consistently maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take a timely off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees sometimes experienced late, short, and/or interrupted meal periods due to the press of work.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law. Accordingly, Employer is liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

Cal. Labor Code §§1198, 2802, 2699 *et seq.*

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to use their personal cell phones to communicate with Employer and Employer's employees in furtherance of assigned tasks. Employer failed to reimburse employees for this necessary business expense and is therefore liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Safe Working Conditions – Excessive Heat

Cal. Labor Code §1198, Wage Orders

Employer's workplaces would sometimes get unsafely hot.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

As discussed above, Employer's facilities would sometimes become unsafely hot. By violating the wage order, and therefore Labor Code §1198, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Potable Drinking Water

(Cal. Labor Code §2441)

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge." 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups. Claimant and aggrieved employees were not provided with sufficient potable water within reasonable proximity to their workplace.

Pursuant to §2441, "Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment." Pursuant to Cal. Labor Code §6712, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation."

Failure to Provide Accurate Itemized Wage Statements & Violation of Record-Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the true legal name of their employer, the total hours worked, and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,


Nazo Koulloukian, Esq.
Attorney for Claimant