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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By G. Lopez, Deputy Clerk

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

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

Plaintiffs,

vs.

AGI POST, INC.; CARGO FORCE, INC.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU007784C

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff PETER SALES, on behalf of all others similarly situated and the State of California
2 under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE ACTION
3 COMPLAINT against Defendants AGI POST, INC.; CARGO FORCE, INC.; and DOES 1 through
4 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

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

8 2. Defendants underpaid the aggrieved employees’ wages by failing to compensate
9 Plaintiff and the aggrieved employees for all hours worked.

10 3. Plaintiff and the aggrieved employees were regularly required to complete mandatory
11 training while off-the-clock, without compensation.

12 4. Defendants underpaid Plaintiff and the aggrieved employees’ wages by failing to
13 include all forms of remuneration, including fringe benefit payments into the “regular rate of pay”
14 calculation for overtime, sick pay, and premiums.

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

17 6. Defendants’ employment policies, practices, and payroll administration systems
18 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
19 employees.

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

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

24 **JURISDICTION & VENUE**

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

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

manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

18. 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.

19. 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.

20. 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

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

22. Defendants underpaid Plaintiff and the aggrieved employees by failing to compensate them for work completed while off-the-clock. For example, Defendants required Plaintiff and the aggrieved employees to complete approximately ten hours of safety training at home, while off-the-clock. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to complete training at home without pay.

23. Further, Defendants maintained an unlawful policy and practice of editing employees' time records to show that compliant meal periods were taken regardless of their ability to take compliant meal periods. This unlawful practice resulted in an underpayment of regular wages to Plaintiff and the aggrieved employees each time they were clocked out for their meal period but forced to continue working while off-the-clock. To the extent that this off-the-clock work resulted in Plaintiff

1 and the aggrieved employees working over 8 hours in a day or over 40 hours in a week, Defendants
2 underpaid Plaintiff and the aggrieved employees for overtime wages.

3 24. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave
4 accrued based upon the actual hours that they worked. Because Defendants' unlawful time editing
5 practices and failure to compensate for off-the-clock work, all hours were not accounted for when
6 calculating an employee's accrued paid sick leave.

7 25. Further, Defendants failed to pay overtime at the "regular rate of pay." For example,
8 during the pay period from September 4, 2023 to September 17, 2023, Plaintiff earned a fringe benefit
9 payment totaling \$363.20 in the same period he worked overtime. However, Plaintiff's overtime was
10 paid at a deficient rate because Defendants failed to properly factor the fringe benefit payment into the
11 overtime calculation, instead electing to pay Plaintiff overtime at 1.5x his base rate of \$23.90.

12 26. Likewise, Defendants failed to pay sick pay at the "regular rate of pay." For example,
13 during the pay period from July 24, 2023 to August 6, 2023, Plaintiff earned a fringe benefit payment
14 totaling \$363.20 in the same pay period he earned paid sick leave. However, Plaintiff's sick leave was
15 paid at a deficient rate because Defendants failed to properly factor the fringe benefit payment into
16 Plaintiff's paid sick leave, instead electing to pay Plaintiff sick leave at his base rate of \$23.90.

17 27. Plaintiff is informed and believes these "regular rate of pay" violations were a matter
18 of Defendants' common payroll administration, susceptible to common proof at trial.

19 28. Plaintiff and the aggrieved employees routinely experienced missed, late, short, and
20 interrupted meal periods due to understaffing and the need to keep up with the high demands of the
21 job. For example, Plaintiff would regularly take non-compliant meal periods to ensure that he met his
22 work responsibilities by the strict deadlines imposed by Defendants.

23 29. Due to Defendants' unlawful policy and practice of altering employees' time records
24 to remove meal period penalties, Plaintiff and the aggrieved employees did not receive their owed
25 meal period premiums. However, to the extent that Defendants paid meal period premiums,
26 Defendants did not pay those premiums at the "regular rate of pay" by failing to include fringe benefit
27 payments when calculating meal period premiums payments.

30. Similarly, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted rest periods due to understaffing and the demands of the job. Further, Defendants maintained the unlawful policy and practice of failing to pay rest period premiums when non-compliant rest periods were taken.

31. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage statements to Plaintiff and Class Members each pay period as a result of the policies set forth above. Defendants failed to list the correct “gross wages earned” as 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, 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.

32. Further, Defendants' wage statements failed to accurately list employees' "total hours worked" because of the aggrieved employees' off-the-clock work that was not accounted for and Defendants' unlawful time editing that showed fewer hours worked than actually worked. Thus, Plaintiff and Class Members 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 Class Members 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.

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

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)

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

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

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

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

9 37. The State of California, via the Labor and Workforce Development Agency
10 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
11 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
12 files suit is always the real party in interest.”])

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

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

25 40. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

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

3 42. On or about **June 13, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

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

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

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

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

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

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
23 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
25 Orders.
- 26 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 27 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
28 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. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 13, 2024

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

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

AGI Post, Inc.
9130 S. Dadeland Blvd.
Miami, FL 33156

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

Cargo Force, Inc.
6705 Red Road, Suite 700
Coral Gables, FL 33143

Dear LWDA Officer and Company Representatives:

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

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Lead Forklift Driver from about November 2021 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants had an unlawful policy and practice of editing employees’ time records to show that compliant meal periods were taken regardless of whether they had actually taken a compliant meal period. This unlawful practice resulted in an underpayment of regular wages to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue working.

Plaintiff and other aggrieved employees were required to regularly complete mandatory trainings, while off-the-clock and without pay. Specifically, Plaintiff was required to complete approximately ten hours of safety training at home, off-the-clock. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to complete training at home without pay.

Further, as discussed in the “Unpaid Overtime” section below, Defendants maintained a practice and policy of failing to include fringe benefit payments and other forms of remuneration in the regular rate of pay when employees worked overtime in the same pay period fringe benefit payments were earned. As a result, Plaintiff and aggrieved employees were not adequately compensated for all wages earned.

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

Defendants failed to pay overtime at the “regular rate of pay.” Defendants paid Plaintiff and the aggrieved employees fringe benefits and other forms of additional remuneration which Defendants failed to include in the overtime rates in the pay periods when employees earned both. *See, e.g., Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901 (affirming “cash-in-lieu of benefits payments are not properly excluded” from the regular rate of pay). Case law is clear that employers who pay cash in lieu of benefits must include such payments in the regular rate of pay. *Id.*; *see also Local 246 Util. Workers Union v. Southern California Edison Co.*, (9th Cir. 1996) 83 F. 3d 292, 296 (holding cash payments made directly to employees were not excepted from the regular rate under the Health Insurance Exception because such payments were not made to a third party); *Bonner v. Metropolitan Security Services, Inc.* (W.D. Tex., Mar. 15, 2011) 2011 U.S. Dist. LEXIS 26251, Case No. SA-10-CV-937-XR (holding that cash health and welfare payments made directly by an employer to an employee under a contract governed by the Service Contract are not excludable from the “regular rate of pay”).

Specifically, Plaintiff and the aggrieved employees earned fringe benefits and other remuneration that Defendants did not include when calculating the overtime rate. An illustrative example of this regular rate of pay violation as it pertains to overtime is shown below:

Cargo Force, Inc. 9130 South Dadeland Blvd Suite 1801 Miami, FL 33156 +1 305-740-3252								
Peter Sales								
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number		
Peter Sales	Cargo Force, Inc.	107882	09/04/2023	09/17/2023	09/22/2023			
	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay		
Current	78.10	2,445.50	0.00	546.15	0.00	1,899.35		
YTD	1,512.15	45,404.92	0.00	9,961.98	0.00	35,442.94		
Earnings			Employee Taxes					
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Double Time			0		81.26	OASDI	151.63	2,815.11
Fringe	09/04/2023 - 09/17/2023	80	4.54	363.20	6,834.77	Medicare	35.46	658.37
Regular Hourly	09/04/2023 - 09/17/2023	76.05	23.9	1,817.60	34,855.80	Federal Withholding	240.34	4,335.67
OT	09/11/2023 - 09/17/2023	2.05	35.85	73.50	1,572.19	State Tax - CA	96.71	1,744.19
Sick Pay			0		932.10	CA SDI - CASDI	22.01	408.64
Un-Worked Holiday	09/04/2023 - 09/17/2023	8	23.9	191.20	736.84			
Holiday Worked DT			0		391.96			
Earnings				2,445.50	45,404.92	Employee Taxes	546.15	9,961.98

Extract from Plaintiff's Wage Statement with a Pay Date of 09/22/2023.

Here, Plaintiff earned a fringe benefit payment itemized as "Fringe" totaling \$363.20 in the same period he worked overtime. However, Plaintiff's overtime was paid at a deficient rate because Defendants failed to properly factor the fringe benefit payment into the regular rate of pay. Upon information and belief, this company-wide policy and practice of not including fringe payments when calculating the regular rate of pay was applied to other aggrieved employees and is a matter of Defendants' common payroll administration.

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. To the extent the aggrieved employees earned sick pay in the same pay period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate should have included fringe benefits and all other forms of additional non-excludable remuneration. An illustrative example of this regular rate of pay violation as it pertains to sick time is shown below:

Cargo Force, Inc. 9130 South Dadeland Blvd Suite 1801 Miami, FL 33156 +1 305-740-3252								
Peter Sales								
Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number		
Peter Sales	Cargo Force, Inc.	107882	07/24/2023	08/06/2023	08/11/2023			
	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay		
Current	77.45	2,434.14	0.00	541.66	0.00	1,892.48		
YTD	1,269.35	38,237.15	0.00	8,389.96	0.00	29,847.19		
Earnings			Employee Taxes					
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Double Time			0		81.26	OASDI	150.91	2,370.70
Fringe	07/24/2023 - 08/06/2023	80	4.54	363.20	5,747.21	Medicare	35.30	554.44
Regular Hourly	07/24/2023 - 08/06/2023	75.05	23.9	1,793.70	29,224.95	Federal Withholding	237.84	3,651.78
OT	07/24/2023 - 07/30/2023	2.4	35.85	86.04	1,314.03	State Tax - CA	95.71	1,468.91
Sick Pay	07/24/2023 - 08/06/2023	8	23.9	191.20	932.10	CA SDI - CASDI	21.90	344.13
Un-Worked Holiday			0		545.64			
Holiday Worked DT			0		391.96			
Earnings				2,434.14	38,237.15	Employee Taxes	541.66	8,389.96

Extract from Plaintiff's Wage Statement with a Pay Date of 08/11/2023.

Here, Plaintiff earned a fringe benefit payment itemized as “Fringe” totaling \$363.20 in the same period he was paid sick leave. However, Plaintiff’s sick leave was paid at a deficient rate because Defendants failed to properly factor the fringe benefit payment into the regular rate of pay. Upon information and belief, this company-wide policy and practice of not including fringe payments when calculating the regular rate of pay was applied to other aggrieved employees and is a matter of Defendants’ common payroll administration.

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

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

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

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

Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted meal periods to keep up with the high demands of the job. Due to understaffing, Plaintiff would regularly take noncompliant meal periods to ensure that he met his work responsibilities by the strict deadlines set by Defendants.

Upon information and belief, Defendants had a policy and practice of altering employees' time records to remove meal period penalties. As a result, Plaintiff and the aggrieved employees did not receive meal period premiums each time they experienced a non-compliant meal period and were due a meal period premium. However, to the extent Defendants paid meal period premiums, Defendants did not pay those premiums at the regular rate of pay. As explained in the "Unpaid Overtime" section above, Defendants did not include all remuneration when calculating the regular rate of pay at which meal premiums must be paid.

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

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

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

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

For the same reasons set forth above in the "Unpaid Meal Period Premiums" section, Plaintiff and aggrieved employees often suffered short, late, missed, and/or interrupted rest periods. Defendants did not pay Plaintiff or aggrieved employees rest period premiums to compensate for those deficient rest periods. However, to the extent that Defendants ever paid rest period

premiums to Plaintiff or the aggrieved employees, those premiums were underpaid due to the same regular rate calculation issues stated above.

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

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

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

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

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

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

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

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

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without

providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Due to Defendants policy and practice of failing to calculate hours worked and pay meal and rest period premiums, Plaintiff alleges that any employee who had an on-duty portion of their meal period or had a noncompliant meal and rest period in their final pay period did not receive a complete and accurate final paycheck.

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

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

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.

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

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela R. Romo". The signature is fluid and cursive, with a large initial "M" and a distinct "R" and "P" at the end.

Mariela R. Romo

Cc Plaintiff Peter Sales

Counsel for Defendants

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Mojan Anari - mojan.anari@akerman.com