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

ABRAM IZQUIERDO-DUARTE, ROLANDO
DE LUNA, and BRENDA BARRAGAN, on
behalf of others similarly situated and the State
of California under the Private Attorneys General
Act,

Plaintiffs,

vs.

NAVAL ENGINEERING SUPPORT INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00028311-CU-OE-CTL

Hon. Loren G. Freestone
Dept. 64

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiffs ABRAM IZQUIERDO-DUARTE, ROLANDO DE LUNA, and BRENDA
2 BARRAGAN on behalf of all others similarly situated and the State of California under the Private
3 Attorneys General Act (“Plaintiffs”) bring this FIRST AMENDED CLASS AND
4 REPRESENTATIVE ACTION COMPLAINT against Defendants NAVAL ENGINEERING
5 SUPPORT INC., and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiffs bring the instant class action on behalf of themselves and similarly situated
8 current and former employees of Defendants for a series of systemic violations of the California Labor
9 Code and IWC Wage Orders.

10 2. Defendants failed to pay Plaintiffs and the class members all minimum and overtime
11 wages due to unlawful policies and practices of unlawful time editing.

12 3. Defendants failed to provide, authorize, and/or permit Plaintiffs and the class members
13 to take compliant meal and rest periods to which they were entitled.

14 4. Defendants failed to properly reimburse Plaintiffs and the class members for using their
15 personal cell phones and other devices, tools, and protective gear to complete work-related duties.

16 5. Defendants’ employment policies, practices, and payroll administration systems
17 enabled and facilitated these violations on a company-wide basis with respect to the class members.

18 **JURISDICTION & VENUE**

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

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

23 8. This Court has jurisdiction over Defendants because, upon information and belief,
24 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
25 themselves to the California economy so as to render the exercise of jurisdiction over them by the
26 California courts consistent with traditional notions of fair play and substantial justice.

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

PARTIES

A. Plaintiffs

10. Plaintiff Izquierdo-Duarte is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2023 to April 2024. Plaintiff Izquierdo-Duarte worked as a Foreman.

11. Plaintiff Rolando De Luna is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about July 2023 to April 2024. Plaintiff De Luna worked as a Deck Installer.

12. Plaintiff Brenda Barragan is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2020 to April 2024. Plaintiff Barragan worked as a Painter.

13. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the Plaintiffs files suit is always the real party in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

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

15. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some

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

16. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

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

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

CLASS ALLEGATIONS

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

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

20. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of

class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiffs' claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiffs are adequate class representatives; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

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

GENERAL ALLEGATIONS

23. Defendants failed to pay Plaintiffs and the class members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

24. First, Defendants engaged in an unlawful policy and practice of time editing.

25. Defendants routinely made edits to Plaintiffs' and other class members' time records without their knowledge or authorization.

26. Specifically, Defendants engaged in an unlawful practice of time shaving where Defendants removed hours worked.

27. Defendants additionally inserted false meal periods to make it appear as if they took a compliant meal period when in reality Plaintiffs and the class members worked through this time.

28. This unlawful practice of time editing resulted in unpaid hours worked.

29. Second, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work.

30. For example, Plaintiffs and the class members often worked through their meal periods. Plaintiffs and the class members would clock out for meal periods but continue working. On the days Plaintiffs did not clock out for a meal period Defendants retroactively added meal periods to their time sheets to make it appear as if a compliant meal period had been taken.

31. While Plaintiffs and the class members would be required to review their hours before they were submitted, failure to approve the hours would result in not being paid, thus forcing them to accept these incorrect hours.

32. Finally, the class members were required to complete work before and after clocking in and out for the day.

33. As a result, Defendants failed to pay Plaintiffs and the class members overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

34. As described above, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work and engaging in unlawful time editing to make it appear as if a compliant meal period was taken, or otherwise remove hours worked. To the extent that these unlawful practices

1 resulted in unpaid hours worked over eight (8) hours in a day or forty (40) hours in a week, this resulted
2 in unpaid overtime.

3 35. Defendants failed to provide Plaintiffs and the class members with compliant meal
4 periods and meal period premiums.

5 36. First, Plaintiffs and the class members routinely experienced missed, late, short, and
6 interrupted meal periods in order to keep up with the high demands of the job and in order to meet
7 project deadlines.

8 37. For example, due to the nature of the work Plaintiff Izquierdo-Duarte and, on
9 information and belief, the other class members worked with epoxy and other time sensitive materials
10 that required they finish a project before taking a break. This prevented Plaintiffs and the class
11 members from taking lawful meal periods.

12 38. As a result, Plaintiff Izquierdo-Duarte and the class members often experienced late or
13 missed meal periods. Plaintiff Izquierdo-Duarte's time records from the pay period 8/14/2023 to
14 8/20/2023 show he experienced several late meal periods taken after the fifth hour of work. Plaintiff
15 Izquierdo-Duarte's wage statement from the same period further shows Defendants failed to pay him
16 any meal period premiums despite the four noncompliant meal periods in violation of Labor Code
17 226.7.

18 39. Plaintiff De Luna's time records from the pay period 4/22/2024 to 4/28/2024 show
19 he experienced several late meal periods taken after the fifth hour of work. Plaintiff De Luna's wage
20 statement from the same period shows Defendants failed to pay him any meal period premiums despite
21 the five noncompliant meal periods in violation of Labor Code section 226.7.

22 40. Plaintiff Barragain's time records from the pay period 4/22/2024 to 4/28/2024 show
23 she experienced several late meal periods taken after the fifth hour of work. Plaintiff Barragan's wage
24 statement from the same period shows Defendants failed to pay her any meal period premiums despite
25 the five noncompliant meal periods in violation of Labor Code section 226.7.

26 41. Plaintiffs and the class members also experienced missed meal periods, typically when
27 working over the weekends due to the pressure to complete projects as soon as possible and meet
28 deadlines. However, these violations do not appear on the time records as frequently due to Defendants

1 unlawful policy and practice requiring Plaintiffs and the class members to clock out and keep working
2 to make it appear as if a compliant meal period was taken and avoid paying all owed meal period
3 premiums.

4 42. Similarly, as a matter of common policy and practice, Defendants failed to provide all
5 rest periods to which Plaintiffs and the class members were entitled. As mentioned above, the nature
6 of work and project deadlines Plaintiffs and the class members often worked until the job was complete
7 and without any time to take a compliant break. This prevented Plaintiffs and the class members from
8 taking lawful rest periods.

9 43. Defendants failed to provide accurate itemized wage statements to the class members
10 each pay period as a result of the policies and practices set forth in this notice. Defendants violated
11 Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages
12 earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate
13 reflection, and recording of “gross wages earned” on those wage statements.

14 44. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
15 employee wage statements each pay period the applicable hourly rates in effect and the number of
16 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
17 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
18 pay stub.

19 45. Defendant violated Labor Code section 226(a)(2) by failing to accurately list
20 employees’ “total hours worked,” as the wage statements did not accurately include the
21 uncompensated time Plaintiffs and other class members worked due to Defendant’s policy and practice
22 of time editing and off-the-clock work.

23 46. Defendants required Plaintiffs and the class members to incur costs for work-related
24 purposes without full reimbursement.

25 47. Plaintiffs and the class members were required to use their personal cell phones to
26 communicate with each other and their supervisors.

27 48. Additionally, Plaintiffs and other class members were required to purchase their own
28 tools and protective gear.

49. For example, Plaintiff De Luna Plaintiff worked as a Deck Installer and was not provided masks to protect himself when removing old paint and working on the deck.

50. Thus, in direct consequence of their job duties, Plaintiffs and the class members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

51. 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.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiffs and Class Members Against All Defendants)

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

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

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

55. Defendants’ unlawful acts and omissions deprived Plaintiffs and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and class

1 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
2 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys'
3 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **Violation of Labor Code §§ 510 and 1194**

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

8 57. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
10 wages all overtime hours worked, and which further provide a private right of action for an employer's
11 failure to pay all overtime compensation for overtime hours worked.

12 58. Defendants failed in their affirmative obligation to pay Plaintiffs and class members no
13 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
14 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
15 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
16 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
17 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
18 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

19 59. Plaintiffs and class members are entitled to recover the full amount of the unpaid
20 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
21 extent permitted by law.

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **Violation of Labor Code §§ 226.7 and 512**

25 60. All outside paragraphs of this Complaint are incorporated into this section.

26 61. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
28 meal period premiums in lieu thereof), and which further provide a private right of action for an

1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

3 62. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiffs and class members compliant, duty-free meal periods of not less than 30 minutes beginning
5 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
6 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
7 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
8 sections of the applicable orders).

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

14 64. Plaintiffs and class members are entitled to recover the full amount of the meal period
15 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
16 the extent permitted by law.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

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

20 65. All outside paragraphs of this Complaint are incorporated into this section.

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

26 67. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

1 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
2 applicable orders).

3 68. Further, Defendants willfully failed in their affirmative obligation to consistently pay
4 Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation
5 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
6 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

7 **FIFTH CAUSE OF ACTION**

8 **UNTIMELY PAYMENT OF WAGES**

9 **Violation of Labor Code §§ 204, 210, 218**

10 69. All outside paragraphs of this Complaint are incorporated into this section.

11 70. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
12 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
13 period, and which further provide a private right of action for an employer’s failure to comply with
14 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
15 under these sections, including Labor Code § 210(c)’s statutory late payment penalties.

16 71. Defendants willfully failed in their affirmative obligation to timely pay all wages,
17 including paid sick leave and meal and rest premiums, earned by Plaintiffs and class members twice
18 during each calendar month on days designated in advance by the employer as regular paydays (for
19 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly
20 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
21 “Minimum Wages” sections of the applicable orders).

22 72. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages,
23 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
24 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
26 in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

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

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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

88. Plaintiffs is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

TENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

(By Plaintiffs on Behalf of the State and the Class members Against All Defendants)

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

92. Plaintiffs brings this cause of action as a proxy for the State of California on behalf of the following “class members” pursuant to the Private Attorneys General Act (“PAGA”), codified as Labor Code section 2698 *et seq.*:

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

4 93. Plaintiffs reserves the right to amend, supplement, or add to this description of the class
5 members, according to proof.

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

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

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

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

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

27 99. On or about **June 13, 2024 and June 14, 2024** Plaintiffs paid the requisite PAGA filing
28 fee and provided written notice (by online electronic filing with the LWDA and by certified mail to

1 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
2 the alleged violations.

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

6 101. A true and correct copy of Plaintiff De Luna’s written PAGA notice, entitled “Notice
7 of Labor Code Violations” is attached hereto as Exhibit 2 and incorporated by reference as though
8 fully set forth herein (the “Plaintiff De Luna’s PAGA notice”).

9 102. A true and correct copy of Plaintiff Barragan’s written PAGA notice, entitled “Notice
10 of Labor Code Violations” is attached hereto as Exhibit 3 and incorporated by reference as though
11 fully set forth herein (the “Plaintiff Barragan’s PAGA notice”).

12 103. To date, neither Plaintiffs nor Plaintiffs’ counsel has received a response to Plaintiffs’
13 written PAGA notice from the LWDA.

14 104. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither
15 Plaintiffs nor Plaintiffs’ counsel has received written notice by certified mail from any defendant
16 providing a description of any actions taken to cure the alleged violations.

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

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

- 24 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
25 1197, 1198; IWC Wage Orders.
- 26 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
27 Orders.

- c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

107. Plaintiffs 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).

PRAAYER

Plaintiffs prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiffs as the class representative;
- c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;

- 1 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by
2 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and
3 Code of Civil Procedure § 1021.5.
- 4 i. For recovery of damages in amount according to proof;
- 5 j. For all recoverable pre- and post-judgment interest;
- 6 k. For this action to be maintained as a representative action under the PAGA;
- 7 l. For Plaintiffs and counsel of record to be provided with all enforcement capability as
8 if the action were brought by the State of California or the California Division of Labor
9 Enforcement;
- 10 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 11 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
12 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
13 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 14 o. For such other relief the Court deems just and proper.

15
16 Dated: August 22, 2024

Ferraro Vega Employment Lawyers, Inc.

17 

18 _____
Nicholas J. Ferraro
19 Attorney for Plaintiffs

EXHIBIT 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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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 -

Naval Engineering Support Inc.
2602 Hoover Ave., Suite 102
National City, California 91950

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

Dear LWDA Officer and Company Representatives:

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

NAVAL ENGINEERING SUPPORT 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 Foreman from about August 2023 to April 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

First, Defendants engaged in an unlawful policy and practice of time editing. Defendants routinely made edits to Plaintiff’s and, on information and belief, other aggrieved employees’ time records without their knowledge or authorization. Specifically, Defendants engaged in an unlawful practice of time shaving where Defendants removed hours worked. Defendants additionally inserted false meal periods to make it appear as if they took a compliant meal period, when in reality Plaintiff and the aggrieved employees worked through this time. This unlawful practice of time editing resulted in unpaid hours worked.

Second, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work.

For example, Plaintiff and the aggrieved employees to work through their meal periods. Specifically, Plaintiff and the aggrieved employees would clock out for meal periods but continue working or not clock out for a meal period at all (which would then be edited by Defendants to make it appear as if a compliant meal period was taken). Plaintiff and the aggrieved employees would be required to review their hours before they were submitted. Failure to approve the hours would result in not getting paid. Additionally, the aggrieved employees were required to complete work before and after clocking in and out for the day.

As a result, Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558

(\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

As stated in the “Unpaid Hours Worked” section above, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work and engaging in unlawful time editing to make it appear as if a compliant meal period was taken, or otherwise remove hours worked. To the extent that these unlawful practices resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week this resulted in unpaid overtime.

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

Unpaid 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.

First, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job and in order to meet project deadlines.

For example, due to the nature of the work Plaintiff and, on information and belief, the other aggrieved employees worked with epoxy and other time sensitive material that required they finish a project before taking a break. As a result, Plaintiff and the aggrieved employees often experienced late or missed meal periods. This prevented Plaintiff and the aggrieved employees from taking lawful meal periods.

An illustrative example is shown on Plaintiff's time records below:

EMP L NAM	EMP F NAM	EMP##	DATE	IN	OUT	TOTAL
IZQUIERDO	ABRAM		8/14/2023	5:00 AM	1:30 PM	8:30
IZQUIERDO	ABRAM		8/14/2023	11:00 AM	11:30 AM	:30
IZQUIERDO	ABRAM		8/15/2023	5:00 AM	1:30 PM	8:30
IZQUIERDO	ABRAM		8/15/2023	10:30 AM	11:00 AM	:30
IZQUIERDO	ABRAM		8/16/2023	5:14 AM	1:31 PM	8:17
IZQUIERDO	ABRAM		8/16/2023	10:10 AM	10:43 AM	:33
IZQUIERDO	ABRAM		8/17/2023	5:08 AM	3:30 PM	10:22
IZQUIERDO	ABRAM		8/17/2023	11:00 AM	11:30 AM	:30
IZQUIERDO	ABRAM		8/18/2023	5:00 AM	1:30 PM	8:30
IZQUIERDO	ABRAM		8/18/2023	9:59 AM	10:29 AM	:30
IZQUIERDO	ABRAM		8/19/2023	5:13 AM	1:30 PM	8:17
IZQUIERDO	ABRAM		8/19/2023	11:00 AM	11:30 AM	:30

Extract of Plaintiff's Time Records

Here, Plaintiff's records show Plaintiff experienced several late meal periods taken after the fifth hour of work. In the pay period from 8/14/2023 to 8/20/2023 Defendants failed to pay Plaintiff any meal periods for the four noncompliant meal periods in violation of Labor Code 226.7.

Additionally, Plaintiff and the aggrieved employees also experienced missed meal periods, typically when working over the weekends due to the pressure to complete projects as soon as possible and meet deadlines. On these days, Plaintiff and the aggrieved employees were required to clock out and keep working to make it appear as if a compliant meal period was taken and avoid paying all owed meal period premiums.

Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of missed meal periods as required by Labor Code section 226.7.

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.

As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As mentioned above, the nature of work that Plaintiff and the aggrieved employees did often required them to continue working until the job was complete and without any time to take a compliant break. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods. 226.7 and 516.

Further, when Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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.

As explained above, Defendant failed to pay Plaintiff and the aggrieved employees all wages owed for regular, overtime, and meal and rest period premiums. Therefore, Defendant failed to pay all wages owed no later than seven (7) calendar days following the close of the payroll period in violation of Labor Code section 204(a).

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.

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.

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

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. Plaintiff and the aggrieved employees were required to use their personal cell phones and purchase tools to complete their required job duties. Defendants were aware that the aggrieved employees were required to use their personal cell phones and supply their own work tools and did not provide reimbursement in violation of Labor Code section 2804. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

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

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 that reads "Elyssa Martinez". The script is cursive and fluid.

Elyssa Martinez

Cc Plaintiff Abram Izquierdo-Duarte
Hamilton & Associates, APC – Counsel for Defendant
alec@hm-lawyers.com
ben@hm-lawyers.com
michelle@hm-lawyers.com

EXHIBIT 2

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

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

June 17, 2024

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

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

Naval Engineering Support Inc.
2602 Hoover Ave., Suite 102
National City, California 91950

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

Dear LWDA Officer and Company Representatives:

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

NAVAL ENGINEERING SUPPORT 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 Deck Installer from about July 2023 to April 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

First, Defendants engaged in an unlawful policy and practice of time editing. Defendants routinely made edits to Plaintiff’s and, on information and belief, other aggrieved employees’ time records without their knowledge or authorization. Specifically, Defendants engaged in an unlawful practice of time shaving where Defendants removed hours worked. Defendants additionally inserted false meal periods to make it appear as if they took a compliant meal period, when in reality Plaintiff and the aggrieved employees worked through this time. This unlawful practice of time editing resulted in unpaid hours worked.

Second, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work.

For example, Plaintiff and the aggrieved employees were required to work through their meal periods. Specifically, Plaintiff and the aggrieved employees were ordered to clock a 30 minute meal period, despite often working through their meal periods due to the pressure from the workload. If no meal period was clocked Defendants often would add one or otherwise edit meal periods to make them appear to be compliant. Plaintiff and the aggrieved employees would be required to review and approve their hours before they were submitted. Failure to approve the hours would result in not getting paid. Additionally, the aggrieved employees were required to complete work before and after clocking in and out for the day.

As a result, Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

As stated in the “Unpaid Hours Worked” section above, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work and engaging in unlawful time editing to make it appear as if a compliant meal period was taken, or otherwise remove hours worked. To the extent that these unlawful practices resulted in unpaid hours worked over eight (8) hours in a day or forty (40) hours in a week this resulted in unpaid overtime.

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

Unpaid 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.

First, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job and in order to meet project deadlines.

An illustrative example is shown on Plaintiff's time records below:

Mon	04/22/24	1012	05:00 AM	02:47 PM	9:47	
		LUNCH	11:00 AM	11:30 AM	-:30	
		1012	DAILY OVERTIME 1		-1:17	1:17
Tue	04/23/24	1012	05:00 AM	01:29 PM	8:29	
		LUNCH	12:30 PM	01:00 PM	-:30	
Wed	04/24/24	1012	06:00 AM	02:46 PM	8:46	
		LUNCH	11:00 AM	11:30 AM	-:30	
		1012	DAILY OVERTIME 1		-:16	:16
Thu	04/25/24	1012	06:00 AM	03:02 PM	9:02	
		LUNCH	11:01 AM	11:26 AM	-:25	
		1012	DAILY OVERTIME 1		-:37	:37
Fri	04/26/24	1012	06:00 AM	02:30 PM	8:30	
		LUNCH	11:02 AM	11:27 AM	-:25	
		1012	DAILY OVERTIME 1		-:05	:05

Extract of Plaintiff's Time Records

Here, Plaintiff's records show Plaintiff experienced several late meal periods taken after the fifth hour of work. In the pay period from 4/22/2024 to 4/28/2024 Defendants failed to pay Plaintiff any meal periods for the five (5) noncompliant meal periods in violation of Labor Code section 226.7.

Additionally, Plaintiff and the aggrieved employees also experienced missed meal periods, typically when working over the weekends due to the pressure to complete projects as soon as possible and meet deadlines. On these days, Plaintiff and the aggrieved employees were required to clock out and keep working to make it appear as if a compliant meal period was taken and avoid paying all owed meal period premiums.

Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of missed meal periods as required by Labor Code section 226.7.

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.

As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As mentioned above, the nature of work that Plaintiff and the aggrieved employees did often required them to continue working until the job was complete and without any time to take a compliant break. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods in violation of Labor Codes 226.7 and 516.

Further, when Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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.

As explained above, Defendant failed to pay Plaintiff and the aggrieved employees all wages owed for regular, overtime, and meal and rest period premiums. Therefore, Defendant failed to pay all wages owed no later than seven (7) calendar days following the close of the payroll period in violation of Labor Code section 204(a).

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.

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.

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

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. Plaintiff and the aggrieved employees were required to use their personal cell phones and purchase tools and protective gear to complete their required job duties. Specifically, Plaintiff worked as a Deck Installer and was not provided masks to protect himself when removing old paint and working on the deck. Defendants were aware that the aggrieved employees were required to use their personal cell phones and supply their own work tools and did not provide reimbursement in violation of Labor Code section 2804. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

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

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.

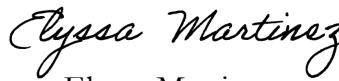
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- 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,



Elyssa Martinez

Cc Plaintiff ROLANDO DE LUNA
Hamilton & Associates, APC – Counsel for Defendant
alec@hm-lawyers.com
ben@hm-lawyers.com
michelle@hm-lawyers.com

EXHIBIT 3

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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June 17, 2024

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

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

Naval Engineering Support Inc.
2602 Hoover Ave., Suite 102
National City, California 91950

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

Dear LWDA Officer and Company Representatives:

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

NAVAL ENGINEERING SUPPORT 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 Painter from about November 2020 to April 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

First, Defendants engaged in an unlawful policy and practice of time editing. Defendants routinely made edits to Plaintiff’s and, on information and belief, other aggrieved employees’ time records without their knowledge or authorization. Specifically, Defendants engaged in an unlawful practice of time shaving where Defendants removed hours worked. Defendants additionally inserted false meal periods to make it appear as if they took a compliant meal period, when in reality Plaintiff and the aggrieved employees worked through this time. This unlawful practice of time editing resulted in unpaid hours worked.

Second, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work.

For example, Plaintiff and the aggrieved employees were required to work through their meal periods. Specifically, Plaintiff and the aggrieved employees were ordered to clock a 30-minute meal period, despite often working through their meal periods due to the pressure from the workload. If no meal period was clocked, Defendants often would add one or otherwise edit meal periods to make them appear to be compliant. Plaintiff and the aggrieved employees would be required to review and approve their hours before they were submitted. Failure to approve the hours would result in not getting paid. Additionally, the aggrieved employees were required to complete work before and after clocking in and out for the day.

As a result, Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

As stated in the “Unpaid Hours Worked” section above, Defendants engaged in an unlawful policy and practice of requiring off-the-clock work and engaging in unlawful time editing to make it appear as if a compliant meal period was taken, or otherwise remove hours worked. To the extent that these unlawful practices resulted in unpaid hours worked over eight (8) hours in a day or forty (40) hours in a week this resulted in unpaid overtime.

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

Unpaid 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.

First, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job and in order to meet project deadlines.

An illustrative example of late meal periods is shown on Plaintiff's time records below:

Mon	04/22/24	NES.N	05:00 AM	02:40 PM	9:40
		LUNCH	11:00 AM	11:30 AM	-:30
		NES.N	DAILY OVERTIME 1		-1:10
			05:00 AM	01:31 PM	
			Buenos días , esta mañana no podía entrar ala aplicación para ponchar alas 5 gracias		
Tue	04/23/24	NES.N			8:31
		LUNCH	12:30 PM	01:00 PM	-:30
		NES.N	DAILY OVERTIME 1		-:01
Wed	04/24/24	NES.N	06:00 AM	02:30 PM	8:30
		LUNCH	11:00 AM	11:30 AM	-:30
Thu	04/25/24	NES.N	06:00 AM	03:01 PM	9:01
		LUNCH	11:00 AM	11:30 AM	-:30
		NES.N	DAILY OVERTIME 1		-:31
Fri	04/26/24	NES.N	06:00 AM	02:30 PM	8:30
		LUNCH	11:02 AM	11:27 AM	-:25
		NES.N	DAILY OVERTIME 1		-:05

Extract of Plaintiff's Time Records

Here, Plaintiff's records show Plaintiff experienced several late meal periods taken after the fifth hour of work. In the pay period from 4/22/2024 to 4/28/2024 Defendants failed to pay Plaintiff any meal periods for the five (5) noncompliant meal periods in violation of Labor Code section 226.7.

Additionally, Plaintiff and the aggrieved employees also experienced missed meal periods, typically when working over the weekends due to the pressure to complete projects as soon as possible and meet deadlines. On these days, Plaintiff and the aggrieved employees were required to clock out and keep working to make it appear as if a compliant meal period was taken and avoid paying all owed meal period premiums.

Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of missed meal periods as required by Labor Code section 226.7.

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.

As a matter of common policy and practice, Defendants failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As mentioned above, the nature of work that Plaintiff and the aggrieved employees did often required them to continue working until the job was complete and without any time to take a compliant break. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods in violation of Labor Codes 226.7 and 516.

Further, when Plaintiff and other aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

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.

As explained above, Defendant failed to pay Plaintiff and the aggrieved employees all wages owed for regular, overtime, and meal and rest period premiums. Therefore, Defendant failed to pay all wages owed no later than seven (7) calendar days following the close of the payroll period in violation of Labor Code section 204(a).

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.

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.

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

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

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

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

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. Plaintiff and the aggrieved employees were required to use their personal cell phones and purchase tools to complete their required job duties. Defendants were aware that the aggrieved employees were required to use their personal cell phones and supply their own work tools and did not provide reimbursement in violation of Labor Code section 2804. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

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

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,


Elyssa Martinez

Cc Plaintiff BRENDA BARRAGAN
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