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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By E. Schilawski ,Deputy Clerk

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

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

Plaintiffs,

vs.

GEOCON WEST, INC. and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2024-00029093-CU-OE-CTL

Hon. Wendy M. Behan
Dept. 66

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

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

5 **INTRODUCTION**

6 1. This is a representative action brought under the California Private Attorneys General
7 Act (Labor Code section 2698 *et seq.*).

8 2. Defendant failed to compensate Plaintiff and aggrieved employees for all hours
9 suffered or permitted to work in violation of the applicable IWC Wage Order.

10 3. Defendant underpaid the aggrieved employees’ wages by failing to include all forms
11 of remuneration, including prevailing wages, into the regular rate of pay calculation for overtime, sick
12 pay, and premiums.

13 4. Defendant’s underpayment of wages was facilitated by their company-wide practices
14 of requiring employees to complete work while off-the-clock.

15 5. Plaintiff and aggrieved employees were not always given adequate opportunity to take
16 compliant meal and rest breaks, yet Defendant did not pay Plaintiff and aggrieved employees for meal
17 or rest period premiums.

18 6. Defendant also failed to reimburse Plaintiff and aggrieved employees for necessary
19 expenses incurred in furtherance of the aggrieved employees’ job duties.

20 7. Defendant’s employment policies, practices, and payroll administration systems
21 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
22 employees.

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

25 9. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
26 attorney’s fees, and costs.

1 **JURISDICTION & VENUE**

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

4 11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
5 the Superior Court.

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

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

13 **PARTIES**

14 **A. Plaintiff Arik Papa**

15 14. Plaintiff Papa is an individual over 18 years of age who worked for Defendants in
16 California as a non-exempt employee from about May 10, 2022 to March 28, 2024. Plaintiff worked
17 as a Field Technician.

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

25 **B. Defendants**

26 16. Defendant Geocon West, Inc., is a California corporation that maintains operations and
27 conducts business throughout the State of California, including in this county.

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3 17. The true names and capacities, whether individual, corporate, or otherwise, of the
4 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
5 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
6 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
7 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
8 true names and capacities once ascertained.

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

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

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

21
22 **GENERAL ALLEGATIONS**

23 1. Plaintiff and the aggrieved employees work for Defendant as non-exempt employees,
24 compensated on an hourly basis.

25 2. Defendant underpaid Plaintiff and aggrieved employees by failing to compensate them
26 for work completed while off-the-clock. For example, Defendant required Plaintiff and aggrieved
27 employees to complete transaction logs while they were off-the-clock but were unauthorized to log
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1 this time in Defendant's timekeeping system. This practice resulted in unpaid minimum, regular, and
2 overtime wages for Plaintiff and aggrieved employees.

3 3. Consequently, Plaintiff and aggrieved employees' time records did not reflect all hours
4 worked nor were those additional hours worked considered for their sick leave accrual. Therefore,
5 Plaintiff and aggrieved employees were not awarded the total accrued sick leave time they earned.
6 Further, Defendant failed to pay sick leave at the lawful rate of pay because Defendant failed to blend
7 other forms of remuneration, such as prevailing wages, into the paid sick leave rate. For example,
8 during the pay period from June 12, 2024, to June 25, 2024, Plaintiff earned \$668.08 in prevailing
9 wages and overtime wages that were not blended into the paid sick leave. This resulted in unpaid sick
10 leave wages.

11 4. Defendant failed to pay overtime at the "regular rate of pay" when Defendant paid
12 Plaintiff and aggrieved employees prevailing wages and other forms of non-excludable remuneration.
13 For example, during the pay period from June 12, 2024, to June 25, 2024, Plaintiff earned prevailing
14 wage earnings of \$668.00 in the same pay period that he earned overtime wages. However, Defendant
15 should have (but failed to) factor the prevailing wages into the regular rate of pay for all overtime
16 hours worked. Defendant instead unlawfully paid Plaintiff at 1.5x his straight hourly rate.

17 5. Further, due to employee responsibilities and the continuous flow of business, Plaintiff
18 and other aggrieved employees suffered many short, missed, late, and/or interrupted meal and rest
19 periods. For example, Plaintiff and aggrieved employees were regularly interrupted by messages from
20 coworkers regarding work-related duties during their meal and rest periods. Yet Defendant had a
21 policy and practice of failing to pay meal premiums to Plaintiff and aggrieved employees.
22 Additionally, Plaintiff alleges that Defendant edited Plaintiff and aggrieved employees' time records
23 to make it appear as if a compliant meal period had been taken, resulting in company-wide meal
24 premium wage violations. Defendant even tracked employees with Apple air tags to locate them during
25 their rest periods and interrupted those breaks when work-related issues would arise. Defendant did
26 not pay rest period premiums to employees when it did not authorize rest periods or interrupted those
27 breaks. Thus, these unlawful practices resulted in underpayment of wages each time Plaintiff and
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aggrieved employees were denied a compliant meal or rest period and were not compensated for a meal or rest premium.

6. Defendant also required Plaintiff and aggrieved employees to incur necessary, work-related costs, without reimbursement. Defendant required Plaintiff and other aggrieved employees to complete weekly transaction logs of the work done at every site when they were at home, off-the-clock. However, Defendant did not reimburse Plaintiff and aggrieved employees for any internet expenses incurred as part of Defendant's requirement that transaction logs were completed at home. Additionally, Plaintiff was required to use his personal vehicle to complete job duties when the company-provided vehicle was out of service. While Defendant provided some reimbursement to Plaintiff for the use of his personal vehicle, the reimbursement was inadequate to cover the expenses incurred. On information and belief, other aggrieved employees that were required to use their personal vehicles to carry out job duties were also insufficiently reimbursed.

7. These violations create derivative liability for failure to timely pay all wages owed each payday or upon separation of employment. As a result of the foregoing issues, Defendant failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies set forth above. Defendant failed to list the correct "gross wages earned" as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection and recording of "gross wages earned" on those wage statements. Likewise, Defendant failed to state on the employees' wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate as Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

8. Further, Defendant's wage statements failed to accurately list employees' "total hours worked" because they failed to account for the time Plaintiff and other aggrieved employees spent working while off-the-clock. Thus, Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. These wage statement violations are significant because they create confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rate, the numbers of hours worked, and how those amounts were or should be

1 calculated. The wage statements reflect a false statement of earnings and concealed the underpayments
2 of employee wages.

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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

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

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

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

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

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

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

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

26 14. Labor Code section 2699(f) provides: “For all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
28 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

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

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

17. On or about **June 10, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

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

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

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

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

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;

- 1 d. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
6 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
7 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
8 g. For such other relief the Court deems just and proper.

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10 Dated: August 16, 2024

Ferraro Vega Employment Lawyers, Inc.

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12 Nicholas J. Ferraro

13 Attorney for Plaintiff Arik Papa
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EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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June 10, 2024

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

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

Geocon West, Inc.
6960 Flanders Drive
San Diego, California 92121

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

GEOCON WEST, 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 Defendant 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 Defendant, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

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

- BACKGROUND -

Defendant employed Plaintiff during the PAGA Period in the position of Field Technician from about May 10, 2022 to March 28, 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 Defendant 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 Defendant's 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

Defendant 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.

Defendant failed to pay Plaintiff and other aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Defendant required Plaintiff and other aggrieved employees to complete transaction logs while they were off-the-clock. Plaintiff and other aggrieved employees were not authorized to log this time in Defendant’s timekeeping system, resulting in unpaid wages.

Additionally, Plaintiff and other aggrieved employees were not provided with an adequate opportunity to take full meal or rest periods due to staffing issues and the steady flow of business. Defendant did not compensate Plaintiff or the aggrieved employees for non-compliant meal periods. Moreover, Plaintiff alleges that Defendant maintained an unlawful practice of editing time records to make it appear as though they had taken a lawful 30-minute meal period regardless of whether they had actually taken a compliant meal period. This unlawful practice resulted in an underpayment of regular wages to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue working.

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

Defendant 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.

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

First, as stated in the “Unpaid Hours Worked” section above, Defendant failed to compensate Plaintiff and the aggrieved employees for time worked when they were off-the-clock and for late, missed, or interrupted meal and rest periods. Plaintiff alleges that his off-the-clock work would amount to around two extra hours of work per day. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages.

Second, Defendant failed to pay overtime at the “regular rate of pay.” Defendant paid Plaintiff and aggrieved employees’ prevailing wages and other forms of non-excludable remuneration which Defendant failed to include in the overtime rates in the pay periods when employees worked overtime hours. During periods when employees earned additional compensation, such as prevailing wages, Defendant unlawfully paid overtime to Plaintiff and the aggrieved employees, at 1.5x their base rate of pay. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have but failed to pay overtime “at a rate no less than one and one-half times the regular rate of pay for an employee” and “twice the regular rate of pay” for double time hours worked as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of Defendant's regular rate of pay violation as it pertains to overtime is shown below:



Geocon Inc
6960 Flanders Drive
San Diego, CA 92121

Pay Statement

Period Start Date 06/12/2023
Period End Date 06/25/2023
Pay Date 06/30/2023
Document 226264
Net Pay \$1,170.85

Pay Details

Arik B Papa

Employee Number 01616

SSN XXX-XX-XXXX

Job Field Tech

Pay Rate \$22.0000

Pay Frequency Biweekly

Pay Group Geocon Inc

Location San Diego

Office 1000 - San Diego

Classificatn TECH - Technical

Billing F3 - Engineering Field Tech II

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
Auto Allowance			\$184.62	\$2,400.06
Holiday	0.0000	\$0.0000	\$0.00	\$528.00
Overtime	1.0000	\$33.0000	\$33.00	\$264.00
Prev Wage	8.0000	\$83.5100	\$668.08	\$1,336.16
Regular	23.0000	\$22.0000	\$506.00	\$8,602.00
Sick	40.0000	\$22.0000	\$880.00	\$1,936.00
Vacation	8.0000	\$22.0000	\$176.00	\$1,254.00
Total Hours 80.0000				

Extract of Plaintiff's wage statement showing he was paid prevailing wages for the pay period from June 12, 2024 to June 25, 2024 in the same pay period he earned overtime wages.

During this pay period, Plaintiff earned prevailing wage earnings of \$668.00 in the same pay period that he earned overtime wages. However, Defendant should have (but failed to) factor the prevailing wages into the regular rate of pay for all overtime hours. Defendants instead unlawfully paid Plaintiff at 1.5x his straight hourly rate.

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

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

Defendant violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice

provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees.

First, Defendant failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock overtime hours that were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff and the other aggrieved employees were not awarded the total accrued sick leave time they earned.

Second, Defendant failed to pay sick leave in accordance with one of the permissible methods in Labor Code section 246(l) (1)-(3). Specifically, Defendant, paid sick leave at the employees’ base hourly rate and failed to factor in other forms of remuneration, such as prevailing wages, into the paid sick leave rate. Defendants failed to pay paid sick leave at the regular rate of pay for the workweek when sick pay was used. An example of Defendant’s sick leave underpayment is below.



Geocon Inc.
6960 Flanders Drive
San Diego, CA 92121

Pay Statement

Period Start Date 06/12/2023
 Period End Date 06/25/2023
 Pay Date 06/30/2023
 Document 226264
 Net Pay \$1,170.85

Pay Details

Arik B Papa 	Employee Number 01616 SSN XXX-XX-XXXX Job Field Tech Pay Rate \$22.0000 Pay Frequency Biweekly	Pay Group Geocon Inc Location San Diego Office 1000 - San Diego Classification TECH - Technical Billing F3 - Engineering Field Tech II
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Earnings

Pay Type	Hours	Pay Rate	Current	YTD
Auto Allowance			\$184.62	\$2,400.06
Holiday	0.0000	\$0.0000	\$0.00	\$528.00
Overtime	1.0000	\$33.0000	\$33.00	\$264.00
Prev Wage	8.0000	\$83.5100	\$668.08	\$1,336.16
Regular	23.0000	\$22.0000	\$506.00	\$8,602.00
Sick	40.0000	\$22.0000	\$880.00	\$1,936.00
Vacation	8.0000	\$22.0000	\$176.00	\$1,254.00
Total Hours 80.0000				

Extract of Plaintiff's wage statement showing he was paid prevailing wages for the pay period from June 12, 2024 to June 25, 2024 in the same pay period he earned paid sick leave.

Plaintiff earned prevailing wages and overtime wages that were not blended into the paid sick leave during the pay period from June 12, 2024 to June 25, 2024, resulting in underpaid sick leave 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 section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section

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

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with the high demands of the job. Plaintiff and aggrieved employees’ meal periods were regularly interrupted by messages from coworkers regarding work-related duties during their meal periods. Yet, Defendant had a policy and practice of failing to pay meal premiums to Plaintiff and other aggrieved employees. Additionally, as previously mentioned in the “Unpaid Hours Worked” section, Plaintiff alleges that Defendant edited Plaintiff and aggrieved employees’ times records to make it appear as if a compliant meal break had been taken, resulting in company-wide meal premium wage violations.

To the extent Defendant paid meal period premiums, Defendant failed to pay Plaintiff and the other aggrieved employees a meal period premium at the “regular rate of compensation” because premiums paid did not factor in all forms of remuneration and instead paid aggrieved employees at their base hourly rate.

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**

Defendant 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.

Defendant had the unlawful policy and practice of encouraging Plaintiff and other aggrieved employees to work through their rest periods without being paid rest period premiums. Further, Defendant required Plaintiff and other aggrieved employees to be tracked using Apple air tags so that Defendant could locate employees on their rest periods and interrupt those breaks when work-related issues would arise. As such, Plaintiff and other aggrieved employees routinely experienced missed and non-complaint rest periods to keep up with the high demands of the job. On information and belief, Defendant did not pay rest period premiums to employees who were not authorized to take rest periods.

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

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

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

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

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

Defendant 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.

Defendant 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. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant 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

Defendant 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.

Defendant 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. Defendant 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), Defendant failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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**

Defendant 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.”

Defendant required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice. Defendant required Plaintiff and other aggrieved employees to complete weekly transaction logs of the work done at every site when they were at home, off-the-clock. However, Defendant did not reimburse Plaintiff and aggrieved employees for any internet expenses incurred as part of Defendant’s requirement that transaction logs were completed at home. Additionally, Plaintiff was required to use his personal vehicle to complete job duties when the company provided vehicle was out of service. While Defendant provided some reimbursement to Plaintiff for the use of his personal vehicle, the reimbursement was inadequate to cover the expenses incurred. On information and belief, other aggrieved employees that were required to use their personal vehicles to carry out job duties were also insufficiently reimbursed.

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**

Defendant 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, Defendant failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

Defendant required Plaintiff and other aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 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, Defendant's 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. Defendant may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

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

Mariela Romo

Cc Plaintiff Arik Papa

Gabrielle New, HR Representative
New@geoconinc.com