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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

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

Plaintiffs,

vs.

GOOD SAMARITAN SHELTER and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CV04221

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. Paid Sick Leave Violations
6. Unpaid Vacation Wages
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Unfair Competition
11. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff CHARLES CONSTANTINO, on behalf of all others similarly situated and the State
2 of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants GOOD
4 SAMARITAN SHELTER and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. Plaintiff brings the instant class action on behalf of himself and similarly situated
8 current and former employees of Defendants for a series of systematic violations of the California
9 Labor Code and IWC Wage Orders.

10 2. Defendants failed to compensate Plaintiff and the class members for all hours worked
11 in violation of the applicable IWC Wage Order.

12 3. Defendants’ underpayment of wages was facilitated by their unlawful company-wide
13 practice of editing time records to show fewer hours worked than Plaintiff and the class members
14 actually worked.

15 4. Defendants also underpaid the class members’ wages by failing to include all forms of
16 remuneration, including shift differentials, into the regular rate of pay calculations for overtime, paid
17 sick leave, and premiums.

18 5. Plaintiff and the class members were not always given an adequate opportunity to take
19 compliant meal and rest periods, yet Defendants did not pay Plaintiff and the class members for meal
20 or rest period premiums.

21 6. Defendant’s employment policies and practices, as well as their payroll administration
22 systems, enabled and facilitated violations on a company-wide basis with respect to the class members.

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

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

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

12. 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.

A. Plaintiff Charles Constantino

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

15. Defendant Good Samaritan Shelter is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

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

- 3 a. Numerosity: The class is estimated to exceed 50 individuals, although the
4 precise membership of the entire class is unknown at this time. The class is so
5 numerous that joinder of all class members is impracticable. The identities of
6 class members are ascertainable by inspection of Defendants' employment and
7 payroll records.
- 8 b. Typicality: Plaintiff's claims are typical of the claims of the other class
9 members. They were subject to the same policies and practices of Defendants,
10 which resulted in losses to the class. Proof of common unlawful business
11 practices, which Plaintiff experienced, will establish the right of the class to
12 recover on the causes of action alleged herein.
- 13 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
14 steps to protect the class members' interests adequately and fairly; has no
15 interest antagonistic to other class members; and is represented by attorneys
16 who have substantial experience prosecuting, defending, resolving, and
17 litigating wage and hour class, collective, and representative actions in
18 California state and federal courts.
- 19 d. Superiority: A class action is superior to other means for adjudicating this
20 dispute. Individual joinder is impractical. Class treatment will allow for
21 common issues to be resolved in a single forum, simultaneously, and without
22 duplication of effort and expense.
- 23 e. Public Policy Considerations: Certification of this lawsuit as a class action
24 advances the State of California's strong public interest in ensuring its
25 approximately millions of employed residents are properly paid the wages they
26 earned for the hours they worked. Class actions provide a mechanism for
27 enforcement of labor laws and allow for vindication of employee rights by
28 unnamed class members.

23. 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

24. Plaintiff and class members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

25. Defendants maintained an unlawful policy and practice of editing Plaintiff and the class members' timecards by interesting false meal period entries.

26. During Plaintiff's employment, Defendants' agents altered his time records to insert meal period times (when none were taken) or to make his meal period entries appear compliant (*i.e.*, taken by the 5th hour, 30 minutes in length).

27. Plaintiff and the class members were deprived of regular wages each time Defendants altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had a shorter/interrupted meal period or no meal period at all. Plaintiff is informed and believes that other employees suffered the same violations.

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

29. First, as a result of Defendants editing Plaintiff and, on information and belief, the class members' time records to include false meal periods, Defendants failed to compensate Plaintiff and the class members for all overtime hours worked. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

30. Second, Defendants failed to pay Plaintiff and the class members overtime wages at the "regular rate of pay" for overtime hours worked, resulting in unpaid overtime wages. Specifically, Plaintiff and the class members earned overtime in the same pay period of their shift differential pay or other non-excludable remuneration, which Defendants did not include in the regular rate of pay.

31. For example, on the check dated May 10, 2024, Plaintiff earned a "Graveyard Shift" differential at a rate of \$20.50/hour. He also earned overtime during the same period. The overtime

1 was paid at a rate of \$30.00/hour (1.5x Plaintiff's base hourly rate of \$20.00/hour). Defendants failed
2 to include Plaintiff's differential pay in calculating his overtime rate.

3 32. For each overtime hour worked during the period in which Plaintiff and the class
4 members earned the additional forms of remuneration, Defendants should have (but failed to) pay
5 overtime "at a rate no less than *one and one-half times the regular rate of pay* for an employee" and
6 twice the regular rate of pay" for double time hours as required by the plain language of Labor Code
7 section 510(a) and the IWC Wage Orders.

8 33. Defendants failed to comply with California's paid sick leave law with respect to the
9 class members. As stated above, due to Defendants' failure to include all non-discretionary pay,
10 including shift differential pay in the regular rate of pay, Defendants failed to pay Plaintiff's and, on
11 information and belief, the class members paid sick leave at the regular rate of pay.

12 34. Defendants also did not provide Plaintiff and the class members with all sick leave
13 accrued based upon the *actual hours* they worked. Because of Defendants' unlawful time editing
14 practice as discussed above, Plaintiff and the class members worked additional hours that were not
15 accounted for when calculating an employee's accrued paid sick leave.

16 35. Defendants also maintained an unlawful policy and practice of failing to pay all accrued
17 and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in
18 forfeiture of vested vacation time and wages. On information and belief, the rate at which Defendants
19 paid final vacation wages did not include all forms of non-discretionary remuneration, including, but
20 not limited to shift differentials.

21 36. Consequently, any Plaintiff and class members' payment of vested vacation wages
22 upon termination was depreciated and underpaid.

23 37. Furthermore, Defendants failed to provide compliant meal periods to Plaintiff and the
24 class members. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the
25 other class members meal period premiums at the regular rate of pay.

26 38. Plaintiff and the class members routinely experienced missed, late, short, and/or
27 interrupted meal periods due to understaffing and the lack of coverage.

1 39. Specifically, as Overnight Shelter Staff, Plaintiff was not permitted to leave the facility
2 during his shift. This unlawful policy also applied to other class members. Due to lack of coverage
3 as a result of understaffing, Plaintiff and the class members often missed or otherwise experienced
4 non-compliant meal periods.

5 40. As discussed above, Defendants also engaged in a practice editing time records to make
6 it appear as though people took compliant meal periods, resulting in further violations.

7 41. When Defendants did not provide compliant meal periods, Defendants failed to pay
8 Plaintiff and the class members all meal period premiums at the regular rate of compensation.

9 42. Defendants failed to provide all rest periods to which employees were entitled and
10 failed to pay rest period premiums to Plaintiff and other class members.

11 43. As stated in the above sections, due to understaffing, Plaintiff and other class members
12 were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant had a policy
13 and practice of not paying rest period premiums to employees who were unable to take rest periods.

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

16 45. Defendants failed to provide accurate itemized wage statements to the class members
17 each pay period as a result of the policies and practices set forth in this notice. Defendants violated
18 Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages
19 earned,” as the employees earned wages (including for off the clock work) and premiums that were
20 not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage
21 statements.

22 46. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
23 employee wage statements each pay period the applicable hourly rates in effect and the number of
24 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees,
25 which includes time when employees worked off the clock. The amounts stated are instead depreciated
26 and underpaid, resulting in an inaccurate reflection on the pay stub.

47. 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 class members worked during their meal periods.

48. Because of the policies and practices set forth in the PAGA 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.

49. As a result of the foregoing violations, Defendants also failed to timely pay all wages as they were due to Plaintiff and class members while they were employed and also failed to timely pay all wages due to Plaintiff and class members at their separation of employment.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

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

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

51. 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).

52. Defendants willfully failed in their affirmative obligation to pay Plaintiff 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.

53. Defendants' unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

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

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

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

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

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

59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

65. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

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

68. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

69. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class members, govern how Defendants were required to calculate paid sick leave.

70. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

71. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19

Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

72. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNPAID VACATION WAGES

Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198

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

74. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be timely paid all vested vacation wages at their final rate of pay upon separation of employment, and which further provide a private right of action for an employer's timely failure to pay all vacation compensation upon termination.

75. Defendant offered Plaintiff and class members an employment contract or policy providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued vacation and/or PTO pursuant to the contract or policy.

76. Upon separation of Plaintiff and class members, Defendants willfully failed in their affirmative obligation to timely pay Plaintiff and class members all accrued but unused vacation at their final rate during their employment with Defendants, in violation of Labor Code sections 201(a), 202(a), and 227.3.

77. Plaintiff and class members are entitled to recover the full amount of the accrued vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

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

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

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

EIGHTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

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

83. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

84. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

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

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

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

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

18 96. Plaintiff and class members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

24 **ELEVENTH CAUSE OF ACTION**

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

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

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

28 97. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

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

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

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

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

3 105. On or about **July 16, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

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

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

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

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

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

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
23 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
25 Orders.
- 26 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 27 d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- 28

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

111. 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 certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff 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;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5.

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

Dated: September 20, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Attorneys for Plaintiff Charles Constantino

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
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ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

July 16, 2024

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

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

Good Samaritan Shelter
PO Box 5908
Santa Maria, CA 93456

Good Samaritan Shelter
400 W Park
Santa Maria, CA 93458

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

GOOD SAMARITAN SHELTER

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 an aggrieved employee.

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 Overnight Shelter Staff from about October 2023 to June 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. Specifically, Defendants had a policy and practice of inserting false meal period entries (i.e., time editing) into Plaintiff and, on information and belief, the aggrieved employees time records. During Plaintiff's employment, Defendants' agents altered his time records to insert meal period times (when none were taken) or to make his meal period entries appear compliant (i.e., taken by the 5th hour, 30 minutes in length). Plaintiff and the aggrieved employees were deprived of regular wages each time Defendants altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had a shorter/interrupted meal period or no meal period at all. Plaintiff is informed and believes that other employees suffered the same violations.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

First, as a result of Defendants editing Plaintiff’s and, on information and belief, the aggrieved employees time records to include false meal periods, Defendants failed to compensate Plaintiff and the aggrieved employees for all overtime hours worked. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Second, Defendants failed to pay overtime at the regular rate of pay. Plaintiff and the aggrieved employees earned overtime in the same pay period they shift differential pay or other non-excludable remuneration, which Defendants did not include in the regular rate of pay. Below is an example of Defendants’ failure to pay the overtime at the regular rate of pay.

PERSONAL AND CHECK INFORMATION			EARNINGS						
Charles Renn T Constantino			BASIS OF DESCRIPTION		HRS/UNITS	RATE	CURRENT (\$)	YTD	YTD (\$)
Employee ID: 1709			PAY					HRS/UNITS	
Home Department: 621 IV ES - HHH			Dir Hrly		0.4300	20000	8.60	7.9900	159.80
Pay Period: 04/22/24 to 05/05/24			Graveyard Shift		76.5200	20500	1568.66	593.1600	12159.80
Check Date: 05/10/24 Check #: 4664			Dir OT		0.0800	30000	2.40	4.9200	147.60
NET PAY ALLOCATIONS			Total Hours		77.0300			606.0700	
DESCRIPTION THIS PERIOD (\$) YTD (\$)			Total Hrs Worked		77.0300				
Check Amount 0.00 0.00			Gross Earnings				1579.66		12467.20
Chkg 525 1215.68 9616.46			WITHHOLDINGS						
NET PAY 1215.68 9616.46			DESCRIPTION FILING STATUS				CURRENT (\$)	YTD (\$)	
TIME OFF (Based on Policy Year)			Social Security				97.94	772.97	
DESCRIPTION CURR.DEDUCT AVAILBAL			Medicare				22.90	180.77	
Floating 0.00 hrs 0.00 hrs			Fed Income Tax SMS				190.62	1486.46	
DESCRIPTION CURR.ACCRUE CURR.DEDUCT AVAILBAL			CA Income Tax SM12 0 0				35.14	273.39	
PTO 3.26 hrs 0.00 hrs 17.24 hrs			CA Disability				17.38	137.15	
DESCRIPTION CURR.DEDUCT AVAILBAL			TOTAL				363.98	2850.74	
Unpaid Time 0.00 hrs 0.00 hrs									

Extract from Plaintiff’s Wage Statement with a Pay Date of May 10, 2024

Here, Plaintiff earned a “Graveyard Shift” differential at a rate of \$20.50/hour. He also earned 0.08 hours of overtime. The overtime was paid at a rate of \$30.00/hour (1.5x Plaintiff’s base hourly rate of \$20.00/hour). Defendants’ failed to include Plaintiff’s differential pay in calculating his overtime rate.

For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants 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 as required by the plain language of Labor Code section 510(a) 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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

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

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. As stated above, due to Defendants’ failure to include all non-discretionary pay,

including shift differential pay, Defendants failed to pay Plaintiff's and, on information and belief, the aggrieved employees' paid sick leave at the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Consequently, any Plaintiff and aggrieved employee's payment of vested vacation wages upon termination was depreciated and underpaid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

Defendants failed to provide compliant meal periods. As a matter of common policy and practice, Defendant failed to pay Plaintiff and the other aggrieved employees meal periods at the regular rate of pay.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to understaffing. Specifically, as Overnight Shelter Staff, Plaintiff was not permitted to leave the facility during his shift. Due to lack of coverage as a result of understaffing, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated in the above sections, due to understaffing, Plaintiff and other aggrieved employees were very rarely, if at all, authorized or permitted to take all their rest periods. Defendant has a policy and practice of not paying rest period premiums to employees who were unable 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, up to the maximum amount allowed as set forth under the Labor Code.

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

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

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

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

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 as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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.

Defendants 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 during their meal periods.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

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, up to the maximum amount allowed as set forth under the Labor Code.

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 blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Charles Constantino

Breanna Naranjo

Human Resource Associate – Good Samaritan Shelter

bnaranjo@goodsamaritanshelter.org

Natalie Guzman

Human Resource Associate – Good Samaritan Shelter

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