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County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

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

Plaintiffs,

vs.

VISHVEN GLOBAL PROMOTERS, LLC and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU025712C

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff FRANCINE CORREA, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants VISHVEN GLOBAL PROMOTERS, and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action complaint brought under the California Private Attorneys
7 General Act (Labor Code sections 2968 *et seq.*).

8 2. Defendants failed to pay Plaintiff and the aggrieved employees all minimum and
9 overtime wages due to unlawful policies and practices of unlawful time editing and requiring Plaintiff
10 and the aggrieved employees to work off-the-clock.

11 3. Defendants failed to provide, authorize, and/or permit Plaintiff and the aggrieved
12 employees to take compliant meal and rest periods to which they were entitled. Defendants further
13 failed to pay Plaintiff and the aggrieved employees’ meal or rest period premiums.

14 4. Defendants failed to properly reimburse Plaintiff and the aggrieved employees for
15 using their personal cell phones, computers, and internet to complete work-related duties.

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

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

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

23 **JURISDICTION & VENUE**

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

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

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

PARTIES

12. Plaintiff Correa is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2023 to May 2024. Plaintiff worked as a Sandwich Artist.

B. Defendants

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

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

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

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

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

GENERAL ALLEGATIONS

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

20. First, Defendants engaged in an unlawful policy and practice of editing Plaintiff and the aggrieved employees' time records.

21. Specifically, Plaintiff and the aggrieved employees often were unable to take compliant meal periods due to high customer demands and often worked through their unpaid meal periods. In order to avoid paying all hours worked, Defendants engaged in an unlawful practice of time editing, where they would insert false meal periods to make it appear as if they took a compliant meal period regardless of their ability to do so.

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

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

1 24. Plaintiff and other aggrieved employees were required to complete mandatory training
2 as part of their onboarding while off-the-clock and without pay. Specifically, Plaintiff was required
3 to complete approximately five training courses at home, while off-the-clock. Plaintiff was not
4 compensated for this time and is informed and believes other aggrieved employees were similarly
5 required to complete training at home without pay.

6 25. Additionally, Plaintiff and the aggrieved employees often worked off-the-clock without
7 the ability to clock in when they began work due to an error with the timekeeping system. On these
8 days, Plaintiff and the aggrieved employees were instructed to notify Defendants of their start time.
9 However, Defendants would often fail to report the correct time, instead reporting start times five to
10 ten minutes later.

11 26. These unlawful practices resulted in unpaid hours worked.

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

14 28. As described above, Defendants engaged in an unlawful policy and practice of time
15 editing and requiring off-the-clock work. To the extent that this unlawful practice resulted in unpaid
16 hours worked over eight (8) hours in a day or forty (40) hours in a week this resulted in unpaid
17 overtime.

18 29. Defendants failed to comply with California's paid sick leave laws with respect to the
19 aggrieved employees.

20 30. Due to Defendants' unlawful time editing system and practice requiring off-the-clock
21 work, Defendants failed to provide Plaintiff and the aggrieved employees with all the sick leave hours
22 she was owed based on accrual. Therefore, Plaintiff and the aggrieved employees were underpaid sick
23 leave whenever Defendants would edit their hours worked.

24 31. The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor
25 Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to
26 aggrieved employees.

1 32. Plaintiff and the aggrieved employees routinely experienced missed, late, short, and
2 interrupted meal periods due to understaffing and in order to keep up with the high demands of the
3 job.

4 33. Specifically, Plaintiff and the aggrieved employees were required to answer phone calls
5 and assist customers. Due to understaffing, Plaintiff and the aggrieved employees often missed,
6 worked through all or part of their meal periods, or took them after the fifth hour of work.

7 34. For example, in a one-week span from June 15, 2024 to June 22, 2024, Plaintiff
8 experienced three noncompliant meal periods. On June 15, 2024, Plaintiff experienced a missed meal
9 period. On June 16, 2024 and June 18, 2024 Plaintiff experienced late meal periods, because these
10 were taken after the fifth hour of work. During the same pay period, Defendants acknowledged
11 Plaintiff and the aggrieved employees missed and took late meal periods, however failed to pay
12 Plaintiff any meal period premiums.

13 35. Further, Defendants maintained an invalid meal period waiver. Under California law,
14 a first meal period waiver is only valid if Plaintiff worked for less than 6 hours in the day.

15 36. Plaintiff's time records show she worked over 8 hours on 5/15/24, therefore a waiver
16 is invalid. Plaintiff signed Missed Meal Period Acknowledgement Form, acknowledging this missed
17 meal period was involuntary because they had an employee meeting and could not take their meal
18 period. However, Defendants waived this meal period instead of paying Plaintiff a meal period
19 premium.

20 37. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the
21 aggrieved employees all owed meal period premiums.

22 38. Similarly, as a matter of common policy and practice, Defendants failed to provide all
23 rest periods to which Plaintiff and the aggrieved employees were entitled.

24 39. Due to constant customer demands, Plaintiff and the aggrieved employees were often
25 required to continue working without any time to take a compliant break.

26 40. To the extent Plaintiff and the aggrieved employees were able to take a rest period, this
27 would only be for about five minutes and not the lawful 10-minute paid rest period.
28

1 41. As a matter of common policy and practice, Defendants failed to pay all owed rest
2 period premiums.

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

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

13 44. Defendants violated Labor Code section 226(a)(2) by failing to accurately list
14 employees’ “total hours worked,” as the wage statements did not accurately include the
15 uncompensated time Plaintiff and other aggrieved employees worked due to Defendants’ policy and
16 practice of time editing.

17 45. Defendants required Plaintiff and the aggrieved employees to incur costs for work-
18 related purposes without full reimbursement.

19 46. Plaintiff and the aggrieved employees were required to use their personal cell phones
20 to communicate with Defendants daily. Plaintiff and the aggrieved employees were required to send
21 Defendants pictures of expired products and inventory counts. Defendants did not reimburse Plaintiff
22 and the aggrieved employees for using their personal cell phone for work-related purposes.

23 47. Further, Plaintiff and the aggrieved employees were required to use their personal
24 computer and internet to complete the mandatory online trainings as required by Defendants. Plaintiff
25 and aggrieved employees incurred expenses as part of their job duties and were not reimbursed by
26 Defendants for those costs.

1 48. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees
2 unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and
3 practice.

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

7 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

18 52. Plaintiff reserves the right to amend, supplement, or add to this description of the
19 aggrieved employees, according to proof.

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

24 54. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
25 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
26 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
27 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of the employee and other current or former

employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3. “

55. 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.”

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

57. On or about **September 27, 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.

58. 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”).

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

60. 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.

61. 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.*

62. 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.

63. 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(k).

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
3 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
4 g. For such other relief the Court deems just and proper.

5
6 Dated: December 2, 2024

Ferraro Vega Employment Lawyers, Inc.

7
8 

Nicholas J. Ferraro

Attorneys for Plaintiff Francine Correa

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 27, 2024

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

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

Vishven Global Promoters, LLC
216 N. Gatewood Way
Santa Maria, CA 93454

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

VISHVEN GLOBAL PROMOTERS, LLC DBA SUBWAY

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 Sandwich Artist from about November 2023 to May 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

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

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

First, Defendants engaged in an unlawful policy and practice of time editing. Defendants routinely made edits to Plaintiff’s and, on information and belief, other aggrieved employees’ time records without their knowledge or authorization.

Specifically, Plaintiff and the aggrieved employees often were unable to take compliant meal periods due to high customer demands and often worked through their unpaid meal periods. In order to avoid paying all hours worked, Defendants engaged in an unlawful practice of time editing, where they would insert false meal periods to make it appear as if they took a compliant meal period regardless of their ability to do so.

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

For example, Plaintiff and other aggrieved employees were required to complete mandatory training as part of their onboarding while off-the-clock and without pay. Specifically, Plaintiff was required to complete approximately five training courses at home, while off-the-clock. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were similarly required to complete training at home without pay.

Additionally, Plaintiff and the aggrieved employees often worked off-the-clock without the ability to clock in when they began work due to an error with the timekeeping system. On these days, Plaintiff and the aggrieved employees were instructed to notify Defendants of their start time. However, Defendants would fail to report the correct time, instead reporting start times five to ten minutes later.

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.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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. Due to Defendant’s unlawful time editing, Defendant failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Therefore, Plaintiff and the aggrieved employees were underpaid sick pay whenever Defendant’s edited hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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.

Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to understaffing and in order to keep up with the high demands of the job. Specifically, Plaintiff and the aggrieved employees were required to answer phone calls and assist customers. Due to understaffing, Plaintiff and the aggrieved employees often missed, worked through all or part of their meal periods, or took them after the fifth hour of work.

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

User ID / Payroll	Employee Name	5/15/2024 Wednesday	5/16/2024 Thursday	5/17/2024 Friday	5/18/2024 Saturday	5/19/2024 Sunday	5/20/2024 Monday	5/21/2024 Tuesday	Hrs Wrkd
3913	CORREA, FRANCINE	13:57 - 22:00*	07:15-12:38 13:08-15:23		06:57-12:41 13:11-15:05	14:13-18:02 18:33-21:45	14:00 - 15:11*		
TOTAL Adj.		8.05	7.53	0.00	7.63	7.02	1.18	0.00	31.51

Extract from Plaintiff’s Timecard Report.

Here, in a one-week span, Plaintiff experienced three noncompliant meal periods. On 5/15/2024 Plaintiff missed her meal period completely. On 5/16/2024 and 5/18/2024 Plaintiff experienced late meal period, because these were taken after the fifth hour of work.

Plaintiff’s wage statement for the corresponding period further shows Plaintiff was not paid a single meal period premium for these noncompliant meal periods.

Further, during the same pay period, Defendants acknowledged Plaintiff and the aggrieved employees missed and took late meal periods as shown below:

Second, Defendants maintained an invalid meal period waiver. An illustrative example is shown below:

☒ **INVOLUNTARY LATE, MISSED, SHORTENED, OR INTERRUPTED MEAL PERIOD:** Employee hereby notifies the Company that the employee was prevented from taking a timely meal period for circumstances outside of the employee's control.

Policy: Under California law, employees who work more than five hours per day must be provided with a duty-free and uninterrupted meal period of not less than 30 minutes. This meal period should begin no later than the end of the fifth hour of work, unless waived, if the employee's total day's work and/or scheduled shift will be completed within a work period of six (6) hours or less.

Employees who work more than 10 hours per day must be provided with a second, duty-free and uninterrupted meal period of not less than 30 minutes, unless waived, if the employee's total day's work and/or scheduled shift will be completed within a work period of twelve (12) hours or less in one workday, as long as the employee did not waive the first meal period. This meal period should begin no later than the end of the tenth hour of work.

Reason for Late, Missed, Shortened, or Interrupted Meal Period:
Had an employee meeting and couldn't take her break on time. Approved by Karissa and Miguel.

Employee Signature: FC Date: 05/20/2024

Manager Signature: LA Date: 05/20/2024

Extract from Plaintiff's Missed Meal Period Acknowledgement Form.

Here, Defendants state the missed meal period on 5/15/24 was involuntary because they had an employee meeting and could not take their meal period. However, a meal period waiver is only valid if Plaintiff worked for less than 6 hours in the day. Plaintiff's time records above show she worked over 8 hours that day, therefore this waiver is invalid.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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.

As a matter of common policy and practice, Defendant failed to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As mentioned above, due to constant high customer demands Plaintiff and the aggrieved employees often required them to continue working without any time to take a compliant break. When Plaintiff and the aggrieved employees were able to take a rest period, this would only be for about five minutes and not the lawful 10-minute paid rest period. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods in violation of Labor Codes 226.7 and 516.

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.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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 due to Defendant’s policy and practice of time editing and off-the-clock work.

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

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

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

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

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

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

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

Specifically, Plaintiff and the aggrieved employees were required to use their personal cell phones to communicate with Defendants daily. Plaintiff and the aggrieved employees were required to send Defendants pictures of expired products and inventory counts. Defendants did not reimburse Plaintiff and the aggrieved employees for using their personal cell phone for work-related purposes.

Further, Plaintiff and the aggrieved employees used their personal computer and internet to complete the mandatory online trainings as required by Defendants. Plaintiff and aggrieved employees incurred expenses as part of their job duties and were not reimbursed by Defendants for those costs.

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 black ink that reads "Elyssa Martinez". The signature is written in a cursive, flowing style.

Elyssa Martinez

Cc Plaintiff Francine Correa

Collins & Khan LLP
Azim Khanmohamed
akhan@collinskhan.com