

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Mariela R. Romo (State Bar No. 341657)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
mariela@ferrarovega.com

Attorneys for Plaintiff Andrea Guerrero, on behalf of others similarly situated and the State of California under the Private Attorneys General Act

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

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

Plaintiffs,

vs.

THE BOYS AND GIRLS CLUBS OF KERN
COUNTY and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-24-103510

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Failure to Reimburse Business Expenses
6. Unpaid Split Shift Premiums
7. Unfair Competition
8. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ANDREA GUERRERO, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”), brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants THE BOYS AND
4 GIRLS CLUBS OF KERN COUNTY and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

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

9 2. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
10 permitted to work in violation of the applicable IWC Wage Order.

11 3. Defendants’ underpayment of wages was facilitated by their company-wide practices
12 of failing to pay split-shift premiums.

13 4. Plaintiff and Class Members were not always given an adequate opportunity to take
14 complaint meal and rest breaks, yet Defendants did not pay Plaintiff and Class Members for meal and
15 rest period premiums on those days.

16 5. Defendants did not reimburse Plaintiff and Class Members for necessary expenses
17 incurred in furtherance of the Class Members’ job duties.

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

20 7. Defendants’ employment policies, practices, and payroll administration systems
21 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

22 8. Plaintiff seeks to recover the damages, wages, interest, and penalties, in addition to
23 attorneys’ fees and costs, according to proof.

24 **JURISDICTION & VENUE**

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

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

11. 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

13. Plaintiff Guerrero is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2023 to September 2024. Plaintiff worked as an Activity Leader.

B. Defendants

17. 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.

18. 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.

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

CLASS ALLEGATIONS

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

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

21. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

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

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

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 practice of scheduling Plaintiff and Class Members to work split shifts without paying split shift premiums. Defendants regularly scheduled Plaintiff and Class Members to work both morning and evening shifts, resulting in five hours of non-paid, non-working time between shifts. For example, Plaintiff was regularly scheduled Monday through Friday from 7:30 am to 9:30 am and then from 2:30 pm to 6:30 pm on the same day. Despite implementing split shifts, Defendants failed to accordingly pay Plaintiff and Class Members split shift premiums. An illustrative example of this violation is found on the extract of Plaintiff's schedule agreement signed August 5, 2024. *See Fig. 1.*

**BOYS & GIRLS CLUBS
OF KERN COUNTY**

**Change in Pay / Position and or Location
Detail Form**

Date: 8/5/2024

Employee Name: Andrea Montenegro Guerrero

Site: Noble AM & PM **Position :** Activity Leader

Rate: \$19.00 per hour

Schedule:

AM:	M – F	7:30 am – 9:30 am
PM:	M, T, R, F W	2:30 pm – 6:30 pm 1:30 pm – 6:30 pm

Note: As of 8/6/2024

Employee Signature: Andrea Montenegro Guerrero (Aug 13, 2024 09:14 PDT)

Director of Operations & Safety: L. M.

Associate Executive Director Signature: [Signature]

Fig. 1, Plaintiff's schedule agreement signed August 5, 2024.

26. Further, due to employee responsibilities and the continuous flow of business, Plaintiff and Class Members suffered late, short, interrupted, and/or missed meal and rest periods. Defendant maintained a practice of understaffing shifts, therefore, only about five to six employees were responsible for over 100 students. Plaintiff and Class Members were not able to take a compliant meal or rest periods without compromising the safety of the over 100 students they were responsible for

1 instructing and monitoring. Plaintiff and Class Members were further prevented from taking compliant
2 meal and rest breaks because of the students' ages which required constant supervision. Moreover, the
3 program was so tightly scheduled that it was not possible to take a compliant meal or rest period.

4 27. Defendants' practice of understaffing and tightly scheduling physical education, STEM
5 lessons, snack breaks, and lesson times, back-to-back made taking compliant meal and rest breaks
6 impossible for Plaintiff and Class Members who had less than ten minutes between activities to clean
7 their workspace, gather students, and take them to their next activity all while ensuring the safety of
8 their students. Further, due to understaffing, Plaintiff and Class Members did not have enough
9 coverage to ensure that they could take a rest break and that the students they monitored were safe and
10 supervised. When Plaintiff and Class Members experienced these missed meal and rest periods,
11 Defendants failed to pay meal and rest period premiums at the regular rate as required by Labor Code
12 section 226.7.

13 28. Defendants also required Plaintiff and Class Members to incur necessary, work-related
14 costs, without reimbursement. Defendants required Plaintiff and Class Members to use their personal
15 cell phones to clock in and out for their shifts using the ADP application. Defendants did not provide
16 reimbursement for the use of personal cell phones. Instead, Plaintiff and Class Members bore the cost
17 of that requirement, without reimbursement.

18 29. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
19 statements to Plaintiff and Class Members each pay period. Defendants failed to list the correct "gross
20 wages earned" as employees earned wages and premiums that were not paid, resulting in an inaccurate
21 reflection and recording of "gross wages earned" on those wage statements. Likewise, Defendants
22 failed to state on employee wage statements each pay period the applicable hourly rates in effect and
23 the number of hours worked at that rate as Defendants failed to pay all wages and premiums owed to
24 employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate
25 reflection on the pay stub.

26 30. Further, Defendants' wage statements failed to accurately list employees' "total hours
27 worked" due to Defendants' unlawful practice of failing to include Plaintiff and Class Members' time
28 spent working through meal or rest periods on their timecards. Thus, Plaintiff and Class Members

1 cannot promptly and easily determine from the wage statement alone the wages paid or earned without
2 reference to other documents or information. These wage statement violations are significant because
3 they create confusion among Plaintiff and Class Members with respect to what amounts were owed
4 and paid, at what rate, the number of hours worked, and how those amounts were or should be
5 calculated. The wage statements reflect a false statement of earnings and conceal the underpayments
6 of employee wages.

7 31. These violations create derivative liability for failure to pay all wages owed each or
8 upon separation of employment.

9 **FIRST CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

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

12 32. All outside paragraphs of this Complaint are incorporated into this section.

13 33. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
14 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
15 meal period premiums in lieu thereof), and which further provide a private right of action for an
16 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
17 regular rate of compensation.

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

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

36. 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.

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

38. 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.

39. 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).

40. 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.

THIRD CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

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

42. 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

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

14 **FOURTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

17 45. All outside paragraphs of this Complaint are incorporated into this section.

18 46. This cause of action is brought by a wage statement subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

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

26 48. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
27 accurate itemized wage statements, causing confusion and concealing wage and premium
28 underpayments.

49. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

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

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

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

SIXTH CAUSE OF ACTION

UNPAID SPLIT SHIFT PREMIUMS

Violation of Labor Code §1198; IWC Orders

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

54. Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages concerning the class.

55. Section 4(C) of the applicable IWC Wage Orders requires that when “an employee works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition to the minimum wage for that workday.” According to the IWC Wage Orders’ definition

sections, a “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

56. Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

57. As described above, Defendants maintained an unlawful policy and practice of failing to pay split shift premiums owed to Plaintiff and the class members. As such, Defendants are liable to the class for all unpaid premiums, and associated penalties, interests, fees, and costs.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

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

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

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

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

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

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

67. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of 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."])

68. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a

1 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
2 former employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

14 72. On or about **September 27, 2024**, Plaintiff paid the requisite PAGA filing fee and
15 provided written notice (by online electronic filing with the LWDA and by certified mail to
16 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
17 the alleged violations.

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

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

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

26 76. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
27 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
28

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.*

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

78. 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

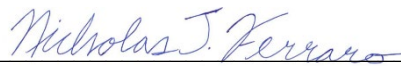
Plaintiff prays for judgment as follows:

- 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;

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

20
21 Dated: December 2, 2024

Ferraro Vega Employment Lawyers, Inc.

22
23 

Nicholas J. Ferraro

Attorneys for Plaintiff Andrea Guerrero

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

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

September 27, 2024

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

VIA CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Boys and Girls Clubs of Kern County
801 Niles Street, P.O. Bin 5J
Bakersfield, CA 93305

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

Boys and Girls Club Foundation of Kern County
5001 E. Commerce Center Dr., Ste. 350
Bakersfield, CA 93309

Dear LWDA Officer and Company Representatives:

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

BOYS AND GIRLS CLUBS OF KERN COUNTY; BOYS AND GIRLS CLUB FOUNDATION OF KERN COUNTY

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 Activity Leader from about September 2023 to September 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 Split Shift Premium Wages Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the aggrieved employees.

Section 4(C) of the applicable IWC Wage Orders requires that when “an employee works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition to the minimum wage for that workday.” According to the IWC Wage Orders’ definition sections, a “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

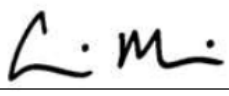
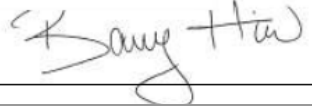
Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to the aggrieved employees. As illustrated below, Defendant scheduled Plaintiff and aggrieved employees to work both morning and evening shifts with approximately a five-hour break in between, resulting in split shifts. Yet, Defendant did not pay Plaintiff and aggrieved employees any split shift premiums.


BOYS & GIRLS CLUBS
OF KERN COUNTY

**Change in Pay / Position and or Location
Detail Form**

Date:	8/5/2024		
Employee Name:	Andrea Montenegro Guerrero		
Site:	Noble AM & PM	Position :	Activity Leader
Rate:	\$19.00 per hour		
Schedule:	AM: M – F	7:30 am – 9:30 am	
	PM: M, T, R, F	2:30 pm – 6:30 pm	
	W	1:30 pm – 6:30 pm	

Note: As of 8/6/2024

Employee Signature:	 Andrea Montenegro Guerrero (Aug 13, 2024 09:14 PDT)
Director of Operations & Safety:	
Associate Executive Director Signature:	

Extract of Plaintiff's schedule agreement showing that Plaintiff was scheduled for split shifts every work day.

As reflected in Plaintiff's time records above, the morning shift covered from 7:30 a.m. to 9:30 a.m. and the evening shift covered from 2:30 p.m. to 6:30 p.m. Plaintiff was scheduled to work a split shift every day. However, Plaintiff was not paid any split shift premiums despite Defendant establishing a work schedule that was interrupted by non-paid, non-working 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.

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 other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with the high demands of the job. Defendant maintained a practice of understaffing shifts, therefore, only about five to six employees were responsible for over 100 students. Plaintiff and other aggrieved employees were not able to take a compliant meal period without comprising the safety of the over 100 students they were responsible for instructing and monitoring. Plaintiff and other aggrieved employees were further prevented from taking compliant meal breaks because of the students' young ages which required constant supervision. Moreover, the program was so tightly scheduled that it was not possible to take a compliant meal period. Defendants' practice of understaffing and tightly scheduling activities made taking compliant meal breaks impossible for Plaintiff and aggrieved employees. When Plaintiff and other aggrieved employees experienced these missed meal periods, Defendants failed to pay meal period premiums at the regular rate as required by Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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 explained in the "Unpaid Meal Period Premium Wages" section above due to the high demands of the job and understaffing, Plaintiff and other aggrieved employees routinely

experienced missed and non-compliant rest periods. Defendant maintained a tight schedule which required Plaintiff and aggrieved employees to monitor several student activities, such as physical education, STEM lessons, snack breaks, and lesson times, back-to-back without sufficient time for a rest period. Plaintiff and other aggrieved employees often had less than ten minutes between activities to clean their workspace, gather the students, and take them to their next activity all while ensuring the safety of their students. Plaintiff was not provided her rest periods due to these constant work demands required for her position. Further, due to understaffing, Plaintiff and other aggrieved employees did not have enough coverage to ensure that they could take a rest break and that the students they monitored were safe and supervised.

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 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. Furthermore, by not listing the meal and rest period premiums owed and payable to Plaintiff and aggrieved employees, Defendants failed to list all hours worked at each hourly rate in violation of Labor Code section 226(a)(9).

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. Defendants required Plaintiff and aggrieved employees to utilize their personal cell phones to clock in and out for their shifts using the ADP application. Defendants did not provide reimbursement for the use of personal cell phones. Instead, Plaintiff and aggrieved employees bore the cost of that requirement, without reimbursement.

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, appearing to read "Mariela R. Romo". The signature is fluid and cursive, with a large initial "M" and a distinct "R" for the last name.

Mariela R. Romo

Cc Plaintiff Andrea Guerrero

Jovan Molina, HR Representative
jmolina@bgckc.org