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

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

Plaintiffs,

vs.

SIERRA LOGISTICS COMPANY, LLC DBA
HOTSHOT ARBOR CARE and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CU015860C

Hon. Wendy M. Behan
Dept. 66

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff MERCEDES MIRANDA, 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 SIERRA
4 LOGISTICS COMPANY, LLC DBA HOTSHOT ARBOR CARE and DOES 1 through 50, inclusive
5 (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

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

10 3. Defendants’ underpayment of wages was facilitated by their unlawful company-wide
11 practice of requiring off the clock work without compensation and editing time records to show fewer
12 hours worked than Plaintiff and the class members actually worked.

13 4. Defendants failed to pay Plaintiff and the class members all minimum and overtime
14 wages due to unlawful policies and practices of requiring off the clock work.

15 5. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members
16 to take all meal and rest periods to which they were entitled.

17 6. Defendants also failed to reimburse Plaintiff and the class members for necessary
18 expenses incurred in furtherance of the class members’ job duties.

19 7. Defendants violated Labor Code section 206.5 with respect to Plaintiff and the class
20 members by requiring that they agree to release wage claims without proper consideration. Plaintiff
21 seeks declaratory relief on this issue in addition to available penalties.

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

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

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

1 **JURISDICTION & VENUE**

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

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

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

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

13 **PARTIES**

14 **A. Plaintiff Mercedes Miranda**

15 15. Plaintiff Miranda is an individual over 18 years of age who worked for Defendants in
16 California as a non-exempt employee from about May 2024 to August 2024. Plaintiff worked as a
17 Vegetation Technician.

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

25 **B. Defendants**

26 17. Defendant Sierra Logistics Company, LLC dba Hotshot Arbor Care is a California
27 limited liability company that maintains operations and conducts business throughout the State of
28 California, including in this county.

18. 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.

19. 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.

20. 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.

21. 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

22. 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.

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

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

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

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

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

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

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

25. 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

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

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

28. Specifically, Defendants engaged in the unlawful policy and practice of requiring Plaintiff and the class members to work off-the-clock without compensation.

29. For example, Plaintiff would arrive to work at 6:30am everyday but was not allowed to clock in until 7:00am. During the time Plaintiff was off-the-clock, she was required to go to the garage and gather tools, put tools in the truck, and wait for the required morning meeting to begin. Plaintiff alleges the Defendants agents, such as supervisors, would punish employees for clocking out later than authorized, by a write-up, termination, or suspension. In order to comply with these requirements, Plaintiff would set alarms on her phone to ensure she clocked in and out on time but continued working. Plaintiff is informed and believes Defendants engaged in the same practice with respect to other class members.

30. Furthermore, Defendants maintained an unlawful policy and practice of editing Plaintiff and class members' time cards to show fewer hours worked. Due to this time shaving practice, all hours worked were not directly compensated, resulting in the underpayment of regular wages to Plaintiff and class members.

31. Specifically, due to traffic, Plaintiff was unable to clock out during her scheduled clock out time, but Defendants would adjust her timesheet to show she clocked out during her scheduled time. For example, Plaintiff would not be able to clock out until 5:40pm -5:50pm every day due to traffic but her timesheets indicate that she clocked out at 5:30pm every day. Plaintiff's timesheets from 8/12/2024 to 8/20/24 are an illustrative example of this practice of time editing.

1 32. Lastly, Plaintiff and the class members routinely worked through their meal and rest
2 periods, without compensation. Plaintiff alleges that Defendants would automatically include
3 compliant lunches in their timesheets when in reality, they did not take a meal break during that time.
4 This unlawful practice resulted in off-the-clock work without compensation.

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

7 34. As discussed above, Defendants failed to pay Plaintiff, and on information and belief,
8 other class members for the time spend working off-the-clock. Defendants also engaged in the
9 unlawful policy and practice of editing employees' time sheets to reflect less hours than they actually
10 worked. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week,
11 this resulted in unpaid overtime.

12 35. Defendants failed to comply with California's paid sick leave laws with respect to the
13 class members. Defendants failed to provide Plaintiff and the class members with all sick leave
14 accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages
15 at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the class
16 members worked off-the-clock.

17 36. Additionally, each time Plaintiff and the class members worked off-the-clock that
18 resulted in unpaid overtime, the overtime hours were not accounted for when calculating an
19 employee's accrued paid sick leave. Therefore, Plaintiff and the class members were not awarded the
20 total accrued sick leave had earned.

21 37. Defendants failed to provide Plaintiff and the class members with compliant meal
22 periods and meal period premiums.

23 38. As described above, the Defendants would automatically include compliant meal
24 periods despite the fact that Plaintiff and the class members routinely experienced missed, late, short,
25 and/or interrupted meal periods in order to keep up with the high demand of the job. As an illustrative
26 example, Plaintiff and the class members were required to work through their meal periods when they
27 had to work on transmission towers and when demand was high.

1 39. Similarly, as a matter of common policy and practice, Defendants failed to provide all
2 rest periods to which Plaintiff and the class members were entitled. For example, in order to keep up
3 with the pressures by management to reach a specific goal, Plaintiff routinely spent her rest breaks
4 driving to the next destination.

5 40. On those occasions, Defendant did not pay the required premium wage owed.

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

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

16 43. Defendants violated Labor Code section 226(a)(2) by failing to accurately list
17 employees’ “total hours worked,” as the wage statements did not accurately include the
18 uncompensated time Plaintiff and other class members worked due to Defendant’s policy and practice
19 of time rounding.

20 44. Defendants required Plaintiff and class members to incur costs for work-related
21 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the class
22 members unavoidably and necessarily incurred these losses, expenditures, costs, and ad a matter of
23 policy and practice.

24 45. Defendants required Plaintiff and class members to utilize their personal cell phone to
25 complete necessary work tasks, such as to communicate with co-workers and management.
26 Furthermore, Defendants required employees to have two devices at all times (cell phone and iPad).
27 Defendants provided the iPad to Plaintiff and other class members but, when the tablet ran out of data,
28 Plaintiff and the class member were required to use their personal cell phones to contact management

1 and other employees. Instead, Plaintiff and the class members bore the cost of these requirements,
2 without reimbursement.

3 46. Defendants required Plaintiff and, on information and belief, other class members to
4 sign a release of all employment-related claims in exchange for continuing their employment and
5 receiving their final paycheck (to which they were already entitled). Continued employment with
6 Defendants was also expressly contingent on Plaintiff and, on information and belief, other class
7 members' agreement to an unenforceable arbitration provision and unlawful duress my Defendants
8 agents'. Additionally, Defendants provided no ability to negotiate whether Plaintiff can continue to
9 work for Defendants if she did not sign the agreement and made no attempt to determine whether any
10 reimbursement was sufficient to compensate Plaintiff, and on information and belief, other class
11 members, for unpaid wages and premiums that they were owed at the time the release was signed.
12 Defendants were aware of Plaintiff's unpaid wages due to off the clock work and Plaintiff's unpaid
13 wages and premiums far exceeds any reimbursement provided, which makes Defendants' requirement
14 that she sign the release agreement in exchange continued employment a violation of Labor Code
15 section 206.5. agree to release wage claims for less than what they are worth, resulting in an unlawful
16 release agreement without proper consideration. Specifically, Defendants required Plaintiff and the
17 class members to execute the release of claims related to the California Labor Code, IWC Wage
18 Orders, and other claims prior to obtaining their final paycheck.

19 47. Moreover, Plaintiff expressed to Defendants that she did not agree with the terms of
20 the arbitration agreement. Defendants responded that her job depends on if she signs it, and they forced
21 her to sign it. As a result, Plaintiff wrote "V.C." next to her signature to express that she was under
22 duress by Defendants to sign this unlawful agreement.

23 48. Defendants failed to provide Plaintiff and other class members with fresh and pure
24 drinking water during their working hours. For example, during the start of Plaintiff's employment,
25 Defendants did not provide their employees with any water until Plaintiff informed Defendants agents'
26 that it was required. Plaintiff alleges that Defendants agents' told her and other class members that
27 they are to supply their own water and that Defendants need only to supply "emergency" water.
28 Thereafter, Defendants provided bottled water and then water from a hose that Plaintiff alleges tasted

1 like rubber and smelled like chlorine. The hose water that Defendants provided was put into a 5-gallon
2 water jug and was not always accessible to employees who were required to stay around their truck.

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

6 **FIRST CAUSE OF ACTION**

7 **MINIMUM WAGE VIOLATIONS**

8 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

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

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

11 51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
12 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
13 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
14 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
15 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
16 liquidated damages).

17 52. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
18 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
19 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
20 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
21 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
22 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
23 Code § 1194.2.

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

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

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

71. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

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

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

5 80. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
6 accurate itemized wage statements, causing confusion and concealing wage and premium
7 underpayments.

8 81. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
9 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
10 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 226(e).

13 **EIGHTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **Violation of Labor Code §§ 201 *et seq.***

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

17 83. This cause of action is brought by a waiting time subclass pursuant to Labor Code
18 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
19 employment, and which further provide a private right of action to recover statutory waiting time
20 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
21 wages.

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

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

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 86. All outside paragraphs of this Complaint are incorporated into this section.

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

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

13 **TENTH CAUSE OF ACTION**

14 **UNLAWFUL RELEASE OF CLAIMS**

15 **Violation of Labor Code § 206.5**

16 89. All outside paragraphs of this Complaint are incorporated into this section.

17 90. Labor Code section 206.5(a) states that, "An employer shall not require the execution
18 of a release of a claim or right on account of wages due, or to become due, or made as an advance on
19 wages to be earned, unless payment of those wages has been made. A release required or executed in
20 violation of the provisions of this section shall be null and void as between the employer and the
21 employee. Violation of this section by the employer is a misdemeanor."

22 91. Labor Code section 206.5(b) affirms that, "For the purposes of this section, execution
23 of a release includes requiring an employee, as a condition of being paid, to execute a statement of the
24 hours he or she worked during a pay period which the employer knows to be false."

25 92. Defendants willfully failed in their affirmative obligation to garner proper
26 consideration in exchange for Plaintiff's release of claims in violation of Labor Code section 206.5.

27 93. Defendants unlawful acts deprived Plaintiff and class members of any ability to
28 negotiate whether Plaintiff can continue to work for Defendants if she did not sign the agreement and

made no attempt to determine whether any reimbursement was sufficient to compensate Plaintiff, and on information and belief, other class members, for unpaid wages and premiums that they were owed at the time the release was signed. Defendants were aware of Plaintiff's unpaid wages due to off the clock work and Plaintiff's unpaid wages and premiums far exceeds any reimbursement provided, which makes Defendants' requirement that she sign the release agreement in exchange continued employment a violation of Labor Code section 206.5. agree to release wage claims for less than what they are worth, resulting in an unlawful release agreement without proper consideration.

94. As a result, Plaintiff and the class members may recover civil penalties up to the maximum amount allowed as set forth under the Labor Code.

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

96. 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.

97. 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.*

98. 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.

99. 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

1 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
2 violations do not provide a private right of action.

3 100. Plaintiff and class members are entitled to injunctive relief against Defendants,
4 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
5 an ownership interest and to prevent future damage and the public interest under Business and
6 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
7 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
8 § 1021.5.

9 **TWELFTH CAUSE OF ACTION**

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

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

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

13 101. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

26 105. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Section 2699.3. “

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

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

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

15 109. On or about **September 19, 2024**, Plaintiff paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

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

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

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

27 113. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
28 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.*

114. 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. ***Unlawful Release of Claims.*** Violation of Labor Code § 206.5
- k. ***Failure to Provide Water.*** Violation of Labor Code § 2441
- l. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5;
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. Declaratory relief stating that Defendant has violated Labor Code sec. 206.5 with respect to any purported release that applies to the claims alleged herein;
- l. For this action to be maintained as a representative action under the PAGA;
- m. 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;
- n. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 o. 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 p. For such other relief the Court deems just and proper.

5
6
7 Dated: November 27, 2024

Ferraro Vega Employment Lawyers, Inc.

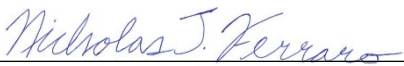
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9 _____
10 Nicholas J. Ferraro
11 *Attorney for Plaintiff Mercedes Miranda*
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EXHIBIT 1

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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nick@ferrarovega.com
Lauren N. Vega
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ATTORNEYS AT LAW
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619-693-7727
619-350-6855 fax
ferrarovega.com

September 19, 2024

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

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

Sierra Logistics Company, LLC dba
Hotshot Arbor Care
40459 Highway 41, suite 7
Oakhurst, California 93644

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

SIERRA LOGISTICS COMPANY, LLC DBA HOTSHOT ARBOR CARE

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 Vegetation Technician from about May 30, 2024 to August 28, 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in the unlawful policy and practice of requiring Plaintiff and the aggrieved employees to work off-the-clock without compensation. For example, Plaintiff would arrive to work at 6:30am everyday but was not allowed to clock in until 7:00am. During the time Plaintiff was off-the-clock, she was required to go to the garage to gather tools, put tools in the truck, and wait for the required morning meeting to begin. Plaintiff alleges the Defendants agents’, such as supervisors, would punish employees for clocking out later than authorized, by a write-up, termination, or suspension. In order to comply with these requirements, Plaintiff would set alarms on her phone to ensure she clocked in and out on time but continued working. Plaintiff is informed and believes Defendants engaged in the same practice with respect to other aggrieved employees.

Furthermore, due to traffic, Plaintiff was unable to clock out during her scheduled clock out time, but Defendants would adjust her timesheet to show she clocked out during her scheduled time. For example, Plaintiff would not be able to clock out until 5:40pm -5:50pm every day due to traffic but her timesheets indicate that she clocked out at 5:30pm every day. An illustrative example of this is shown below:

Time in	Time out	Duration	Customer	Mileage
August 12, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	0000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	0000
August 13, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	0000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	0000
August 14, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	000
August 15, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	00
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	00
August 16, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	000
August 19, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	000
August 20, 2024				10.00
7:00am	10:30am	3.50	SCE- Structure Brushing	000
10:30am	11:00am	0.50	Lunch	
11:00am	5:30pm	6.50	SCE- Structure Brushing	000

Extract of Plaintiff's timesheet from 08/12/2024 to 08/20/2024.

Therefore, Plaintiff and the aggrieved employees were deprived of regular, and overtime wages each time Defendants rounded their time records to inaccurately reflect the amount of time the employees actually worked on the clock.

Lastly, Plaintiff and the aggrieved employees routinely worked through their meal and rest periods, without compensation. Plaintiff alleges that Defendants would automatically include compliant lunches in their timesheets when in reality, they did not take a meal break during that time. This unlawful practice resulted in off-the-clock work without compensation.

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 discussed above in the “unpaid Minimum Wage” section, Defendants failed to pay Plaintiff, and on information and belief, other aggrieved employees for the time spent working off-the-clock. Defendants also engaged in the unlawful policy and practice of editing employees’ time sheets to reflect less hours than they actually worked. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

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. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the aggrieved employees worked off-the-clock. Additionally, each time Plaintiff and the aggrieved employees worked off-the-clock that resulted in unpaid overtime, the overtime hours were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff and the aggrieved employees were not awarded the total accrued sick leave time they had earned.

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under

conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees to which they were entitled in a manner that complies with California Law. Plaintiff and the aggrieved employees routinely experienced missed, late, short, and/or interrupted meal periods in order to keep up with high demands of the job. For example, Plaintiff and the aggrieved employees were required to work through their meal periods when they had to work on transmission towers and when demand was high.

As mentioned above, despite Defendants failure to provide compliant meal periods, Defendants willfully engaged in this auto-deduct policy for meal periods. Specifically, the time punches for Plaintiff and, on information and belief, the aggrieved employees reflect automatic deductions of 0.5 hours (or 30 minutes) each workday, regardless of whether a meal period was taken. Defendants engaged in this unlawful policy and practice without the employees’ knowledge or consent, and without the option to edit the auto-deductions in their timesheets. Thus, Defendants failed to pay Plaintiff and the aggrieved employees’ meal period premiums each time a meal period was automatically deducted but forced Plaintiff and other employees to continue working.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees all meal period premiums in violation of Labor Code section 226.7. Plaintiff is informed and believes this unlawful practice of failing to pay all meal period premiums occurred with respect to other aggrieved employees.

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.

Similar to the reasons Plaintiff and other aggrieved employees were unable to take complaint meal periods, such as the pressures to keep up with high demands of the job, Plaintiff and the aggrieved employees were not authorized or permitted to take their rest periods. For example, in order to keep up with the pressures by management to reach a specific goal, Plaintiff routinely spent her rest breaks driving to the next destination.

As a matter of common policy and practice, Defendants failed to pay Plaintiff and the aggrieved employees rest period premiums when they were unable to take rest periods. When Plaintiff and other aggrieved employees experienced these missed, late, and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate as required by Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, 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, Defendants underpaid Plaintiff and other aggrieved employees’ minimum, regular, overtime wages, and paid sick leave. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

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.

Defendants additionally failed to pay all accrued sick leave owed to aggrieved employees during their employment as set forth in this notice and failed to pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments.

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.

Defendants violated Labor Code section 226(a)(2) because the wage statements do not accurately list “total hours worked” as a result of the off-the-clock work performed by Plaintiff and the aggrieved employees during employment, including during unpaid meal periods.

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.

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 phone to complete necessary work tasks, such as to communicate with co-workers and management. Furthermore, Defendants required employees to have two devices at all times (cell phone and iPad). Defendants provided the iPad to Plaintiff and other aggrieved employees but, when the tablet ran out of data, Plaintiff and the aggrieved employees were required to use their personal cell phones to contact management and other employees. Instead, Plaintiff and the aggrieved employees bore the cost of these requirements, 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.

Unlawful Release of Claims
Violation of Labor Code § 206.5

Defendants violated Labor Code section 206.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to release wage claims without proper consideration.

Labor Code section 206.5(a) states that, “An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.”

Labor Code section 206.5(b) affirms that, “For the purposes of this section, execution of a release includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.”

Defendants required Plaintiff and, on information and belief, other aggrieved employees to sign a release of all employment-related claims in exchange for continuing their employment and receiving their final paycheck (to which they were already entitled). Continued employment with Defendants was also expressly contingent on Plaintiff and, on information and belief, other aggrieved employees' agreement to an unenforceable arbitration provision and unlawful duress by Defendants' agents'. Additionally, Defendants provided no ability to negotiate whether Plaintiff can continue to work for Defendants if she did not sign the agreement and made no attempt to determine whether any reimbursement was sufficient to compensate Plaintiff, and on information and belief, other aggrieved employees, for unpaid wages and premiums that they were owed at the time the release was signed. Defendants were aware of Plaintiff's unpaid wages due to off the clock work and Plaintiff's unpaid wages and premiums far exceeds any reimbursement provided, which makes Defendants' requirement that she sign the release agreement in exchange continued employment a violation of Labor Code section 206.5. agree to release wage claims for less than what they are worth, resulting in an unlawful release agreement without proper consideration. Specifically, Defendants required Plaintiff and the aggrieved employees to execute the release of claims related to the California Labor Code, IWC Wage Orders, and other claims prior to obtaining their final paycheck.

Moreover, Plaintiff expressed to Defendants that she did not agree with the terms of the arbitration agreement. Defendants responded that her job depends on if she signs it, and they forced her to sign it. As a result, Plaintiff wrote "V.C." next to her signature to express that she was under duress by Defendants to sign this unlawful agreement.

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 Provide Water **Violation of Labor Code § 2441**

Defendants violated Labor Code section 2441 with respect to Plaintiff and other aggrieved employees by failing to provide access to drinking water during working hours.

Labor Code section 2441(a) states that, "Every employer of labor in this state shall, without making charge therefor, provide fresh and pure drinking water to his or her employees during working hours. Access to the drinking water shall be permitted at reasonable and convenient times and places. Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.

Labor Code section 2441(b) affirms that, "The State Department of Health Services and all health officers of counties, cities, and health districts shall enforce the provisions of this section pursuant to subdivision (b) of Section 118390 of the Health and Safety Code. The

enforcement shall not be construed to abridge or limit in any manner the jurisdiction of the Division of Industrial Safety of the Department of Industrial Relations pursuant to Division 5 (commencing with Section 63000).

Defendants failed to provide Plaintiff and other aggrieved employees with fresh and pure drinking water during their working hours. For example, during the start of Plaintiff's employment, Defendants did not provide their employees with any water until Plaintiff informed Defendants agents' that it was required. Plaintiff alleges that Defendants agents' told her and other aggrieved employees that they are to supply their own water and that Defendants need only to supply "emergency" water. Thereafter, Defendants provided bottled water and then water from a hose that Plaintiff alleges tasted like rubber and smelled like chlorine. The hose water that Defendants provided was put into a 5-gallon water jug and was not always accessible to employees who were required to stay around their truck.

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,



Xavier L. Woodford

Cc Plaintiff Mercedes Miranda

PROPER DEFENSE LAW CORPORATION

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