

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 Brissette Alvarez

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/10/2024 11:18:44 AM

Clerk of the Superior Court
By M. Acevedo ,Deputy Clerk

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

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

Plaintiffs,

vs.

SWICKARD CROWN, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CU027512C

**REPRESENTATIVE ACTION
COMPLAINT**

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

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

5 **INTRODUCTION**

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

8 2. Defendants underpaid the aggrieved employees’ wages by failing to include all forms
9 of remuneration, including bonuses, into the regular rate of pay calculation for overtime and premiums.

10 3. Defendants failed to provide, authorize, and/or permit Plaintiff and the aggrieved
11 employees to take compliant meal and rest periods to which they were entitled. Further, Defendants
12 did not pay Plaintiff and the aggrieved employees’ meal or rest period premiums.

13 4. Defendants failed to reimburse Plaintiff and aggrieved employees for necessary
14 expenses incurred in furtherance of the aggrieved employees’ job duties.

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

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

20 **JURISDICTION & VENUE**

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

23 8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
24 the Superior Court.

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

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

PARTIES

A. Plaintiff Brissette Alvarez

11. Plaintiff Alvarez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about April 2024 to Present. Plaintiff worked as a Sales Consultant.

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

B. Defendants

13. Defendant Swickard Crown, LLC is a Delaware limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

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

GENERAL ALLEGATIONS

18. Plaintiff and aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

19. Defendants failed to pay Plaintiff and aggrieved employees overtime wages at the “regular rate of pay” for overtime hours worked, resulting in unpaid overtime wages. For example, during the pay period from June 16, 2024, to June 30, 2024, Plaintiff earned \$394.30 in commissions and a “Spiffs” bonus of \$200 for selling a warranty, in the same pay period she earned overtime and double time wages. However, Defendants failed to properly include the commissions and bonus payments in Plaintiff’s overtime rate, as the 30.97 overtime hours were paid at 1.5x Plaintiff’s base rate of \$16 rather than 1.5x her regular rate of pay. Likewise, the 0.25 double time hours she worked, failed to factor in the commissions and bonuses she earned that pay period. Defendants committed the same “regular rate of pay” and overtime violations against Plaintiff and aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

20. Further, due to understaffing and the high demands of the job, Plaintiff and aggrieved employees suffered many short, missed, late, and/or interrupted meal periods. Specifically, Plaintiff and the aggrieved employees were required to finish all deals and services they started with customers, otherwise they would not receive the full commission for that deal. For example, if Plaintiff and the

1 aggrieved employees were in the middle of negotiating a payment with a customer or needed to finish
2 running a credit check, they were expected to complete that task before taking their meal periods.
3 Further, even when Plaintiff and the aggrieved employees were able to take meal periods, they were
4 often taken after the fifth hour of work. For example, on June 1, 2024, Plaintiff took her meal break
5 after 7.92 hours of work. Likewise, Plaintiff and the aggrieved employees, often missed second meal
6 periods when working over 10 hours due to the demands of the job.

7 21. To the extent that Defendants paid any meal period premiums, the premiums were not
8 paid at the regular rate of compensation because the premium did not factor in bonuses or other forms
9 of remuneration, instead electing to pay Plaintiff and aggrieved employees at their base hourly rate.

10 22. Similarly, Plaintiff and aggrieved employees were not authorized and permitted to take
11 all rest periods to which they were entitled. Plaintiff and other aggrieved employees rarely, if at all,
12 took all their rest periods. For similar reasons as their noncompliant meal periods, due to understaffing
13 and work demands, Plaintiff and other aggrieved employees were required to work through their rest
14 periods to complete deals with existing customers and contacting new customers as required by
15 Defendants. Defendants failed to pay the aggrieved employees all rest premiums owed when they
16 experienced such non-compliant rest periods. To the extent that Defendants paid any rest period
17 premiums, the premiums were not paid at the regular rate of compensation because the premium did
18 not factor in bonuses or other forms of remuneration, instead electing to pay Plaintiff and aggrieved
19 employees at their base hourly rate.

20 23. Defendants also required Plaintiff and aggrieved employees to incur necessary, work-
21 related expenses, without reimbursements. Specifically, Plaintiff and aggrieved employees were
22 required to use their personal cell phones to send text messages and make multiple phone calls to
23 customers each day to follow up on deals with current customers and obtain new customers.

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

26 25. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
27 statements to Plaintiff and aggrieved employees each pay period as a result of the policies set forth
28 above. Defendants failed to list the correct “gross wages earned” as employees earned wages and

premiums that were not paid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Likewise, 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.

26. Further, Defendants’ wage statements failed to accurately list Defendant’s entire correct legal name and address on wage statements.

FIRST 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)

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

28. 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.

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

30. 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.”])

31. 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 civil

1 action brought by an aggrieved employee on behalf of the employee and other current or former
2 employees against whom a violation of the same provision was committed pursuant to the procedures
3 specified in Section 2699.3. “

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

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

9 34. On or about **October 1, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
10 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
11 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
12 violations.

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

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

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

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

25 39. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
26 Complaint, Defendants committed the following violations and are liable for all corresponding civil
27 penalties:
28

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 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.

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

PRAYER

Plaintiff prays for judgment as follows:

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

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

5
6 Dated: December 10, 2024

Ferraro Vega Employment Lawyers, Inc.

7 

8 Nicholas J. Ferraro

9 *Attorneys for Plaintiff Brissette Alvarez*

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

October 1, 2024

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

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

**Swickard Crown, LLC dba Crown
Toyota**
1650 Spring Gate Ln
Las Vegas, NV 89134

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

SWICKARD CROWN, LLC DBA CROWN TOYOTA

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 Sales Consultant from about April 2024 to Present. 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 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. An illustrative example of Defendants’ regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from 06/16/2024 to 06/30/2024 as it pertains to overtime is shown below:

Swickard Crown, LLC

Brissette A Alvarez

Employee ID	1366982	Fed Taxable Income	2,652.35	Check Date	July 10, 2024	Voucher Number	12511
Location	115	Fed Filing Status	H	Period Beginning	June 16, 2024	Net Pay	2,127.94
Hourly	\$16.00	State Filing Status	S-0	Period Ending	June 30, 2024	Total Hours Worked	118.02

Earnings Statement

Earnings	Rate	Hours	Amount	YTD	Deductions	Amount	YTD
Commission		0.00	394.30	394.30	Cell Reimbursement	-10.00	-20.00
Doubletime	32.00	0.25	8.00	162.24	401k	82.03	82.03
Overtime	24.00	30.97	743.28	2,846.64	Deductions	72.03	62.03
Regular	16.00	86.80	1,388.80	7,006.40	Direct Deposits	Type Account	Amount
Sick Bank		-2.23	0.00	0.00	WELLS FARGO BANK NA	C ***8942	2,127.94
Sick Hrs E		4.00	0.00	0.00	Total Direct Deposits		2,127.94
Spiffs		0.00	200.00	200.00			
Gross Earnings		118.02	2,734.38	10,609.58			
Taxes			Amount	YTD	Time Off	Available Plan Year	Used
CA			101.06	318.38	CA PTO	0.00	0.00
CASDI-E			29.18	115.81	Sick	40.00	0.00
FITW			194.99	538.14			
MED			39.65	153.85			
SS			169.53	657.79			
Taxes			534.41	1,783.97			

Extract from Plaintiff’s wage statement for pay period 06/16/2024 to 06/30/2024 showing that she earned \$394.30 in commissions and a \$200 Spiffs bonus in the same pay period she earned overtime wages.

During this pay period, Plaintiff earned \$394.30 in commissions and a “Spiffs” bonus of \$200 based on the sale of a warranty. However, Defendants failed to properly include the commissions and bonus payments in Plaintiff’s overtime rate, as the 30.97 overtime hours were paid at 1.5x Plaintiff’s base rate of \$16, rather than 1.5x her regular rate of pay. Additionally, the 0.25 double time hours were paid at 2x Plaintiff’s base rate of \$16, rather than 2x her regular rate of pay. Defendants committed the same “regular rate of pay” violation against Plaintiff and other aggrieved employees as a matter of common payroll administration

and company policy in a manner susceptible to common proof. This resulted in the underpayment of wages to 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 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.

First, Plaintiff and other aggrieved employees routinely experienced, missed, late, short, and interrupted meal periods due to the demands of the job. Specifically, Plaintiff and the aggrieved employees were required to finish all deals and services they started with customers, otherwise they would not receive the full commission for that deal. For example, if Plaintiff and the aggrieved employees were in the middle of negotiating a payment with a customer or

needed to finish running a credit check, they were expected to complete that task before taking their meal periods. As a result, Plaintiff and the aggrieved employees suffered from non-compliant meal periods.

Even when Plaintiff and the aggrieved employees were able to take their meal periods, these were often taken after the fifth hour of work in violation of Labor Code 512. An illustrative example of this is shown below:

06/01/2024	Sat	Work	11:09 AM	7:04 PM	7.92
		Lunch	7:04 PM	7:50 PM	0.00
		Work	7:50 PM	9:07 PM	1.28

Extract of Plaintiff's time records from 06/01/2024 showing she took a meal period after the fifth hour of work.

Here, Plaintiff took her meal periods after the seventh hour of work due to the demands of the job. Upon information and belief, when Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

Second, Plaintiff and the aggrieved employees often experienced missed second meal periods, when working over 10 hours due to the demands of the job as mentioned above. This prevented Plaintiff and the aggrieved employees from being able to take their second meal period when working more than 10 hours in a day.

To the extent Defendants paid any meal period premium, the premiums were not paid at the regular rate of compensation because the premium did not factor in commissions, bonuses, or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

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

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a

rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants had an unlawful policy and practice of failing to provide all rest periods to which Plaintiff and the aggrieved employees were entitled. As stated above in the "Unpaid Meal Period Premium" section, due to the demands of the job, Plaintiff and other aggrieved employees rarely, if at all, took all their rest periods. Plaintiff and the aggrieved employees were too busy completing deals with existing customers and contacting new customers as required by Defendants. This prevented Plaintiff and the aggrieved employees from taking lawful rest periods.

When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in bonuses, commissions, and other forms of remuneration.

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.

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

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

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

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

Additionally, as seen on Plaintiff’s wage statement below, Defendants violated Labor Code section 226(a)(8) by not listing the entire correct legal name and address of the employer on Plaintiff and the aggrieved employees’ wage statements. This can be confusing to Plaintiff and the aggrieved employees.

Here, on Plaintiff’s and the aggrieved employees’ wage statements, the employer’s address is listed as 1611 Spring Gate Ln, 371507, Las Vegas, NV 89134 which differs from Defendants’ stated legal address. Additionally, Defendants list Swickard Crown, LLC as its name and fail to include its registered fictitious name, Crown Toyota. Below is an example of the improper naming and address on Plaintiff’s 08/09/2024 wage statement:

Swickard Crown, LLC
1611 Spring Gate Ln
371507
Las Vegas, NV 89134

Extract of Plaintiff's wage statement from 08/09/2024

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. Plaintiff and the aggrieved employees were required to send multiple text messages and make multiple phone calls to customers each day from their personal cell phone. This was required by Defendants because they expected Plaintiff and the aggrieved employees to follow up on deals with current customers and obtain new customers. The use of their personal devices was necessary to complete the required job duties because Defendants did not provide employees with work cell phones. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved employees were required to supply and use their personal cell phones for work-related purposes. Defendants did not reimburse Plaintiff and other aggrieved employees for expenses incurred from obtaining and using their own cell phone that was necessary for the job.

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 Romo". The signature is fluid and cursive, with a large initial "M" and a stylized "R" at the end.

Mariela Romo

Cc Plaintiff Brissette Alvarez

Swickard Crown, LLC
hr@swickard.com
legal@swickard.com