

November 8, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Jason Dowling, Agent for Service
UPM Inc. dba Universal Plastic Mold
13245 Los Angeles Street
Baldwin Park, CA 91706
Certified Mail Tracking Number: 9414 8112 0620 5520 6569 28

UPM Inc. dba Universal Plastic Mold
13245 Los Angeles Street
Baldwin Park, CA 91706
Certified Mail Tracking Number: 9414 8112 0620 5520 6512 82

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Segura v. UPM Inc. et al.***

Gentlepersons:

This office represents Plaintiff Nancy Segura (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants UPM Inc. dba Universal Plastic Mold; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Contra Costa County Superior Court and will be



assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Defendants' location in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees." Aggrieved Employees consistently worked at Defendants' behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular, and overtime rates. Specifically, Defendants failed to pay Aggrieved employees for the time that they spent completing mandatory training while off-the-clock. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without compensation.

As a result of the above-described requirements to work off the clock, and the other wage violations endured at Defendants' hands, Aggrieved Employees were not paid all wages earned and all wages owed to them including when working in excess of eight (8) hours a day, and/or forty (40) hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Further, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required. Additionally,



Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including the cost of purchasing and maintaining protective equipment, such as aprons, which were necessary to perform their duties under Defendants' employ and which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to accurately specify the name and address of the employer as required under the law as the wage statements provided to Aggrieved Employees name an entity that is not registered with the California Secretary of State's Office despite the fact that all businesses that wish to conduct business in California need to register with the California Secretary of State's Office. Furthermore, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime, discussed above. Moreover, the wage statements provided to Aggrieved Employees failed to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned.

Defendants also failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work to the detriment of Aggrieved Employees. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Lastly, Defendants failed to maintain a reasonable temperature in their facilities and to take all feasible measures to reduce excessive heat and/or humidity in their facilities resulting in Aggrieved Employees working in unreasonably hot temperatures in violation of Wage Order 4, paragraph 15(A)-(B).

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be



paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Defendants failed to pay Aggrieved employees for the time that they spent completing mandatory training while off-the-clock. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double



minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. The uncompensated time, discussed above including the time spent completing mandatory training while off-the-clock caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Defendants failed to compensate for all hours worked and at the applicable hourly rates for regular rate and overtime. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours



worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

///



Failure to Comply with Labor Code §§ 245 *et seq.* 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1). Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including the cost of purchasing and maintaining protective equipment, such as aprons, which were necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing, including all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be



given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately specify the name and address of the employer as required under the law as the wage statements provided to Aggrieved Employees' name an entity that is not registered with the California Secretary of State's Office despite the fact that all businesses that wish to conduct business in California need to register with the California Secretary of State's Office. Moreover, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime. Moreover, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, and unlawfully received or collected wages, discussed above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."



Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including for mandatory training. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawfully understating hours worked, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code §§ 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., all discussed herein, Defendants failed



to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unreasonable and Excessive Warehouse Temperatures

Under the IWC's Wage Order 4, paragraph 15(A), "[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed." During their employ with Defendants, Plaintiff and Aggrieved Employees worked in facilities with unreasonably excessive temperatures due to Defendants' failure to "take all feasible means to reduce such excessive heat" in violation of Wage Order 4, paragraph 15(A)-(B).

///



Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) **Wage Claims:** For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) **Inaccurate Wage Statements and Failure to Maintain Records:** For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(c) **Failure to Timely Pay Wages:** For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor



Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(d) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation wages in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

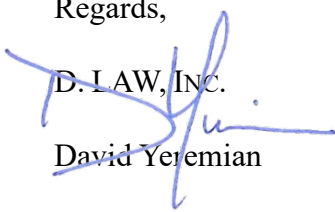
This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against UPM Inc. dba Universal Plastic Mold; and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the



Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,


D. LAW, INC.

David Yeremian

Cc: UPM Inc. dba Universal Plastic Mold by Certified Mail

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Roman Shkodnik (SBN 285152)
r.shkodnik@d.law
Mason Doidge (SBN 352604)
m.doidge@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff NANCY SEGURA,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NANCY SEGURA, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

UPM INC. dba UNIVERSAL PLASTIC
MOLD, a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Violation of Labor Code § 227.3;
4. Failure to Comply with Labor Code § 245 *et seq.* 246;
5. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and 1174.5;
8. Penalties Pursuant to Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff NANCY SEGURA, (hereinafter “Plaintiff”) on behalf of herself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants UPM INC. dba
8 UNIVERSAL PLASTIC MOLD, a California corporation; and DOES 1 through 50 (all
9 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
10 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
11 orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code,
12 and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
17 California and, and consistently worked at Defendants’ behest without being paid all wages due.
18 More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants failed to accurately record time worked by Plaintiff and the Employee
25 Class members by failing to record all hours worked by Employees. Defendants thus failed to pay
26 Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage
27 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.

28 ///

1 **THE PARTIES**

2 **A. The Plaintiff**

3 4. Plaintiff NANCY SEGURA has resided in California and during the time period
4 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
5 the State of California.

6 **B. The Defendants**

7 5. Defendant UPM INC. dba UNIVERSAL PLASTIC MOLD is a California
8 corporation, with its principle executive offices in Baldwin Park, California, and has been listed as
9 the employer on the wage statements issued to Plaintiff during the relevant time period. UPM
10 INC. dba UNIVERSAL PLASTIC MOLD lists an address in Baldwin Park, California with the
11 California Secretary of State, and employs Plaintiff and the Employees in Los Angeles County,
12 including at Defendants' offices and facilities throughout California and Defendants conduct
13 business throughout California.

14 6. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
16 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
18 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 50 when their identities become known.

22 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, or suffered or
28 permitted Employees to work, or engaged, thereby creating a common law employment

1 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
2 employed Employees.

3 **JURISDICTION AND VENUE**

4 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
6 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
8 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
9 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
10 County and Defendants maintain and operate company offices and facilities in Los Angeles
11 County, and employ Plaintiff and other Class members in Los Angeles County and throughout
12 California.

13 **FACTUAL BACKGROUND**

14 9. The Employees who comprise the Class and Collective, including Plaintiff, are
15 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
16 Employees who work in nonexempt positions at the direction of Defendants in the State of
17 California. Plaintiff and the Class members were either not paid by Defendants for all hours
18 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
19 Plaintiff and Employees were not paid for the time that they spent completing mandatory training.
20 Defendants had a policy prohibiting employees from recording training hours as hours worked,
21 resulting in Defendants not compensating employees for this work. Plaintiff also contends that
22 Defendants failed to pay Plaintiff and the Class members all wages due and owing, and failed to
23 furnish accurate wage statements, all in violation of various provisions of the California Labor
24 Code and applicable Wage Orders. Additionally, Defendants paid Plaintiff and Employees
25 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
26 information and belief, Defendants failed to incorporate all remunerations, including
27 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the
28 calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,

1 during times when Plaintiff and Employees worked overtime and received nondiscretionary
2 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
3 overtime wages by paying a lower overtime rate than required.

4 10. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
6 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
7 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
8 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
9 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
10 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
11 to pay all sick pay by paying a lower overtime rate than required.

12 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
13 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
14 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
15 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
16 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
17 vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and
18 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
19 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

20 12. During the course of Plaintiff and the Class members' employment with
21 Defendants, they were not paid all wages they were owed, including for all work performed and
22 for all training hours worked.

23 13. As a matter of uniform Company policy, Plaintiff and the Class members were
24 required to complete trainings which were not compensated by Defendants in violation of the
25 California Labor Code. As a result, Plaintiff and the Class members worked shifts over eight (8)
26 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
27 overtime rate for all such hours, including by being required to perform work duties and tasks
28 without pay and while off-the-clock. As a result, Plaintiff and the Class members worked

1 substantial overtime hours during their employment with Defendants for which they were not
2 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

3 14. As a result of the wage violations they endured at Defendants' hands, Plaintiff and
4 the Class members were not properly paid for all wages earned and for all wages owed to them by
5 Defendants, including when working more than eight (8) hours in any given day and/or more than
6 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
7 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
8 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
9 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
10 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
11 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
12 Labor Code, applicable IWC Wage Orders.

13 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees for all hours worked and failing to pay minimum wage for all time worked as required
16 by California Law.

17 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay
19 Employees overtime compensation at premium overtime rates for all hours worked in excess of
20 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
21 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
22 sections of IWC Wage Orders.

23 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
24 continuing to the present, Defendants have consistently failed to provide Employees with timely,
25 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.
26 Specifically, the wage statements given to Class members failed to accurately specify the name
27 and address of the employer as required under the law as the wage statements provided to Class
28 members name an entity that is not registered with the California Secretary of State's Office

1 despite the fact despite the fact that all businesses that wish to conduct business in California need
2 to register with the California Secretary of State's Office. Moreover, Defendants failed in their
3 affirmative obligation to keep accurate records of the correct overtime wages based on proper
4 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
5 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
6 Additionally, the wage statements given to Plaintiff and Class members failed to accurately
7 account for unpaid wages and overtime, which Defendants knew or reasonably should have known
8 were owed to Employees, as alleged hereinabove. Furthermore, the wage statements failed to list
9 Defendants' name and address in violation of Labor Code § 226(a)(8). The wage statements
10 provided to Employees were confusing and required Employees to engage in discovery and refer
11 to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation
12 by Employees.

13 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
15 performance of their job duties for Defendants including the cost of purchasing and maintaining
16 protective gear, such as aprons, which were necessary to perform their duties under Defendants'
17 employ in violation of Labor Code § 2802.

18 19. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
19 continuing to the present, Defendants have consistently failed to keep accurate time and wage
20 records as required by California wage-and-hour laws.

21 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
22 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
23 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
24 required by California wage-and-hour laws.

25 21. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
26 Code §§ 201, 202, 203, 204, 226, 226.3, 227.3, 245 *et seq.* 246, 248, 510, 512, 558, 558.1, 1174,
27 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2802.

28 ///

22. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

23. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, and have been employed by Defendants within the State of California.

24. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

e. Subclass 5. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

1 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
2 applicable limitations period, either voluntarily or involuntarily separated from their employment
3 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
4 termination.

5 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as
6 result of Defendants' business acts and practices, to the extent such acts and practices are found to
7 be unlawful, deceptive, and/or unfair.

8 25. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
9 modify the class description with greater particularity or further division into subclasses or
10 limitation to particular issues.

11 26. This action has been brought and may properly be maintained as a class action
12 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
13 of interest in litigation and proposed class is easily ascertainable.

14 **A. Numerosity**

15 27. The potential members of the class as defined are so numerous that joinder of all
16 the member of the class is impracticable. While the precise number of class member has not been
17 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
18 time period relevant to this lawsuit, employed more than 100 individuals were employed by
19 Defendants within the State of California.

20 28. Accounting for employee turnover during the relevant time period increases this
21 number substantially. Plaintiff alleges that Defendants' employment records will provide
22 information as to the number and location of all class members.

23 **B. Commonality**

24 29. There are questions of law and fact common to the class that predominate over any
25 questions affecting only individual class members. These common questions of law and fact
26 include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;
28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under
2 Labor Code § 510;
3 d. Whether Defendants violated Labor Code § 227.3;
4 e. Whether Defendants failed to comply with Labor Code § 245 *et seq.* 246;
5 f. Whether Defendants violated Labor Code § 226(a);
6 g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
7 h. Whether Defendants failed to reimburse Employees for necessary business
8 expenses;
9 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to
10 pay wages and compensation due and owing at the time of termination of
11 employment;
12 j. Whether Defendants violated Business and Professions Code § 17200 *et*
13 *seq.*; and
14 k. Whether Employees are entitled to equitable relief pursuant to Business and
15 Professions Code § 17200 *et seq.*

16 **C. Typicality**

17 30. The claims of the named plaintiff are typical of those of the other Employees.
18 Employees all sustained injuries and damages arising out of and caused by Defendants' common
19 course of conducts in violation of statutes, as well as regulations that have the force and effect of
20 law, as alleged herein.

21 **D. Adequacy of Representation**

22 31. Plaintiff will fairly and adequately represent and protect the interest of Employees.
23 Counsel who represents Employees are experienced and competent in litigating employment class
24 actions.

25 **E. Superiority of Class Action**

26 32. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
28 questions of law and fact common to all Employees predominate over any questions affecting only

individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

33. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

34. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

35. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with mandatory off-the-clock training. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

36. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

37. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

38. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of
2 this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

3 39. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
4 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

5 40. California Labor Code § 1194.2 also provides for the following remedies:

6 In any action under Section 1194 . . . to recover wages because of
7 the payment of a wage less than the minimum wages fixed by an
8 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

9 41. Defendants have the ability to pay minimum wages for all time worked and have
10 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
11 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

12 42. Wherefore, Employees are entitled to recover the unpaid minimum wages
13 (including double minimum wages), liquidated damages in an amount equal to the minimum
14 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
15 to California Labor Code § 1194(a).

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

18 **(Against All Defendants)**

19 43. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 44. By their conduct, as set forth herein, Defendants violated California Labor Code §
22 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
23 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
24 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
25 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
26 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
27 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
28 paying Employees wages for all hours worked including as alleged above in connection with off-

1 the-clock training. As a result, Employees regularly worked over 8 hours on a given day without
2 receiving overtime compensation.

3 45. Furthermore, on information and belief, Defendants did not pay Plaintiff and
4 Employees the correct overtime rate for the recorded overtime hours that they generated. In
5 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
6 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
7 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
8 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
9 rate of pay for purposes of calculating the overtime wage rate.

10 46. Therefore, during times when Plaintiff and Employees worked overtime and
11 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
12 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

13 47. Defendants' failure to pay compensation in a timely fashion also constituted a
14 violation of California Labor Code § 204, which requires that all wages shall be paid
15 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
16 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
17 and overtime compensation earned by Employees. Each such failure to make a timely payment of
18 compensation to Employees constitutes a separate violation of California Labor Code § 204.

19 48. Employees have been damaged by these violations of California Labor Code §§
20 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

21 49. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
22 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
23 full amount of all their unpaid wages and overtime compensation, with interest, plus their
24 reasonable attorneys' fees and costs.

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE § 227.3
(Against All Defendants)

50. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth herein.

51. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

52. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

53. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 227.3.

FOURTH CAUSE OF ACTION
FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET. SEQ* 246
(Against All Defendants)

54. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

55. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1).

56. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements

1 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
2 rate, in violation of the law.

3 57. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
4 Code §§ 245 *et seq.* and 246.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
7 **IN VIOLATION OF LABOR CODE § 2802**

8 **(Against All Defendants)**

9 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 59. Under Labor Code § 2802(a) an employer must indemnify its employees for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or her duties, or of his or her obedience to the directions of the employer.

14 60. Employees incurred necessary expenditures in the performance of their job duties
15 for Defendants, namely the cost of purchasing and maintaining protective equipment, such as
16 aprons, which were necessary to perform their duties under Defendants' employ. From four (4)
17 years prior to the original filing of this lawsuit and continuing to the present, Defendants
18 consistently failed to reimburse Employees for these necessarily incurred business expenses.

19 61. As a result of the unlawful acts of Defendants, Employees have been deprived of
20 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
21 plus interest and penalties thereon, attorneys' fees, and costs.

22 **SIXTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 226(a)**

24 **(Against All Defendants)**

25 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 63. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate; these statements must be appended to
3 the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's
4 wages; or, if wages are paid by cash or personal check, these statements may be given to the
5 employee separately from the payment of wages; in either case the employer must give the
6 employee these statements twice a month or each time wages are paid.

7 64. Defendants failed to provide Employees with accurate itemized wage statements in
8 writing, as required by the Labor Code. Specifically, the wage statements given to Class members
9 failed to accurately specify the name and address of the employer as required under the law as
10 the wage statements provided to Class members name an entity that is not registered with the
11 California Secretary of State's Office despite the fact despite the fact that all businesses that wish
12 to conduct business in California need to register with the California Secretary of State's Office.
13 Moreover, the wage statements given to Employees by Defendants failed to accurately account for
14 wages and overtime, which Defendants knew or reasonably should have known were owed to
15 Employees, as alleged hereinabove. Additionally, Defendants failed in their affirmative obligation
16 to keep accurate records of the correct overtime wages based on proper regular rate calculations
17 that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses
18 earned, and the total amount of compensation of their Employees. Furthermore, the wage
19 statements failed to list Defendants' name and address in violation of Labor Code § 226(a)(8). The
20 wage statements provided to Employees were confusing and required Employees to engage in
21 discovery and refer to outside sources to verify whether their pay was correct and potentially
22 resulting in a miscalculation by the Employees.

23 65. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
24 Employees suffered injuries, including among other things confusion over whether they received
25 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
26 forcing them to make mathematical computations to analyze whether the wages paid in fact
27 compensated them correctly for all hours worked.

28 ///

66. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

67. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

68. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown according to proof.

SEVENTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174

and 1174.5

(Against All Defendants)

69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

70. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

71. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

72. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them.

1 73. Accordingly, Defendants are liable for civil penalties pursuant to the California
2 Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

3 **EIGHTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 203**

5 **(Against All Defendants)**

6 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 75. Numerous Employees are no longer employed by Defendants; they either quit
9 Defendants' employ or were fired therefrom.

10 76. Defendants failed to pay these Employees all wages due and certain at the time of
11 termination or within seventy-two (72) hours of resignation.

12 77. The wages withheld from these Employees by Defendants remained due and owing
13 for more than thirty (30) days from the date of separation of employment.

14 78. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
15 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
16 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
17 to thirty (30) days from the date they were due.

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

20 **(Against All Defendants)**

21 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 80. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
24 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
25 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
26 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
27 meaning of Code of Civil Procedure § 1021.5.

28 ///

1 81. Plaintiff is a “person” within the meaning of Business & Professions Code
2 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
3 relief, restitution, and other appropriate equitable relief.

4 82. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
5 business practices.

6 83. Wage-and-hour laws express fundamental public policies. Paying employees their
7 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
8 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
9 to enforce minimum labor standards, to ensure that employees are not required or permitted to
10 work under substandard and unlawful conditions, and to protect law-abiding employers and their
11 employees from competitors who lower costs to themselves by failing to comply with minimum
12 labor standards.

13 84. Defendants have violated statutes and public policies. Through the conduct alleged
14 in this Complaint Defendants have acted contrary to these public policies, have violated specific
15 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
16 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
17 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
18 guaranteed to all employees under the law.

19 85. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
20 violation of the Business & Professions Code § 17200 *et seq.*

21 86. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
22 overtime, etc., either knew or in the exercise of reasonable care should have known that their
23 conduct was unlawful; therefore, their conduct violates the Business & Professions Code § 17200
24 *et seq.*

25 87. As a proximate result of the above-mentioned acts of Defendants, Employees have
26 been damaged, in a sum to be proven at trial.

27 88. Unless restrained by this Court Defendants will continue to engage in such
28 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should

1 make such orders or judgments, including the appointment of a receiver, as may be necessary to
2 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
3 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
4 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
5 failed to pay.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

- 8 1. For an order certifying this action as a class action;
- 9 2. For compensatory damages in the amount of the unpaid minimum wages for work
10 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
11 the filing of this action, as may be proven;
- 12 3. For liquidated damages in the amount equal to the unpaid minimum wage and
13 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 14 4. For penalties pursuant to Labor Code § 227.3;
- 15 5. For penalties pursuant to Labor Code §§ 245 *et seq.* 246;
- 16 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 17 7. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 18 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
19 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 20 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 21 10. For restitution for unfair competition pursuant to Business & Professions Code
22 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 23 11. For compensatory damages in the amount of all previously unreimbursed business
24 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
25 from four (4) years prior to the original filing of this action, as may be proven;
- 26 12. For an order enjoining Defendants and their agents, servants, and employees, and
27 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
28 duties adumbrated in this Complaint; and

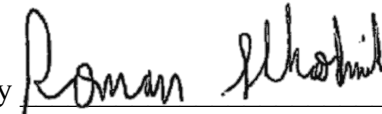
- 1 13. For all general, special, and incidental damages as may be proven;
- 2 14. For an award of pre-judgment and post-judgment interest;
- 3 15. For an award providing for the payment of the costs of this suit;
- 4 16. For an award of attorneys' fees; and
- 5 17. For such other and further relief as this Court may deem proper and just.
- 6

7 DATED: November 8, 2024

D. LAW, INC.

8

9 By



David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
NANCY SEGURA
and the putative class

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED: November 8, 2024

By Roman Elsharif

David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
NANCY SEGURA
and the putative class