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Superior Court of California,
County of San Diego

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

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

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

Plaintiffs,

vs.

ALTERNATIVE BEHAVIOR STRATEGIES
LLC, a Utah limited liability company, and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU028600C

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff EMILY WASSINK (“Plaintiff”), on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act brings this FIRST AMENDED CLASS
3 AND REPRESENTATIVE ACTION COMPLAINT against Defendants ALTERNATIVE
4 BEHAVIOR STRATEGIES LLC and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings the instant class action on behalf of herself and similarly situated current
8 and former employees of Defendants for a series of systemic violations of the California Labor Code
9 and IWC Wage Orders.

10 2. Defendants failed to pay Plaintiff and the class members for all regular and overtime
11 hours due to their policy and practice of editing time records and removing hours worked (i.e.
12 timeshaving).

13 3. Defendants underpaid overtime, paid sick leave, and premiums by failing to include
14 non-discretionary bonuses, differentials, and all other forms of non-excludable remuneration into the
15 regular rate of pay calculations.

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

18 5. Defendants failed to properly reimburse Plaintiff and class members for use of their
19 personal laptops for work-related purposes in direct consequence of their job duties.

20 6. Defendants’ employment policies, practices, and payroll administration systems
21 enabled and facilitated these violations on a company-wide basis with respect to the class members.
22 Plaintiff seeks to recover the damages, wages, interest, and penalties, in addition to attorneys’ fees and
23 costs, according to proof.

24 **JURISDICTION & VENUE**

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

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

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

PARTIES

11. Plaintiff Wassink is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2013 to September 2017 and August 2019 to April 2023, most recently in the position of Behavior Analyst Trainee.

B. Defendants

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.

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.

CLASS ALLEGATIONS

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

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

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

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

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants,

1 which resulted in losses to the class. Proof of common unlawful business
2 practices, which Plaintiff experienced, will establish the right of the class to
3 recover on the causes of action alleged herein.

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

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

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

20 21. Common questions of law and fact as to the class members predominate over questions
21 affecting only individual members. The common questions of law and fact exist as to whether the
22 employment policies and practices formulated by Defendants and applied to the class members
23 constitute violations of California law.

24 **GENERAL ALLEGATIONS**

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

27 23. Specifically, Defendants maintained a policy and practice of requiring off-the-clock
28 work.

1 24. For example, due to a heavy workload, Plaintiff and the class members often completed
2 work outside of their scheduled hours in order to complete it all. Additionally, Plaintiff recalls the
3 insurance would only authorize a certain number of hours. Any hours outside of that, that were
4 required to complete their work, went unpaid.

5 25. Second, Defendants engaged in a practice of removing hours worked or *timeshaving*,
6 when Plaintiff and the class members worked outside of their scheduled hours.

7 26. Specifically, Defendants required Plaintiff and the class members to submit forms
8 adjusting their hours back to their scheduled hours.

9 27. An illustrative example of these perfectly rounded time records from March 9, 2023 to
10 March 16, 2023 showing, every punch was perfectly rounded to the nearest 15th minute. Plaintiff's
11 time records throughout her employment reveal similar situations.

12 28. These hours are incorrect each time Defendant as a matter of policy and practice
13 effectively removed hours actually worked.

14 29. Defendant failed to pay Plaintiff and the class members overtime wages and the lawful
15 rate of pay for overtime hours worked, resulting in unpaid overtime wages.

16 30. To the extent that Defendants' unlawful practice of time shaving resulted in removing
17 hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

18 31. Additionally, Defendants failed to pay overtime at the "regular rate of pay."

19 32. Defendants paid class members additional non-excludable remuneration, including
20 non-discretionary bonuses, commissions, and other remuneration that Defendant failed to include in
21 the regular rate of pay with respect to overtime. Instead, Defendants unlawfully paid overtime to
22 Plaintiff and the class members at 1.5x their base hourly rate

23 33. Defendant failed to comply with California's paid sick leave laws with respect to the
24 class members.

25 34. Defendants maintained unlawful practices of time editing and requiring off-the-clock
26 work. For each hour worked, but for which no paid sick leave was accrued, Defendants failed to
27 provide all owed paid sick leave hours to Plaintiff and the class members. On information and belief,
28 Defendants did not include hours worked off the clock when calculating the total accrued sick leave

1 they had earned.

2 35. Defendants failed to pay sick leave at the lawful statutory rate inclusive of all non-
3 discretionary earnings.

4 36. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in
5 Labor Code §§ 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice
6 to class members.

7 37. Plaintiff and class members routinely experienced missed, late, short, and interrupted
8 meal periods in order to keep up with the high demands of the job.
9 However, as a common matter of policy and practice, Defendants failed to pay all owed meal period
10 premiums.

11 38. Specifically, Plaintiff and the class members would be scheduled back-to-back
12 appointments which prevented them from being relieved to take a compliant meal period.

13 39. Additionally, Plaintiff and the class members would often work through their unpaid
14 meal period to drive to their next client appointment.

15 40. Further, Defendants required Plaintiff and class members to finish their client
16 appointments before taking a break.

17 41. As such, Plaintiff and the class members would often work during their unpaid meal
18 period, resulting in frequent missed, late, or otherwise non-compliant meal periods.

19 42. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the
20 class members meal period premiums for these non-compliant meal periods.

21 43. To the extent that Defendants ever paid a meal period premium, Defendants failed to
22 pay Plaintiff and other class members a meal period premium at the “regular rate of compensation”
23 because premiums paid did not factor in all forms of non-excludable remuneration including bonuses
24 and commissions.

25 44. To the extent Defendants maintained a meal period waiver, this waiver is inapplicable
26 each time Plaintiff and the class members worked more than 6 hours in a day.

27 45. Similarly, Defendants had a policy and practice of denying these employees their
28 entitled rest periods.

1 46. Defendants further failed to pay Plaintiff and the class members rest period premiums
2 at the regular rate of pay for the non-compliant rest periods.

3 47. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
4 Code section 226.7 because such premiums were not paid at the correct regular rate of compensation
5 to the class members, which would have factored in bonuses and all other types of non-excludable
6 additional remuneration.

7 48. Defendants required Plaintiff and the class members to incur necessary, work-related
8 costs, without adequate reimbursement.

9 49. Specifically, Defendants required Plaintiff and the class members to use their personal
10 laptops and home internet for work-related duties with no reimbursement.

11 50. In direct consequence of their job duties, Plaintiff and the class members unavoidably
12 and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

13 51. Because of these violations, Defendants failed to provide accurate, itemized wage
14 statements to Plaintiff and the class members that included accurate gross or net wages earned due to
15 the off-the-clock and time shaving violations.

16 52. Defendants failed to accurately state the “gross wages earned” and “net wages earned”
17 in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and class members’ earned wages and
18 premiums that were not paid, resulted in an inaccurate reflection, and recording of “gross wages
19 earned” and “net wages earned” on those wage statements.

20 53. Second, Defendants violated Labor Code section 226(a)(2) by failing to list employees’
21 “total hours worked,” as class members worked off-the-clock to perform the various work-related
22 tasks described above, rendering the total hours listed as an inaccurate reflection of hours worked.

23 54. Third, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding
24 hours worked at those rates are incorrectly listed on Plaintiff’s and class members’ wage statements.

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

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES OWED**

3 **Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197**

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

5 56. All outside paragraphs of this Complaint are incorporated into this section.

6 57. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
7 §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours
8 and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-
9 exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of
10 work, and further provide a private right of action for an employer’s failure to pay all minimum wages
11 (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that “‘wages’
12 includes all amounts for labor performed by employees of every description, whether the amount is
13 fixed or ascertained by the standard of time, task, piece, commission basis, or other method of
14 calculation.”

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

22 59. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
23 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
24 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
25 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
26 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2,
27 218.6 and any other applicable statutes.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Violation of Labor Code §§ 510 and 1194**

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

5 61. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
7 wages all overtime hours worked, and which further provide a private right of action for an employer's
8 failure to pay all overtime compensation for overtime hours worked.

9 62. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
10 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
11 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
12 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
13 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
14 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
15 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

16 63. Plaintiff and class members are entitled to recover the full amount of the unpaid
17 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
18 extent permitted by law.

19 **THIRD CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

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

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

23 65. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
24 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
25 meal period premiums in lieu thereof), and which further provide a private right of action for an
26 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
27 regular rate of compensation.

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

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

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

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

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

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

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

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

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Violation of Labor Code §§ 204, 210, 218

80. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code § 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period and which further provide a private right of action for an employer's failure to comply with these provisions. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

WAGE STATEMENT VIOLATIONS

raphs of this Complaint are incorporated into this section.

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

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

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

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

13 **EIGHTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

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

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

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

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

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

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

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

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

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

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

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

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

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

26 98. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28

1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

7 100. Plaintiff and class members are entitled to injunctive relief against Defendants,
8 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
9 an ownership interest and to prevent future damage and the public interest under Business and
10 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
11 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
12 § 1021.5.

13 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

26 104. The State of California, via the Labor and Workforce Development Agency
27 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
28

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

3 105. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
4 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
7 action brought by an aggrieved employee on behalf of the employee and other current or former
8 employees against whom a violation of the same provision was committed pursuant to the procedures
9 specified in Section 2699.3. “

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

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

15 108. On or about **December 9, 2024**, Plaintiff paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

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

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

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

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

the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

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

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

114. 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).

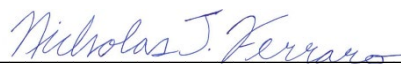
PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. 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;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- o. For such other relief the Court deems just and proper.

Dated: February 13, 2025

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Emily Wassink

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
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December 9, 2024

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

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

Alternative Behavior Strategies LLC
16255 Ventura Boulevard, Ste 900
Encino, CA 91436

- 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 **EMILY WASSINK** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendant”:

ALTERNATIVE BEHAVIOR STRATEGIES LLC

Defendant 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 Defendant 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 Defendant as an aggrieved employee.

Through this notice, Plaintiff requests that Defendant 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(s). Defendant 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 Defendant 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 -

Defendant employed Plaintiff during the PAGA Period from about October 2013 to September 2017 and August 2019 to April 2023, most recently in the position of Behavior Analyst Trainee. 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 Defendant 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 Defendant’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be

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

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

First, Defendants maintained a policy and practice of requiring off-the-clock work. Due to a heavy workload, Plaintiff and the aggrieved employees often completed work outside of their scheduled hours in order to complete it all. Additionally, Plaintiff recalls the insurance would only authorize a certain number of hours. Any hours outside of that required to complete their work, went unpaid.

Second, Defendants additionally engaged in a practice of removing hours worked or *timeshaving*, when Plaintiff and the aggrieved employees worked outside of their scheduled hours. Defendants required Plaintiff and the aggrieved employees to submit forms adjusting their hours back to their scheduled hours, resulting in unpaid hours worked.

This violation is shown throughout Plaintiff’s time records which show perfectly rounded time entries. An illustrative example of these perfectly rounded time records is shown below:

3/9/2023 8:00	3/9/2023 11:00
3/9/2023 15:00	3/9/2023 16:30
3/9/2023 16:30	3/9/2023 18:00
3/8/2023 8:00	3/8/2023 8:45
3/8/2023 15:00	3/8/2023 15:30
3/9/2023 11:30	3/9/2023 12:00
3/9/2023 8:00	3/9/2023 8:45
3/9/2023 14:00	3/9/2023 18:30
3/13/2023 8:00	3/13/2023 11:00
3/15/2023 8:00	3/15/2023 11:00
2/9/2023 8:00	2/9/2023 8:45
2/8/2023 14:30	2/8/2023 16:00
3/16/2023 8:00	3/16/2023 11:00

Extract from Plaintiff’s Time Records from March 9, 2023 to March 16, 2023

Here, Plaintiff's records show every punch was perfectly rounded to the nearest 15th minute. Plaintiff's time records throughout her employment reveal similar situations. These hours are incorrect each time Defendant as a matter of common policy and practice effectively removed hours actually worked. Plaintiff and the aggrieved employees were entitled to minimum wage for each and every hour worked.

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

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendant 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.

Defendant 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.

Defendant 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. For the same reasons set forth above in the unpaid hours worked section—Defendant's policy of requiring off-the-clock work and time shaving—Plaintiff alleges that the aggrieved employees were underpaid overtime wages. Each time this unlawful policy resulted in unpaid wages over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

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

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendant violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Due to Defendant’s unlawful policy of requiring off-the-clock work and time shaving, Defendant failed to properly credit Plaintiff and the aggrieved employees with their full accrued sick leave.

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

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to pressure from Defendant to keep up with high demands of the job. As a matter of common policy and practice, Defendant failed to pay Plaintiff and the other aggrieved employees meal period premiums at the regular rate of pay.

Specifically, due to lack of coverage as a result of understaffing, and high client demands Plaintiff and the other aggrieved employees would be scheduled back-to-back appointments which prevented them from being relieved to take a compliant meal period. Plaintiff and the aggrieved employees often used this time to drive to their next session. Defendant required Plaintiff and the aggrieved employees to finish their client appointments before taking a break. As such, Plaintiff and the aggrieved employees would often work during their unpaid meal period, resulting in frequent missed, late, or otherwise non-compliant meal periods.

Each time Plaintiff and the aggrieved employees experienced a noncompliant meal period, they were owed a meal period premium. As a matter of policy and practice, Plaintiff and the aggrieved employees were not provided meal period premiums in lieu of non-compliant meal periods as required by Labor Code section 226.7.

To the extent Defendants maintained a meal period waiver, this waiver was inapplicable each time Plaintiff and the aggrieved employees worked more than 6 hours in a day.

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

Defendant 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.

Due to the reasons explained in the "Unpaid Meal Period" section above, such as understaffing and the pressures to keep up with the high demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take their rest periods. For example, due to high demands of the job, Plaintiff routinely missed rest periods in order to keep up with high number of client appointments. Defendant required Plaintiff and the other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

For example, Plaintiff and the aggrieved employees would complete at home one on one sessions with clients. Plaintiff and the aggrieved were not authorized to stop the session to

take a compliant rest period and as a result often missed or otherwise experienced noncompliant rest periods.

When Defendant did not provide compliant rest periods, Defendant as a matter of common policy and practice failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section 226.7.

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

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendant 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 Defendant failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendant 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. Indeed, Defendant failed to pay all overtime, regular, sick leave, and other earnings on time each payday.

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**

Defendant 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.

Defendant 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. Defendant did not pay waiting time penalties for the late payments. As a result, Defendant 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**

Defendant 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.

Defendant 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. Defendant violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Furthermore, by not listing the meal and rest period premiums owed and payable to Plaintiff and aggrieved employees, Defendant failed to list all hours worked at each hourly rate in violation of Labor Code section 226(a)(9).

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or

information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

Defendant 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.”

Defendant required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendant required Plaintiff and aggrieved employees to utilize their personal laptops to complete work related tasks. Defendant did not provide reimbursement for the use of personal laptops. Instead, Plaintiff and aggrieved employees bore the cost of that requirement, without reimbursement.

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

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendant 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, Defendant 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(k)(1)

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(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all Defendant 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, Defendant’ 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. Defendant may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Elyssa Martinez

Cc Plaintiff Emily Wassink

rmceachen@abskids.com
hr@abskids.com
Defendant's HR Representatives