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County of San Diego
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Clerk of the Superior Court
By M. Reyes ,Deputy Clerk

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

MICHAEL GAUQUIER, individually and on
behalf of others similarly situated and the State
of California under the Private Attorneys General
Act,

Plaintiffs,

vs.

TERRA VISTA MANAGEMENT, INC.;
BAYSIDE VILLAGE MARINA, LLC;
CAMPLAND, LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CU002703C

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

1 Plaintiff MICHAEL GAUQUIER, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED REPRESENTATIVE ACTION COMPLAINT against Defendants TERRA VISTA
4 MANAGEMENT, INC.; BAYSIDE VILLAGE MARINA, LLC; CAMPLAND, LLC; and DOES 1
through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

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

7 2. Defendants failed to compensate Plaintiff and the aggrieved employees for all hours
8 suffered or permitted to work, due to Defendant’s routine practice of requiring aggrieved employees
to complete work while off-the-clock, in violation of the applicable IWC Wage Order.

9 3. Defendants underpaid the aggrieved employees’ wages by failing to include all forms
10 of remuneration, including a non-discretionary bonus, in their hourly overtime, sick pay, and premium
11 rates, resulting in underpayment of wages.

12 4. Defendants also failed to pay Labor Code § 226.7 premiums at the regular rate of
13 compensation for non-compliant meal and rest periods, including late, short, and missed meal and
non-compliant rest periods.

14 5. Defendants did not reimburse Plaintiff and the aggrieved employees for necessary
expenses incurred in furtherance of the aggrieved employees’ job duties.

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

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

19 8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interest,
20 attorney’s fees and costs.

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

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

A. Plaintiff Michael Gauquier

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

15. Defendant Terra Vista Management, Inc., is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

1 16. Defendant Bayside Village Marina, LLC is a California limited liability company that
2 maintains operations and conducts business throughout the State of California, including in this
3 county.

4 17. Defendant Campland, LLC is a Delaware limited liability company that maintains
5 operations and conducts business throughout the State of California, including in this county.

6 18. The true names and capacities, whether individual, corporate, or otherwise, of the
7 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
8 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
9 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
10 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
11 true names and capacities once ascertained.

12 19. Upon information and belief, Defendants in this action are employers, co-employers,
13 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
14 control over the wages, hours, and working conditions of the employees, suffered and permitted them
15 to work, and otherwise engaged them as employees under California law.

16 20. Upon information and belief, at least some of the Defendants have common ownership,
17 common management, interrelationship of operations, and centralized control over labor relations and
18 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
19 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

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

GENERAL ALLEGATIONS

23 22. Plaintiff and the aggrieved employees worked for Defendants as non-exempt
24 employees and were compensated on an hourly basis.

1 23. Defendants repeatedly underpaid Plaintiff and the aggrieved employees by requiring
2 employees to work off the clock and through meal periods to keep up the with high demands of their
3 job.

4 24. Plaintiff and, on information and belief, other aggrieved employees were required to
5 complete work-related duties while off-the-clock. For example, Plaintiff was required to clock out at
6 the end of his shift to avoid overtime and continue to complete work-related tasks such as counting
7 money, making drops, and completing paperwork while off-the-clock. Consequently, Plaintiff and the
8 aggrieved employees' time records did not reflect all hours worked and employees were not
9 compensated for all hours worked nor were those additionally hours considered for their sick leave
10 accrual.

11 25. Defendants engaged in the unlawful policy and practice of paying employees based on
12 their scheduled hours rather than the actual hours worked, resulting in unpaid wages.

13 26. Plaintiff was not compensated for this time and is informed and believes other
14 aggrieved employees were required to complete off-the-clock work without pay. This resulted in
15 unpaid overtime for time that should have been compensated at the overtime rate.

16 27. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the
17 "regular rate of pay" for overtime hours worked, resulting in unpaid overtime wages.

18 28. First, as stated above, Defendants required Plaintiff and the aggrieved employees to
19 work off-the-clock after the end of their shift. When Plaintiff and the aggrieved employees worked
20 more than 8 hours in a day or 40 hours in a week, this practice resulted in unpaid overtime.

21 29. Second, Defendants failed to pay overtime and double time at the "regular rate of pay."
22 For example, during the pay period from December 1, 2023, to December 31, 2023, Plaintiff earned a
Christmas bonus of \$1,079.27 in the same period he earned overtime wages. However, Defendants
failed to properly include the bonus payment in Plaintiff's overtime rate, as the 8.71 overtime hours
were paid at 1.5x Plaintiff's base rate rather than 1.5x his "regular rate of pay." Even if Defendants
provided an overtime adjustment, the regular rate of pay calculation was often incorrect and the
amount of overtime actually due was underpaid. Defendants committed the same "regular rate of pay"

violation against Plaintiff and the aggrieved employees as a matter of common payroll administration and company policy in a manner susceptible to common proof.

30. Defendants failed to provide Plaintiff and aggrieved employees all sick leave accrued based upon the actual hours that they worked. Because of Defendants' unlawful policy of requiring off-the-clock work, Plaintiff and the aggrieved employees worked overtime hours that were not accounted for when calculating an employee's accrued paid sick leave.

31. Further, Defendants did not accrue Plaintiff and aggrieved employees' paid sick leave at the lawful statutory rate, inclusive of all earnings. For example, during the same above-mentioned pay period that Plaintiff earned a bonus, he also earned and used paid sick leave. However, the bonus was not blended into the paid sick leave because Defendants paid sick leave at employees' straight time of pay. Therefore, Plaintiff and the aggrieved employees were not awarded the total accrued sick leave time they had earned.

32. Further, due to the high demands of the job, Plaintiff and the aggrieved employees routinely experienced missed, late, short, and/or interrupted meal periods. For example, Plaintiff experienced non-complaint meal periods because Defendants required him to clock out for his meal period and then continue working off-the-clock. Therefore, he regularly worked through his meal periods or missed them altogether.

33. Additionally, as a result of the professions nature and high demands of the job, Plaintiff, on many occasions, was unable to take his first meal period after five hours of work. On information and belief, Defendants had the same practice with other aggrieved employees as Plaintiff and the aggrieved employees were required to work during their uncompensated meal periods.

34. To the extent Defendants did pay a meal period premium, the premiums were not paid at the "regular rate of compensation" because the premiums did not factor in all forms of remuneration. Instead, Defendants, on information and belief, paid such premiums at aggrieved employees' base hourly rate, in violation of California law.

35. Similarly, Plaintiff and the aggrieved employees were rarely, if at all, authorized or permitted to take all their rest periods to which they were entitled.

36. Defendants failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. To the extent that Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the “regular rate of pay” to Plaintiff and the aggrieved employees, which should have been factored in bonuses and other forms of non-excusable remuneration.

37. Defendants also required Plaintiff and the aggrieved employees to incur necessary, work-related expenses, without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, and costs as a matter of policy and practice.

38. For example, Defendants expected Plaintiff and the aggrieved employees to utilize their personal cell phones to complete necessary work tasks such as communicating with staff via text message to complete scheduling, shift changes, and to clock in and out of work. Additionally, Plaintiff was required to supply and use his own vehicle and gas for work-related purposes, such as picking up products and meeting with vendors in various locations.

39. Defendants did not fully reimburse Plaintiff and the aggrieved employees for expenses incurred from obtaining and using their personal cell phones and vehicles that were necessary for the job.

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

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

42. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.

1 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
2 pay stub.

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

5 **FIRST CAUSE OF ACTION**

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

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

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

9 44. All outside paragraphs of this Complaint are incorporated into this section.

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

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

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

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

18 48. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
19 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
21 action brought by an aggrieved employee on behalf of himself or herself and other current or former
employees pursuant to the procedures specified in Section 2699.3. “

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

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

10 51. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
11 penalties under the PAGA.

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

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

19 54. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
20 written PAGA notice from the LWDA.

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

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

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

- 4 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
5 1197, 1198; IWC Wage Orders.
- 6 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
7 Orders.
- 8 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 9 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
10 1198; IWC Wage Orders.
- 11 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
12 1198; IWC Wage Orders.
- 13 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
14 §§ 204, 204b, 210.
- 15 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
16 Labor Code §§ 201, 202, 203, 256.
- 17 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 18 i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 19 j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
20 Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;

- 1 c. For this action to be maintained as a representative action under the PAGA;
2 d. For Plaintiff and counsel of record to be provided with all enforcement capability as if
3 the action were brought by the State of California or the California Division of Labor
4 Enforcement;
5 e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
6 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
8 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
9 g. For such other relief the Court deems just and proper.

8 Dated: October 16, 2024

Ferraro Vega Employment Lawyers, Inc.

9 

10 Nicholas J. Ferraro

11 Lauren N. Vega

Xavier L. Woodford

Attorneys for Plaintiff Michael Gauquier

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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July 18, 2024

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

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

Terra Vista Management, Inc.
445 Marine View Ave., Suite 110
Del Mar, California 92014

Campland, LLC
445 Marine View Ave., Suite 110
Del Mar, California, 92014

Bayside Village Marina, LLC
445 Marine View Ave., Suite 110
Del Mar, California 92014

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

**TERRA VISTA MANAGEMENT, INC.; BAYSIDE VILLAGE MARINA, LLC;
CAMPLAND, LLC**

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Supervisor/Bartender from about August 4, 2022 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and, on information and belief, other aggrieved employees were required to complete work-related duties off-the-clock. For example, Plaintiff was required to clock out at the end of his shift to avoid overtime and then continue to complete tasks such as counting money, making drops, and completing paperwork while off-the-clock. Defendants engaged in the unlawful policy and practice of paying employees based on their scheduled hours rather than the actual hours worked, resulting in unpaid wages. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to complete the same tasks without pay.

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

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

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as stated in the “Unpaid Hours Worked” section above, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work off-the-clock after the end of their shift. When Plaintiff and the aggrieved employees worked more than 8 hours, this practice resulted in unpaid overtime wages.

Second, Defendants failed to pay overtime and double time at the “regular rate of pay.” Defendants paid aggrieved employee’s bonuses and other forms of remuneration that Defendant failed to include in the overtime and double time rates in the pay periods when employees worked overtime hours.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

An illustrative example of Defendants’ regular rate of pay violation as it pertains to overtime is shown below:

Earnings Statement

GAUQUIER, MICI

Pay Date: 12/08/2023 Company: 0VY53 - TERRA VISTA MANAGEMENT INC
 Period Start: 12/01/2023 445 MARINE VIEW AVE STE 110
 Period End: 12/31/2023 DEL MAR CA 92014

	Rate	Hours / Units	Current Period	Year To Date
Earnings				
Regular	16.99	0.00	0.00	17224.98
DOUBLETIME	33.98	0.00	0.00	3.40
Weighted Double Time	25.49	0.00	0.00	140.94
Weighted Overtime	25.49	0.00	0.00	3279.10
Holiday	16.99	0.00	0.00	543.68
Sick	16.99	0.00	0.00	135.92
Bonus			1079.27	1079.27
Meal Break Penalty	16.99	0.00	0.00	254.16
Retro Pay			0.00	47.99
Tips			0.00	1640.00
Gross			1079.27	24349.44

Extract of Plaintiff's Wage Statement indicating the bonus received, for the Pay Period between 12/01/2023 and 12/31/2023

Earnings Statement

GAUQUIER, MICI

Pay Date: 12/29/2023 Company: 0VY53 - TERRA VISTA MANAGEMENT INC
 Period Start: 12/09/2023 445 MARINE VIEW AVE STE 110
 Period End: 12/23/2023 DEL MAR CA 92014

	Rate	Hours / Units	Current Period	Year To Date
Earnings				
Regular	16.99	72.22	1227.02	19651.83
DOUBLETIME	33.98	0.00	0.00	3.40
Weighted Double Time	25.49	0.00	0.00	140.94
Weighted Overtime	25.49	8.71	221.97	3729.67
Holiday	16.99	0.00	0.00	679.60
Sick	16.99	16.00	271.84	407.76
Vacation	16.99	16.00	271.84	271.84
Bonus			0.00	1079.27
Meal Break Penalty	16.99	0.00	0.00	288.14
Retro Pay			0.00	47.99
Tips			35.00	1775.00
Gross		112.93	2027.67	28075.44

Extract of Plaintiff's Wage Statement indicating the bonus received, for the Pay Period between 12/09/2023 and 12/23/2023

During this pay period, Plaintiff earned a bonus (appearing as "Bonus" on the wage statement) of \$1,079.27 that was not factored into Plaintiff's overtime rate. Instead, Plaintiff was paid at a rate of 1.5x the base rate of \$16.99, rather than 1.5x the regular rate of pay which would have factored in the \$1,079.27 bonus. To the extent other aggrieved employees earned bonuses or other forms of remuneration each must be factored into the regular rate of pay during the statutory period. Defendants violated the Labor Code accordingly.

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

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

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

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

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

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

First, Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, as illustrated on the below wage statements from Plaintiff, Defendants paid sick leave at the base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering paid sick leave underpaid:

Earnings Statement

GAUQUIER, MIC

Pay Date: 12/08/2023 Company: 0VY53 - TERRA VISTA MANAGEMENT INC
 Period Start: 12/01/2023 445 MARINE VIEW AVE STE 110
 Period End: 12/31/2023 DEL MAR CA 92014

	Rate	Hours / Units	Current Period	Year To Date
Earnings				
Regular	16.99	0.00	0.00	17224.98
DOUBLETIME	33.98	0.00	0.00	3.40
Weighted Double Time	25.49	0.00	0.00	140.94
Weighted Overtime	25.49	0.00	0.00	3279.10
Holiday	16.99	0.00	0.00	543.68
Sick	16.99	0.00	0.00	135.92
Bonus			1079.27	1079.27
Meal Break Penalty	16.99	0.00	0.00	254.16
Retro Pay			0.00	47.99
Tips			0.00	1640.00
Gross			1079.27	24349.44

Extract of Plaintiff's Wage Statement indicating the bonus received, for the Pay Period between 12/01/2023 and 12/31/2023

Earnings Statement

GAUQUIER, MIC

Pay Date: 12/29/2023 Company: 0VY53 - TERRA VISTA MANAGEMENT INC
 Period Start: 12/09/2023 445 MARINE VIEW AVE STE 110
 Period End: 12/23/2023 DEL MAR CA 92014

	Rate	Hours / Units	Current Period	Year To Date
Earnings				
Regular	16.99	72.22	1227.02	19651.83
DOUBLETIME	33.98	0.00	0.00	3.40
Weighted Double Time	25.49	0.00	0.00	140.94
Weighted Overtime	25.49	8.71	221.97	3729.67
Holiday	16.99	0.00	0.00	679.60
Sick	16.99	16.00	271.84	407.76
Vacation	16.99	16.00	271.84	271.84
Bonus			0.00	1079.27
Meal Break Penalty	16.99	0.00	0.00	288.14
Retro Pay			0.00	47.99
Tips			35.00	1775.00
Gross		112.93	2027.67	28075.44

Extract of Plaintiff's Wage Statement indicating the bonus received, for the Pay Period between 12/09/2023 and 12/23/2023

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Defendants paid sick leave at employees' straight time of pay and failed to factor in bonuses and other forms of remuneration.

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code sections 246(1)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, commission, bonuses, or other forms of non-excludable remuneration, such as the above-mentioned bonus and also received paid sick leave.

Second, Defendant failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock, overtime hours that were not accounted for when calculating an employee's accrued paid sick leave. Therefore, Plaintiff and the aggrieved employees were not awarded the total accrued sick leave time they had earned.

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

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

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

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

Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the demands of the job. Specifically, Plaintiff

experienced non-compliant meal periods because he was required to clock out for his meal period and then continue to work. Therefore, he regularly worked through meal periods or missed them altogether. As a result of the professions nature and high demands of the job, Plaintiff, on many occasions, was unable to take his first meal period after five hours of work. On information and belief, Defendants had the same practice with other aggrieved employees. Plaintiff and the aggrieved employees were required to work during their uncompensated meal periods.

On information and belief, to the extent Defendants did pay a meal period premium, the premiums were not paid at the “regular rate of compensation” because the premiums did not factor in all forms of remuneration. Instead, Defendants, on information and belief, paid such premiums at aggrieved employees’ base hourly rate, in violation of California law.

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

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

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

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendant failed to provide all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiff and other aggrieved employees. As stated above in the “Unpaid Meal Period Premium” section, due to the job’s high demands, Plaintiff and the aggrieved employees were rarely, if at all, authorized or permitted to take all their rest periods. To the extent Defendant ever paid a rest period premium, Defendant violated Labor Code section 226.7 because such premiums were not paid at the “regular rate of pay” to Plaintiff

and the aggrieved employees, which should have been factored in bonuses and other forms of non-excusable remuneration.

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

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

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees’ minimum, regular, overtime wages, paid sick leave, and premium pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday, in violation of Labor Code sections 204 and/or 204b.

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

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

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

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

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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, and costs as a matter of policy and practice. For example, Defendant expected Plaintiff and aggrieved employees to utilize their personal cell phone to complete necessary work tasks, such as communicating with staff via text message to complete scheduling, shift changes, and to clock in and out of work. Additionally, Plaintiff was required to supply and use his own vehicle for work-related purposes. Specifically, Plaintiff was required to drive his own vehicle to pick up work-related products and meet with vendors. Defendant did not reimburse Plaintiff and the aggrieved employees for expenses incurred from obtaining and using their personal cell phones and vehicles that were necessary for the job.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

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

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

Attorneys’ Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also

be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Michael Gauquier

Katie Rogow – Human Resource Representative
Katier@campland.com