

1 Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
2 Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
3 San Diego, California 92108
(619) 693-7727 / (619) 350-6855 facsimile
4 nick@ferrarovega.com / lauren@ferrarovega.com

5 Rick A. Waltman (State Bar No. 306463)
RICK WALTMAN LAW, APC
6 501 W. Broadway, Ste. 800
San Diego, California 92101
7 (619) 320-5666
rick@rickwaltmanlaw.com

8 Attorneys for Plaintiff Jon Wood
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12

13 JON WOOD, as an individual and on behalf of
14 all others similarly situated,

15 Plaintiff,

16 vs.

17 2018HMO LLC dba HIKEI MODERN
18 CANNABIS; 2018HMPF LLC; AARON
19 MAGAGNA, an individual; MICHAEL
STRATMAN, an individual; and DOES 1
20 through 50, inclusive,

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/17/2022 at 04:31:00 PM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

Case No. 37-2021-00053035-CU-OE-CTL

Assigned to the Hon. Carolyn Caietti, Dept. C-70

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Failure to Reimburse Business Expenses
9. Failure to Provide Records
10. Violations of the Unfair Competition Law
- 11-20. Civil Penalties under the PAGA

Action Filed: Dec. 20, 2021

Trial Date: Not Set

1 Plaintiff JON WOOD (“Plaintiff”), on behalf of a class of all other similarly situated current
2 and former California employees and the State of California, brings this class and representative
3 action against Defendants 2018HMO LLC dba HIKEI MODERN CANNABIS; 2018 HMPF LLC;
4 AARON MAGAGNA; MICHAEL STRATMAN; and DOES 1 through 50 (collectively,
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action filed for wage and hour violations of the
8 California Labor Code. Plaintiff worked as an hourly, non-exempt employee for Defendants from
9 March 2020 through October 2021. Defendants engaged in a pattern of editing employees’ time
10 records that resulted in an underpayment of regular and overtime wages to Plaintiff and the other
11 employees. Defendants also maintained an unlawful automatic meal period policy, whereby meal
12 periods of at least minimum duration were entered and/or automatically deducted regardless of
13 whether they were actually taken. This resulted in an underpayment of regular and overtime hours
14 worked each pay period for the Plaintiff and other employees. Defendants also required Plaintiff
15 and other employees to work through their meal and rest breaks as a matter of policy, failed to pay
16 Plaintiff and other employees for such time, and also failed to pay any meal or rest period premiums
17 to Plaintiff and other employees. Defendants thus failed to provide compliant meal and rest periods
18 (or premiums in lieu thereof) as required. Defendants also failed to reimburse Plaintiff and other
19 employees for necessary business expenses, including for the use of personal cell phones as a
20 requirement of employment. As a result of these violations, Defendants failed to timely pay
21 Plaintiff and Class Members each pay period on paydays and upon separation of employment, and
22 thus are liable for waiting time and other statutory penalties.

23 2. Defendants’ employment policies and practices and payroll administration systems
24 enabled and facilitated these violations on a company-wide basis with respect to the Class
25 Members.

26 **JURISDICTION & VENUE**

27 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
28 California Constitution.

1 4. Venue as to each defendant is proper in this judicial district under Code of Civil
2 Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed
3 Plaintiff in this county, and committed some of the alleged violations in this county.

4 5. Plaintiff is informed, believes, and alleges that more than two-thirds of the Class
5 Members in this action are citizens of the State of California, which is where the principal injuries
6 of Defendants' alleged conduct occurred.

7 PARTIES

8 **A. Plaintiff Jon Wood**

9 6. Plaintiff JON WOOD is a citizen of California over 18 years of age who worked for
10 Defendants in San Diego County as an hourly, non-exempt employee of Defendants.

11 7. Plaintiff worked for Defendants in California from March 2020 to October 2021 as a
12 Delivery Driver.

13 **B. Defendants (Hikei Modern Cannabis)**

14 8. Plaintiff is informed, believes, and alleges that Defendant 2018HMO LLC is a
15 California limited liability company doing business and employing individuals in San Diego,
16 California.

17 9. Plaintiff is informed, believes, and alleges that Defendant 2018HMPF LLC is a
18 California limited liability company doing business and employing individuals in San Diego,
19 California.

20 10. Plaintiff is informed, believes, and alleges that Defendant Aaron Magagna is a
21 California resident and an officer, member, director, agent, and/or owner of the above corporate
22 Defendants at all relevant times stated herein.

23 11. Plaintiff is informed, believes, and alleges that Defendant Michael Stratman is a
24 California resident, and is the Chief Operating Officer of the above corporate Defendants during the
25 class period.

26 12. Defendants does business as "Hikei Modern Cannabis."

27 13. Plaintiff is informed and alleges that no class action asserting similar factual
28 allegations has been filed against any of the named defendants within the preceding three years.

1 14. The true names and capacities, whether individual, corporate, or otherwise, of the
2 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
3 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and
4 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
5 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
6 capacities when they become known.

7 15. The true names and capacities, whether individual, corporate, or otherwise, of the
8 parties sued as DOES 1 through 50, are presently unknown or uncertain to Plaintiff, who sues them
9 by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes,
10 and alleges that each of the factiously named defendants is responsible in some manner for the acts
11 and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true
12 names and capacities when they become known.

13 16. Plaintiff is informed, believes, and alleges that all defendants in this action are
14 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
15 exercises control over the wages, hours, and working conditions of Plaintiff and other employees,
16 suffers and permits them to work, and engages the workforce creating a common law employment
17 relationship. Additionally, all Defendants have common ownership, common management,
18 interrelationship of operations, and centralized control over labor relations and are therefore part of
19 an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
20 herein.

21 17. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
22 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
23 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
24 such that the acts and omissions of each defendant are legally attributable to all others.

25 18. Plaintiff is informed, believes and alleges that the above-mentioned defendants
26 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
27 regulating minimum wages and days of work and other provisions of the Labor Code with respect
28 to the Class of aggrieved employees. As a result, they may be held personally liable under Labor

1 Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th
2 809.)

3 GENERAL ALLEGATIONS

4 19. Defendants failed to pay all minimum, regular, and overtime wages to employees as
5 a result of their practice of editing employees' time records and automatically deducting employees'
6 meal periods and forcing them to work through meal periods. Defendants maintained an unlawful
7 automatic meal period policy, whereby meal periods of at least minimum duration were entered
8 and/or auto-deducted regardless of whether they were actually taken. This resulted in an
9 underpayment of hours worked each pay period for employees, as Class Members worked during
10 those periods marked as unpaid meal periods. Class Members did not receive compensation for
11 those hours worked. Defendants also engaged in a pattern of editing employees' time records that
12 resulted in an underpayment of regular and overtime wages to Plaintiff and other non-exempt
13 employees. The revisions were made without employees' knowledge or consent.

14 20. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute
15 meal periods to Class Members within the first five hours of work, and timely second off-duty 30-
16 minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor
17 Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v.*
18 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 ["We hold that the terms are
19 synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay"
20 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages."])
21 Defendants' policy and practice of not paying all meal period premiums is a matter of common
22 corporate policy and payroll administration such that it applies and affected all other employees. As
23 discussed above, Defendants automatically created/deducted meal periods entries on behalf of
24 Plaintiff and Class Members, even when they did not take a compliant meal period (*i.e.*, taken by
25 the 5th hour, uninterrupted, 30 minutes in length). Plaintiff and Class Members also experienced
26 other meal period violations due to deliveries, poor staffing, company policy prohibiting breaks
27 during deliveries, and customer demands. Plaintiff and other employees were not paid meal period
28 premiums for shifts of 5 hours or more without a meal period when no meal period waiver was in

1 effect. Furthermore, Defendants' time records show that Defendants' or their agents edited
2 Plaintiff's time records (without his knowledge) to make it appear as though Plaintiff took
3 compliant meal periods during times when they did not. Plaintiff is informed, believes, and alleges
4 that Defendants engage in this same practice for other employees.

5 21. Moreover, drivers were not permitted to take breaks until they arrived back at the
6 store location per company policy. Drivers like Plaintiff were required to sign an agreement stating
7 that once they left the retail location, they were prohibited from making any stops in the vehicle
8 unless it was for product delivery, fuel, or vehicle repair and that they were required to drive
9 straight back to the retail location after the last delivery. This requirement prevented Plaintiff and
10 other Class Members from taking meal and rest periods because they were often scheduled with
11 back-to-back deliveries.

12 22. When Defendants did not provide fully compliant meal periods, Defendants failed to
13 pay Class Members a meal period premium at the regular rate of compensation in violation of
14 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) “[T]ime records showing noncompliant
15 meal periods raise a rebuttable presumption of meal period violations, including at the summary
16 judgment stage.” (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.) Defendants' policy
17 and practice of not paying all meal period premiums at the lawful rate is a matter of common
18 corporate policy and payroll administration such that it applies and affected all other Class
19 Members and are evident from the time records and time record edits maintained by Defendants,
20 which show late, short and missed meal periods without an associated meal period premium on the
21 corresponding employee wage statement.

22 23. Defendants failed to authorize or *permit* ten-minute rest periods for every four hours
23 of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of
24 the applicable IWC Wage Order. Defendants did not authorize rest periods and did not afford
25 sufficient staffing for Plaintiff and other employees to take compliant 10-minute rest periods in
26 accordance with California law. Legally compliant breaks were usually precluded by Defendants'
27 scheduling practices and lack of compliant policies and practices with respect to 10-minute rest
28 periods, as well as company policy prohibiting breaks during deliveries. Defendants prohibited

1 drivers from taking breaks while delivering cannabis products and were expressly prohibited from
2 engaging in “any activities except for cannabis goods delivery[.]”

3 24. On information and belief, Plaintiff alleges that Defendants did not pay a single rest
4 period premium to any of its employees. Plaintiff is informed, believes, and alleges that Defendants
5 failed to maintain lawful meal and rest period policies in an employee handbook or other governing
6 document that apprised Plaintiff and other Class Members of their respective rights under
7 California law.

8 25. When Defendants did not provide a fully compliant rest period to Plaintiff or other
9 Class Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium
10 at the lawful “regular rate of compensation” in violation of Labor Code section 226.7.

11 26. Defendants also failed to reimburse Plaintiff and other employees for necessary
12 business expenses. Defendants required Plaintiff and other employees to clock in and out using an
13 app called Deputy. At all relevant times, Defendants were required to comply with the
14 reimbursement mandate of Labor Code section 2802. Plaintiff and other employees were not
15 compensated for their use of their personal cell phones, and Defendants did not provide a
16 reasonable stipend. (*See, e.g., Cochran v. Schwan Home Service* (2014) 228 Cal. App. 4th 1137.)

17 27. With respect to the unpaid wages and premiums owed to Plaintiff and Class
18 Members, Defendants failed to pay those wages on time each pay period or upon separation of
19 employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums owed
20 each pay period their employment, Defendants failed to timely pay all wages owed each pay day or
21 upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections
22 201 through 203 (waiting time) and 204 and 204b (paydays).

23 28. Defendants equally failed in their affirmative obligation to provide accurate itemized
24 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
25 statements to Plaintiff and, on information and belief, Class Members, which contain several types
26 of violations.

27 29. First, on each wage statement furnished, Defendants failed to accurately state the
28 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as

1 Plaintiff and Class Members earned regular and overtime wages, but were underpaid (due to meal
2 period automatic deductions and time record alterations), and were deprived of wages and meal and
3 rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and
4 net wages earned on those wage statements.

5 30. Second, on each wage statement furnished to Plaintiff and, on information and
6 belief, the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
9 Class Members do not accurately list the actual hours worked by employees (due to meal period
10 automatic deductions and time record alterations), but instead list deflated hours and wages.

11 31. Third, Defendants inaccurately listed total hours worked during the pay period, as
12 Plaintiff and Class Members worked off-the-clock during times that were Defendants edited time
13 records to (1) reduce hours worked, (2) automatically deduct 30 minutes from hours worked for a
14 meal period, or (3) insert false meal periods, resulting in an inaccurate reflection of total hours
15 worked on those corresponding wage statements.

16 32. Defendants’ wage statement issues described above rendered the wage statements
17 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
18 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
19 Members as the sole documentary evidence of their respective earnings.

20 33. Plaintiff and Class Members suffered injury in the form of confusion regarding
21 amounts paid for hours worked, and in the form of concealment of the common payroll practices
22 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
23 this Complaint.

24 34. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
25 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
26 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
27 led to believe that the hourly rates and net and gross wages reflected were a complete and accurate
28 reflection of the wages actually earned under California law.

1 35. Defendants' wage statement violations were knowing and intentional as a matter of
2 law with respect to Plaintiff and California Class Members given that the legal obligation was not
3 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
4 Defendants nevertheless failed to comply despite the means and ability to do so.

5 36. Because of the violations set forth in this Complaint, including Defendants' failure
6 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
7 (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
8 Wage Orders by failing to maintain records showing accurate daily hours worked at the
9 corresponding wage rate, and the wages paid to each employee.

10 37. Plaintiff issued a records request to Defendants requesting all records due under the
11 IWC Wage Orders (including the Records sections), and Labor Code sections 226 and 432. In
12 response to Plaintiff's records request to Defendants, Defendants did not provide the employee
13 handbook or Plaintiff's time records, in violation of California law and as an effort to conceal the
14 violations addressed herein.

15 38. Plaintiff is informed, believes, and alleges that Defendants acts' and omissions have
16 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
17 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
18 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
19 under California law.

20 CLASS ACTION ALLEGATIONS

21 39. ***Class Definition.*** The named individual Plaintiff seeks class certification under
22 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- 23 a. All individuals currently or formerly employed by Defendants in the State of
24 California as hourly non-exempt employees at any time from **December 20, 2017**
25 through the time of trial in this action (the "Class" or "Class Members" and the
26 "Class Period").

27 40. ***Subclasses.*** Further, Plaintiff proposes the following subclasses:
28

- 1 a. All Class Members who separated from employment with Defendants at any
2 time from **December 20, 2018** through the time of trial in this action (the
3 “Waiting Time Subclass”).
- 4 b. All Class Members who received a wage statement from Defendants at any time
5 from **December 20, 2020** through the time of trial in this action (“Wage
6 Statement Subclass”).
- 7 c. All Class Members who worked shifts of five hours or more without a duty-free
8 meal period of at least 30 minutes, who were not paid one hour of pay at the
9 regular rate of compensation for each of those days (“Meal Period Subclass”).
- 10 d. All Class Members who worked shifts of four hours or major fraction thereof
11 without being authorized or permitted an uninterrupted rest period of at least
12 10 minutes, who were not paid one hour at the regular rate of compensation for
13 each of those days (“Rest Period Subclass”).
- 14 e. All Class Members who were not paid all regular, overtime, or minimum wages
15 for all hours worked each pay period (“Unpaid Wage Subclass”).
- 16 f. All Class Members who used a personal cell phone or device for work-related
17 purposes and did not receive a reimbursement from Defendants
18 (“Reimbursement Subclass”).

19 41. Plaintiff reserves the right to move the Court to amend or modify the class
20 definitions and to establish additional classes and subclasses as appropriate.

21 42. **Numerosity.** The members of the Class are so numerous that joinder of all
22 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
23 of Defendants’ employment and payroll records. Plaintiff is informed, believes and alleges there
24 are more than 50 Class Members.

25 43. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff
26 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
27 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
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1 wage-and-hour class actions in the past and currently have numerous wage-and-hour class actions
2 pending in California state and federal courts.

3 44. **Manageability.** This class action is manageable because the liability and damages to
4 Class Members can be ascertained by forensic review of corporate and employer timekeeping and
5 payroll records along with other evidence that Defendants maintained and is required by law to
6 maintain. This class action is manageable because the contact information and identity of
7 percipient witnesses—namely, Defendants employees (the putative class members)—is readily
8 maintained by Defendants.

9 45. **Superiority.** A class action is superior to other means for adjudication of the claims
10 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
11 for the common issues to be resolved in a single forum, simultaneously and without duplication of
12 effort and expense.

13 46. **Commonality.** Common questions of law and fact and a community of interest
14 exists amongst Plaintiff and the Class. These common issues arise from the employment
15 relationship with Defendants and predominate over any individual issues.

16 47. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
17 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
18 resulted in losses to Plaintiff and Class Members.

19 Proof of common unlawful business practices, which Plaintiff experienced and is representative of,
20 will establish the right of the Class to recover on the causes of action alleged herein.

21 **PAGA ALLEGATIONS**

22 48. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
23 behalf of the State of California and all current and former non-exempt hourly employees who
24 worked for Defendants in the State of California during one-year period preceding the date of the
25 PAGA Notice through the current date and the date of final judgment in any pending action (the
26 "aggrieved employees" and the "PAGA Period").

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

5 50. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
6 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
7 suited to act on behalf of the State of California and collect civil penalties for all violations
8 committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff*
9 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
10 “aggrieved employee”—a person affected by one Labor Code violation committed by an
11 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

12 51. “Notwithstanding any other provision of law, any provision of this code that
13 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
14 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
15 violation of this code, may, as an alternative, be recovered through a civil action brought by an
16 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
17 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

18 52. Now that at least 65 days have passed from Plaintiff first notifying Defendants and
19 the LWDA on **December 14, 2021** of the specific provisions of the Labor Code alleged to have
20 been violated (including the supporting facts and theories) without LWDA intervention—and
21 without Defendants giving written notice by certified mail to Plaintiff providing a description of
22 any actions taken to cure the alleged violations within 33 days—Plaintiff exhausted all prerequisites
23 and commences this civil action under Labor Code § 2699 with respect to the PAGA notice and any
24 amendments or supplements thereto. A true and correct copy of the PAGA Notice, incorporated by
25 reference as though fully set forth herein, is attached hereto as **Exhibit A**.

26 53. All allegations regarding violations of the IWC Wage Orders are enforceable as
27 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
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1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.”)

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL REGULAR AND MINIMUM WAGES**

5 **Labor Code §§ 1194 and 1194.2**

6 54. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 55. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
8 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
9 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
10 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
11 local and county minimum wage ordinances in effect.

12 56. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
13 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
14 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
15 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees,
16 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY ALL OVERTIME WAGES**

19 **Labor Code §§ 510 and 1194**

20 57. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

21 58. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
22 no less than one and one-half times their respective “regular rate of pay” for all hours worked in
23 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
24 seventh day of work in any one workweek, and no less than twice their respective “regular rate of
25 pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
26 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
27 Orders (the “Hours and Days of Work” sections of the applicable orders).

1 59. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
2 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
3 to the full amount of the unpaid overtime wages, in addition to interest, attorneys' fees, and costs to
4 the extent permitted by law, including under Labor Code section 1194.

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **Labor Code §§ 226.7 and 512**

8 60. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 61. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
11 beginning before the fifth hour of hour for each work period of more than five hours per day and a
12 second duty free meal period of not less than 30 minutes beginning before the tenth hour of hour of
13 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
14 Periods" sections of the applicable orders).

15 62. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and Class Members one additional hour of pay at the respective regular rate of
17 compensation for each workday that a fully compliant meal period was not provided, in violation of
18 Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the "Meal Periods" sections
19 of the applicable orders).

20 63. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of meal
21 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
22 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys' fees,
23 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

24 **FOURTH CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **Labor Code §§ 226.7 and 516**

27 64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
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1 65. Defendants willfully failed in their affirmative obligation to consistently authorize
2 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
3 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
4 sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
5 applicable orders).

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

10 67. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest
11 periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are
12 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees,
13 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

14 **FIFTH CAUSE OF ACTION**

15 **UNTIMELY PAYMENT OF WAGES**

16 **Labor Code §§ 204, 204b and 210**

17 68. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 69. Defendants willfully failed in their affirmative obligation to timely pay all wages and
19 premiums earned by Plaintiff and Class Members twice during each calendar month on days
20 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
21 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of
22 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
23 the applicable orders).

24 Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of timely wages in
25 amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount
26 of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation
27 for each failure to pay each employee and \$200 for all subsequent violations and for all willful or
28 intentional violations for each failure to pay each employee, plus 25 percent of the amount

1 unlawfully withheld under provided in Labor Code section 210, in addition to interest, attorneys'
2 fees, and costs to the extent permitted by law.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **Labor Code § 226**

6 70. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 71. Defendants knowingly and intentionally failed in their affirmative obligation provide
8 accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code
9 section 226(a).

10 72. As an initial matter, on information and belief, Plaintiff alleges that Defendants
11 maintained a policy and practice of non-compliance with Labor Code section 226(a)'s statutory
12 mandate by failing to issue or make available wage statements to Class Members each pay period
13 that list any of the information required by Labor Code section 226.

14 73. Moreover, based on the wage statements issued by Defendants, Plaintiff alleges that
15 these wage statements fail to correctly list (1) gross wages earned each pay period, (2) total hours
16 actually worked each pay period, (5) net wages earned, (9) all hourly rates in effect and the total
17 number of hours worked each pay period.

18 74. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
19 itemized wage statements, causing confusion and concealing wage and premium underpayments/
20 As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee
21 for the initial pay period in which a violation occurred and \$100 per employee for each violation in
22 a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest,
23 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section
24 226(e).

25 **SEVENTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **Violation of Labor Code §§ 201 through 203**

28 75. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 76. Defendants willfully failed in their affirmative obligation to pay all wages earned
2 and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination
3 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
4 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter
5 in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

6 77. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
7 wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class
8 are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a
9 waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs
10 to the extent permitted by law.

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **Violation of Labor Code § 2802**

14 78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

15 79. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
16 Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in
17 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

18 80. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
19 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the
20 Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class
21 Members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including
22 under Labor Code section 2802.

23 **NINTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE RECORDS**

25 **Violation of Labor Code §§ 226, 432, 1198.5**

26 81. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 82. Plaintiff brings this cause of action on behalf of himself only.

1 83. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating
2 to the obtaining or holding of employment, he shall be given a copy of the instrument upon
3 request.”

4 84. Labor Code section 226(b) grants employees the right to inspect or receive “a copy
5 of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750
6 for an employer’s failure to comply with a request for records made under section 226.

7 85. Labor Code section 1198.5 requires employers to provide an employee’s “personnel
8 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750
9 for an employer’s failure to provide a copy of or permit inspection of personnel records. Section
10 1198.5(l) allows an employee to seek injunctive relief to obtain an employer’s compliance with this
11 section and authorizes the recovery of attorneys’ fees and costs.

12 86. Section 7 of the IWC Wage Orders, which may be enforced through Labor Code
13 section 1198, requires that employers maintain records of when an employee begins and ends each
14 work period and when the employee takes meal periods. Section 7(C) states that “[a]n employee’s
15 records shall be made available for inspection by the employee upon reasonable request.”

16 87. Plaintiff issued a records request to Defendants requesting all records due under the
17 IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
18 Defendants willfully refused to provide Plaintiff’s time records and a copy of the employee
19 handbook signed by Plaintiff (among other records separately required by 1198.5), which are
20 records pertaining to his employment and records Defendants were required to obtain and produce
21 and/or make available upon request.

22 88. Defendants’ unlawful acts and omissions deprived Plaintiff of the ability to inspect
23 and reconcile his actual time worked with the ultimate pay he received. Plaintiff is entitled to
24 recover to penalties, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
25 including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

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1 **TENTH CAUSE OF ACTION**

2 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

3 **Business and Professions Code §§ 17200, et seq.**

4 89. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 90. Defendants willfully failed in their affirmative obligation to timely pay each payday
6 or at other required intervals all minimum, regular, and overtime wages, meal and rest period
7 premium wages, and reimbursements to Plaintiff and Class Members. These failures constitute
8 unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions
9 Code section 17200, et seq.

10 91. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
11 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of
12 all monies and property withheld, acquired, or converted by Defendants in violation of the Labor
13 Code and IWC Wage Orders under Business and Professions Code section 17202, 17203, 17204
14 and 17208.

15 92. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
16 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
17 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
18 which Plaintiff and the Class have an ownership interest and to prevent future damage under
19 Business and Professions Code section 17200, et seq. in addition to interest, attorneys' fees, and
20 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

21 **ELEVENTH CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR FAILURE TO PAY**

23 **ALL REGULAR AND MINIMUM WAGES**

24 **Labor Code §§ 1182.12, 1194, 1197**

25 93. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 94. Labor Code section 2699(f) provides: "For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs

1 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
3 employee per pay period for each subsequent violation.”

4 95. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
5 of an employer who violates, or causes to be violated, a section of this chapter or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
7 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
8 underpaid employee for each pay period for which the employee was underpaid in addition to an
9 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
10 dollars (\$100) for each underpaid employee for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid wages.”

12 96. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
13 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
14 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
15 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
16 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
18 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
19 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
20 underpaid employee for each pay period for which the employee is underpaid regardless of whether
21 the initial violation is intentionally committed.”

22 97. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
23 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
24 Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of
25 Work” and “Minimum Wages” sections of the applicable orders).

26 98. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
27 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
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1 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys' fees,
2 and costs to the extent permitted by law, including under Labor Code section 2699(g).

3 **TWELFTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR FAILURE TO PAY**

5 **ALL OVERTIME WAGES**

6 **Labor Code §§ 510, 558 1194, 1197.1, 1198, 1199**

7 99. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 100. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
9 employees no less than one and one-half times their respective "regular rate of pay" for all hours
10 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
11 the seventh day of work in any one workweek, and no less than twice their respective "regular rate
12 of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
13 day of a workweek in violation of Labor Code sections 510, 558, 1194, 1197.1, 1198, 1199 and the
14 IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

15 101. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
16 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
17 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
18 to the extent permitted by law, including under Labor Code section 2699(g).

19 **THIRTEENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS**

21 **Labor Code §§ 226.7 and 512**

22 102. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 103. Defendants willfully failed in their affirmative obligation to consistently provide
24 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
25 beginning before the fifth hour of hour for each work period of more than five hours per day and a
26 second duty free meal period of not less than 30 minutes beginning before the tenth hour of hour of
27 work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the "Meal
28 Periods" sections of the applicable orders).

1 104. Further, Defendants willfully failed in their affirmative obligation to consistently pay
2 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
3 compensation for each workday that a fully compliant meal period was not provided, in violation of
4 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

5 105. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
6 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
7 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
8 to the extent permitted by law, including under Labor Code section 2699(g).

9 **FOURTEENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS**

11 **Labor Code §§ 226.7 and 516**

12 106. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 107. Defendants willfully failed in their affirmative obligation to consistently authorize
14 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
15 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
16 Code sections 226.7, 516, 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
17 applicable orders).

18 108. Further, Defendants willfully failed in their affirmative obligation to consistently pay
19 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
20 compensation for each workday that a fully compliant rest period was not provided, in violation of
21 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

22 109. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
23 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
24 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
25 to the extent permitted by law, including under Labor Code section 2699(g).

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1 **FIFTEENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES**

3 **Labor Code §§ 204 and 210**

4 110. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 111. Defendants willfully failed in their affirmative obligation to timely pay all wages and
6 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
7 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
8 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
9 violation of Labor Code sections 204,204b, 210 and the IWC Wage Orders (the “Minimum Wages”
10 sections of the applicable orders).

11 112. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
12 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
13 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
14 to the extent permitted by law, including under Labor Code section 2699(g).

15 **SIXTEENTH CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS**

17 **Labor Code §§ 226 and 226.3**

18 113. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 114. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of
20 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
21 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a
23 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
24 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

25 115. Defendants failed in their affirmative obligation provide accurate itemized wage
26 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a).

27 116. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
28 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required

1 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and
2 costs to the extent permitted by law, including under Labor Code section 2699(g).

3 **SEVENTEENTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR FAILURE TO TIMELY PAY**
5 **ALL WAGES UPON SEPARATION OF EMPLOYMENT**

6 **Labor Code §§ 201 through 203**

7 117. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 118. Defendants willfully failed in their affirmative obligation to pay all wages earned
9 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
10 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
11 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
12 Labor Code sections 201 through 203 and the IWC Wage Orders.

13 119. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
14 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
15 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
16 to the extent permitted by law, including under Labor Code section 2699(g).

17 **EIGHTEENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES FOR FAILURE TO**
19 **REIMBURSE BUSINESS EXPENSES**

20 **Labor Code § 2802**

21 120. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 121. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
23 aggrieved employees for all necessary expenditures, losses, expenses, and costs incurred by them in
24 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

25 122. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
26 aggrieved employees and the State of California for civil penalties as required by Labor Code
27 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
28 by law, including under Labor Code section 2699(g).

1 **NINETEENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR FAILURE TO PROVIDE RECORDS**

3 **Violation of Labor Code §§ 226, 432, 1198.5**

4 123. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 124. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating
6 to the obtaining or holding of employment, he shall be given a copy of the instrument upon
7 request.”

8 125. Labor Code section 226(b) grants employees the right to inspect or receive “a copy
9 of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750
10 for an employer’s failure to comply with a request for records made under section 226.

11 126. Labor Code section 1198.5 requires employers to provide an employee’s “personnel
12 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750
13 for an employer’s failure to provide a copy of or permit inspection of personnel records. Section
14 1198.5(l) allows an employee to seek injunctive relief to obtain an employer’s compliance with this
15 section and authorizes the recovery of attorneys’ fees and costs.

16 127. Section 7 of the IWC Wage Orders, which may be enforced through Labor Code
17 section 1198, requires that employers maintain records of when an employee begins and ends each
18 work period and when the employee takes meal periods. Section 7(C) states that “[a]n employee’s
19 records shall be made available for inspection by the employee upon reasonable request.”

20 128. Plaintiff issued a records request to Defendants requesting all records due under the
21 IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
22 Defendants willfully refused to provide Plaintiff’s time records and a copy of the employee
23 handbook signed by Plaintiff (among other records separately required by 1198.5), which are
24 records pertaining to his employment and records Defendants were required to obtain and produce
25 and/or make available upon request.

26 129. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
27 aggrieved employees and the State of California for civil penalties as required by Labor Code
28

1 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
2 by law, including under Labor Code section 2699(g).

3 **TWENTIETH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS**

5 **Labor Code § 1174**

6 130. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 131. Labor Code section 1174 provides: "Every person employing labor in this state shall:
8 ... (d) Keep, at a central location in the state or at the plants or establishments at which employees
9 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
10 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
11 the respective plants or establishments. These records shall be kept in accordance with rules
12 established for this purpose by the commission, but in any case shall be kept on file for not less than
13 three years."

14 132. Labor Code section 1174.5 provides: "Any person employing labor who willfully
15 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
16 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
17 hundred dollars (\$500)."

18 133. Defendants willfully failed in their affirmative obligation to maintain accurate
19 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
20 Labor Code sections 1174, 1198 and the IWC Wage Orders (the "Records" sections of the
21 applicable orders).

22 134. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
23 aggrieved employees and the State of California for civil penalties as required by Labor Code
24 section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law,
25 including under Labor Code section 2699(g).

26 **PRAYER FOR RELIEF**

27 Plaintiff prays for judgment as follows:

28 a. For certification of this action as a class action;

- 1 b. For appointment of Plaintiff as the representative of the Class;
- 2 c. For appointment of counsel for Plaintiff as Class Counsel;
- 3 d. For injunctive relief;
- 4 e. For compensatory damages in amount according to proof;
- 5 f. For all recoverable pre- and post-judgment interest;
- 6 g. For recovery of all statutory penalties and liquidated damages;
- 7 h. For disgorgement of all amounts wrongfully obtained;
- 8 i. For reasonable attorneys' fees and costs of suit, including expert witness fees, to the
- 9 extent recoverable by law.
- 10 j. For Plaintiff and counsel to be provided with all enforcement capability as if the
- 11 action were brought by the State of California or the California Division of Labor
- 12 Enforcement;
- 13 k. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 14 l. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 15 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
- 16 2802, 2699(g) and Code of Civil Procedure section 1021.5; and
- 17 m. For such other relief the Court deems just and proper.

18 Dated: February 17, 2022

Ferraro Vega Employment Lawyers, Inc.

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20 

21 _____
Nicholas J. Ferraro
22 Attorney for Plaintiff Jon Wood
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25
26
27
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Exhibit A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

December 14, 2021

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

2018HMO LLC
3639 Midway Drive, Suite B-132
San Diego, CA 92110

2018HMPF LLC
3940 Home Avenue, Suite B
San Diego, CA 92105

Aaron Magagna
3639 Midway Drive, Suite B-132
San Diego, CA 92110

Michael Stratman
Hikei Modern Cannabis
3940 Home Avenue, Suite B
San Diego, CA 92105

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **12/14/2021**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of JON WOOD (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against 2018HMO LLC; 2018HMPF LLC; AARON MAGANA; and MICHAEL STRATMAN and all related employer persons and entities (“Defendants”).

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 period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California 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; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants operate Hikei Modern Cannabis, a marijuana dispensary. Defendants employ individuals like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees.

Defendants’ agents are personally liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein. Defendants Aaron Magana and Michael Stratman operate Hikei Modern Cannabis and are accountable for executive management concerning the payment of wages to aggrieved employees like Claimant. Mr. Magagna is the owner and member of Defendants and Michael Stratman is COO. Any judgment against Hikei may be directly enforced against them.

Claimant worked for Defendants from about March 2020 through October 2021. Throughout his employment, Claimant was an hourly, non-exempt employee. He worked in San Diego. Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly 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 final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant 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. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations
Violation of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, all applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage *for all hours* worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “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.

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides 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.”

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 sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime

compensation applicable to the employee. 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 and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Defendants failed to pay Claimant and the aggrieved employees for all hours worked because of Defendants’ practice of editing employees’ time records to avoid/reduce overtime and to insert false unpaid meal periods (*i.e.*, time shaving). For a portion of the PAGA Period, Defendants maintained an unlawful automatic meal period policy, whereby meal periods of at least minimum duration were entered and/or autodeducted regardless of whether they were actually taken. This resulted in an underpayment of hours worked each pay period for the aggrieved employees, as they worked during those periods which were inserted as unpaid meal periods, without receiving compensation for those hours. Defendants engaged in a pattern of editing employees’ time records that resulted in an underpayment of regular and overtime wages to Claimant and the aggrieved employees. The revisions were made without employees’ knowledge or consent and are evident from Defendants’ time records, which Defendants’ lawyers refuse to provide in response to statutory records requests. Furthermore, Defendants did not include all required forms or remuneration in the regular rate of pay required to calculate and pay overtime.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted 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 for an 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.” *Donobue 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.

During Claimant’s employment, Defendants failed to pay meal period premiums for times when he involuntarily experienced late, short, interrupted, or missed meal periods. Claimant and the aggrieved employees experienced meal period violations due to deliveries, poor staffing, company policy prohibiting breaks during deliveries, and customer demands. Claimant and the aggrieved employees were not paid all meal period premiums. Claimant and others were not paid meal period premiums for shifts of 5 hours or more without a meal period when no meal period waiver was in effect. Defendants did not maintain lawful meal period waivers during the majority of the PAGA Period. Furthermore, as discussed above, Defendants’ time records show that Defendants’ agents edited Claimant’s time records (without his knowledge) to make it appear as though Claimant and other aggrieved employees took compliant meal periods during times when they did not. Lastly, drivers were not permitted to take breaks until they arrived back at the store location per company policy. Drivers like Claimant were required to sign an agreement stating that once they left the retail location, they were prohibited from making any stops in the vehicle unless it was for product delivery, fuel, or vehicle repair and that they were required to drive straight back to the retail location after the last delivery. This requirement prevented Claimant and other aggrieved employees from taking meal and rest periods because they were often scheduled with back to back deliveries.

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

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. 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. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Defendants did not provide for or authorize rest periods, and did not afford sufficient staffing for Claimant and other aggrieved employees to take compliant 10-minute rest periods in accordance with California law. This was the result of scheduling practices and lack of compliant policies and practices with respect to 10-minute rest periods, as well as company policy prohibiting breaks during deliveries. On information and belief, Claimant alleges that Defendants did not pay a single rest period premium to aggrieved employees. Moreover, Defendants prohibited drivers from taking breaks while delivering cannabis products and were expressly prohibited from engaging in “any activities except for cannabis goods delivery[.]”

As a result, Claimant may recover civil penalties on behalf of herself, 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.

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

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled payday with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. 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 that, “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.

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

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to 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.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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

Failure to Reimburse Necessary Expenses
Violation of Labor Code §§ 2800, 2802

Defendants failed in their affirmative legal obligation to reimburse Claimants and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall 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.

Defendants required Claimants and the aggrieved employees to clock in and out during part of the PAGA period using an app called Deputy. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code section 2802. Claimant and the aggrieved employees were not compensated for their use of their personal cell phones.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further 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." In other words, if—as here—employees incur "necessary expenses" or "losses" for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney's fees and costs of suit.

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

Defendants violated Labor Code section 226 with respect to Claimant and other 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.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 ("Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG ("Injuries from a failure to provide an accurate pay statement include 'possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked'" (rejecting *Maldonado* defense for class claims).

citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(2) because employees’ total hours worked were incorrect as a result of the off the clock work employees were forced to perform.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates in are incorrect for the same reasons described above. The hourly rates are inaccurately stated as the base rate for Claimant and other aggrieved employees who were paid for regular hours as a result of Defendants’ timeshaving practice when they should have been paid the overtime hourly rate for some of the hours worked.

Claimant 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 sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 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, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants’ failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Failure to Provide Records in Response to Statutory Records Requests/Inspection
Violation of Labor Code §§ 226, 432 IWC Wage Orders

Claimant issued a records request to Defendants requesting all records due under the IWC Wage Orders (including the Records sections), and Labor Code sections 226 and 432. In response to Claimant's records request to Defendants, Defendants did not provide the employee handbook or Claimant's time records, in violation of California law.

Claimant signed a copy of the employee handbook, but Defendants only provided the acknowledgment page. This violates Labor Code section 432, which requires all documents signed by an employee to be provided upon request, and Labor Code section 226, which requires companies to provide a copy of all records pertaining to the respective employee's employment, as well as the inspection requirements of the IWC Wage Orders, which may be enforced via Labor Code section 1198. Additionally, Defendants willfully refused to provide Claimant's time records, despite the requirements of the IWC Wage Orders and Labor Code section 226, which state:

As a result, Claimant is an aggrieved employee who seeks civil penalties on behalf of himself and others for these and other Labor Code violations. Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226 and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Claimant was compelled to retain the services of counsel to file this court action to protect Claimant's interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) Claimant's lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial,

and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Diamler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

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

Thank you for your attention to this matter.

Sincerely,



Nicholas J. Ferraro

Cc Claimant

Lauren N. Vega
Lauren@ferrarovega.com
Counsel for Claimant