

1 Lauren N. Vega (State Bar No. 306525)
Nicholas J. Ferraro (State Bar No. 306528)
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 lauren@ferrarovega.com / nick@ferrarovega.com

5 *Attorneys for Plaintiff Seth Chance*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/18/2022 at 11:30:20 AM
Clerk of the Superior Court
By Gabriel Lopez, Deputy Clerk

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 SETH CHANCE, as an individual and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 COLONNA'S SHIP YARD,
16 INCORPORATED; COLONNA'S
SHIPYARD WEST, LLC; and DOES
17 1 through 50, inclusive,

18 Defendants.

Case No. 37-2022-00018968-CU-OE-CTL

CLASS ACTION

**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. Claims for Civil Penalties under the
Private Attorneys General Act of 2004

1 Plaintiff SETH CHANCE (“Plaintiff”), on behalf of a class of all other similarly situated
2 current and former employees, and the State of California brings this class and representative action
3 against Defendants COLONNA’S SHIP YARD, INCORPORATED; COLONNA’S SHIPYARD
4 WEST, LLC; and DOES 1 through 50, inclusive (collectively, “Defendants”), alleging as follows¹:

5 INTRODUCTION

6 1. This is a class and representative action filed for wage and hour violations of the
7 California Labor Code.

8 2. Plaintiff and the Class Members further seek civil penalties under the Private
9 Attorneys General Act for Defendants’ violations of the California Labor Code.

10 3. Defendants’ employment policies and practices and payroll administration systems
11 enabled and facilitated these violations on a company-wide basis with respect to the Class
12 Members.

13 JURISDICTION & VENUE

14 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution.

16 5. Venue as to Defendants is proper in this judicial district under Code of Civil
17 Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed
18 putative class members in this county, and committed some of the alleged violations in this county.

19 PARTIES

20 **A. The Plaintiff Seth Michael Chance**

21 6. Plaintiff Seth Michael Chance is an individual over 18 years of age who worked for
22 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until DECEMBER
23 2021.

26 ¹ Plaintiff amends the original complaint without leave of court pursuant to Labor Code §
27 2699.3(a)(2)(C), which states “[n]otwithstanding any other provision of law [including C.C.P. §
28 472], a plaintiff may as a matter of right amend an existing complaint to add a cause of action
arising under this part [Labor Code § 2698 et seq.] at any time within 60 days of the time periods
specified in this part [i.e., after the 65-day notice period has expired].”

1 **B. Class Members**

2 7. Plaintiff brings this action as an individual and on behalf of the following classes
3 under Code of Civil Procedure § 382. Plaintiff proposes the following class:

4 a. All individuals currently or formerly employed by Defendants in the State of
5 California as hourly non-exempt employees at any time from four years
6 preceding the filing of this action through the time of trial (the “Class” or
7 “Class Members” and the “Class Period”).

8 8. Further, Plaintiff proposes the following subclasses:

9 a. All Class Members who separated from employment with Defendants at any
10 time from three years preceding the filing of this action through the time of
11 trial (“Waiting Time Subclass”).

12 b. All Class Members who received a wage statement from Defendants at any
13 time from one-year preceding the filing of this action through the time of
14 trial (“Wage Statement Subclass”).

15 c. All Class Members who worked shifts of five hours or more without a duty-
16 free meal period of at least 30 minutes, or worked shifts of 10 hours or more
17 without a second duty-free meal period of at least 30 minutes, and who were
18 not paid one hour of pay at the regular rate of compensation for each of those
19 days (“Meal Period Subclass”).

20 d. All Class Members who worked shifts of four hours or major faction thereof
21 without being authorized or permitted an uninterrupted rest period of at least
22 10 minutes, who were not paid one hour at the regular rate of compensation
23 for each of those days (“Rest Period Subclass”).

24 e. All Class Members who used their personal devices for work-related
25 purposes and were not fully reimbursed for the usage
26 (“Reimbursement Subclass”).

27 f. All Class Members who were not paid all regular, overtime, or minimum
28 wages for all hours worked each pay period (“Unpaid Wage Subclass”).

1 g. All Class Members who were subject to Defendants' unlawful or unfair
2 business acts or practices during the Class Period ("UCL Subclass").

3 **C. The Defendants**

4 9. Defendant COLONNA'S SHIP YARD, INCORPORATED is a corporation
5 registered to do business in the State of California, doing business and employing labor throughout
6 San Diego County.

7 10. Defendant COLONNA'S SHIPYARD WEST, LLC is a limited liability company
8 registered to do business in the State of California, doing business and employing labor throughout
9 San Diego County.

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

16 12. Plaintiff is informed, believes, and alleges that all defendants in this action are
17 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as
18 each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the
19 other aggrieved employees, suffers and permits them to work, and/or otherwise engages the
20 workforce creating a common law employment relationship.

21 13. Plaintiff is informed, believes, and alleges that at least some of the defendants have
22 common ownership, common management, interrelationship of operations, and centralized control
23 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
24 responsible for the acts and omissions alleged herein.

25 14. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
26 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-
27 conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-
28

1 defendants, such that the acts and omissions of each defendant may be legally attributable to all
2 others.

3 15. Plaintiff is informed, believes and alleges that the above-mentioned defendants
4 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
5 regulating minimum wages and days of work and other provisions of the Labor Code with respect
6 to the Class of aggrieved employees. As a result, they may be held personally liable under Labor
7 Code sections 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th
8 809.

9 GENERAL ALLEGATIONS

10 16. Defendants failed to consistently provide timely, off-duty 30-minute meal periods to
11 Class Members within the first five hours of work, and timely second off-duty 30-minute meal
12 periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections
13 226.7, 512 and section 11 of the applicable IWC Wage Orders.

14 17. Because of Defendant’s practices, understaffing, and business needs, Plaintiff and
15 the Class Members were not allowed to start their meal breaks before the end of the fifth hour of
16 work, or to receive a 30-minute meal break without work-related interruptions. Plaintiff and the
17 Class Members were also not provided with the opportunity to take a second meal period when
18 their shifts exceeded 10 hours.

19 18. On information and belief, Plaintiff’s and the Class Member’s time sheets establish
20 meal period liability on their face. “[T]ime records showing noncompliant meal periods raise a
21 rebuttable presumption of meal period violations, including at the summary judgment stage.”
22 (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61).

23 19. When Defendants did not provide fully compliant meal periods, Defendants failed
24 to pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
25 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
26 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under
27 section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
28 payments, not just hourly wages”).

1 20. Defendants’ policy and practice of not paying all meal period premiums at the
2 lawful rate is a matter of common corporate policy and payroll administration such that it applies
3 and affected all other Class Members and, on information and belief, are evident from the time
4 records maintained by Defendants, which show late, short and missed meal periods without an
5 associated meal period premium on the corresponding employee wage statement.

6 21. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for every
7 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
8 section 12 of the applicable IWC Wage Order.

9 22. Plaintiff and the Class Members were not allowed to take compliant or all of their
10 rest periods due to staffing issues, employee’s job responsibilities, and the steady flow of business.
11 When Defendants did not provide a fully compliant rest period to Plaintiff or other Class Members,
12 Defendants failed to pay Plaintiff and other Class Members a rest period premium at the lawful
13 “regular rate of compensation” in violation of Labor Code section 226.7.

14 23. Plaintiff and the Class Members were not compensated for the work performed off-
15 the-clock during their meal periods. Defendants required Plaintiff and the Class Members to work
16 during uncompensated meal periods, off-the-clock. Plaintiff and the Class Members usually
17 worked shifts of at least eight hours. Thus, Defendants’ practice of not paying for work performed
18 off-the-clock resulted in unpaid regular, overtime, and double-time wages for Plaintiff and the
19 Class Members.

20 24. With respect to the unpaid wages and premiums owed to Plaintiff and Class
21 Members, Defendants failed to pay those wages on time each pay period or upon separation of
22 employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums owed
23 each pay period their employment, Defendants failed to timely pay all wages owed each pay day or
24 upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections
25 201 through 203 (waiting time) and 204 and 204b (paydays).

26 25. Defendants equally failed in their affirmative obligation to provide accurate itemized
27 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
28

1 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
2 several types of violations.

3 26. First, on each wage statement furnished, Defendants failed to accurately state the
4 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
5 Plaintiff and Class Members worked off the clock and were not paid for all hours worked at the
6 lawful rate and were deprived of all meal and rest period premiums, resulting in an inaccurate
7 itemization of gross and net wages earned on those wage statements.

8 27. Second, on each wage statement furnished to Plaintiff and, on information and
9 belief, the Class Members, Defendants failed to accurately list employees’ “total hours worked,” in
10 violation of Labor Code § 226(a)(2), as employees worked off the clock during uncompensated
11 meal periods, rendering the total hours worked on wage statements an inaccurate reflection.

12 28. Third, on each wage statement furnished to Plaintiff and, on information and belief,
13 the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
14 during the pay period and the corresponding number of hours worked at each hourly rate by the
15 employee,” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
16 Class Members do not accurately list the correct hourly overtime rate in effect (when employees
17 performed off the clock work). The wage statements the Defendants issued to Plaintiff and the
18 Class Members show the total number of hours worked for each category of earning (*i.e.*, regular,
19 overtime), but fail to include the applicable hourly rate for each category of payment.

20 29. Fourth, on each wage statement furnished to Plaintiff and, on information and
21 belief, the Class Members, Defendants failed to accurately state “the inclusive dates of the pay
22 period for which the employee is paid,” in violation of § 226(a)(6).

23 30. Defendants’ wage statement issues described above rendered the wage statements
24 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
25 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
26 Members as the sole documentary evidence of their respective earnings.

27 31. Plaintiff and Class Members suffered injury in the form of confusion regarding
28 amounts paid for hours worked, and in the form of concealment of the common payroll practices

1 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
2 this Complaint.

3 32. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
4 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
5 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
6 led to believe that the total hours worked, hourly rates, and net and gross wages reflected were a
7 complete and accurate reflection of the wages actually earned under California law.

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

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

17 35. Furthermore, Defendants required Plaintiff and the Class Members to use their
18 personal cellphones for work-related purposes without reimbursement. Specifically, Plaintiff and
19 the Class Members had to use their personal cell phone to communicate within the company about
20 projects to be completed, instructions to complete such projects, and/or where to go to complete the
21 projects. Although Plaintiff was provided with a company cell phone for some part of his
22 employment, he was not given a company cell phone for the entirety of his employment and during
23 those periods he and other employees who were not provided a cell phone incurred costs that were
24 not reimbursed. As such, in direct consequence of their job duties, Plaintiff and the Class Members
25 unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendant did
26 not fully and compliantly reimburse as a matter of policy and practice.

27 36. Finally, on January 3, 2022, Plaintiff, through his attorneys of record, requested
28 from Defendants a copy of his personnel and payroll records pursuant to Labor code section

1 1198.5, 226, and 432. Defendants' deadline to produce Plaintiff's wage statements was January 24,
2 2022 and the deadline to produce the personnel file was February 3, 2022. As of the date of this
3 Complaint, Defendants failed to produce copies of the wage statements provided to Plaintiff and/or
4 that contained all the categories required by Labor Code section 226. On information and belief,
5 Defendants failed to produce all of the documents signed by Plaintiff, in violation of Labor Code
6 section 1198.5 and 432. Defendants also refused to provide Plaintiff's time records, in violation of
7 Labor Code section 226 and Section 7(c) of the applicable IWC Wage Order.

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

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

18 CLASS ALLEGATIONS

19 39. ***Numerosity.*** The members of the Class are so numerous that joinder of all
20 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
21 of Defendants' employment and payroll records. Plaintiff is informed, believes, and alleges there
22 are more than 40 Class Members.

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

27 41. ***Manageability.*** This class action is manageable because the liability and damages
28 to Class Members can be ascertained by review of corporate and employer timekeeping and payroll

1 48. “Notwithstanding any other provision of law, any provision of this code providing
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
4 of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
5 employee on behalf of himself or herself and other current or former employees pursuant to the
6 procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

7 49. **On March 10, 2022**, Plaintiff gave written notice by online filing with the LWDA
8 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
9 been violated, including the facts and theories to support the alleged violations (the “PAGA
10 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
11 Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

12 50. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
13 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
14 actions taken to cure the alleged violations.

15 51. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
16 violations, without any notice of cure from them or notice from the LWDA of its intent to
17 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff
18 exhausted all prerequisites and commenced this civil action under Labor Code § 2699.

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

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY ALL MINIMUM WAGES**

25 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

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

27 54. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
28 Members at least the lawful minimum wage for each hour worked in violation of Labor Code

1 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
2 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
3 local and county minimum wage ordinances in effect.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

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

13 57. This cause of action is brought by the Unpaid Wage subclass pursuant to the IWC
14 Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt
15 employees be timely paid overtime wages all overtime hours worked, and which further provide a
16 private right of action for an employer’s failure to pay all overtime compensation for overtime
17 hours worked.

18 58. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
19 no less than one and one-half times their respective “regular rate of pay” for all hours worked in
20 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
21 seventh day of work in any one workweek, and no less than twice their respective “regular rate of
22 pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
23 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the
24 IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

25 59. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
26 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
27 extent permitted by law.

1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

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

4 61. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
5 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
6 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
7 provide a private right of action for an employer’s failure to lawfully provide all meal periods
8 and/or pay meal period premiums at the lawful regular rate of compensation.

9 62. 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
13 of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the
14 “Meal Periods” sections of the applicable orders).

15 63. Further, Defendants willfully failed in their affirmative obligation to consistently
16 pay Plaintiff and the Class 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
18 of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods”
19 sections of the applicable orders).

20 64. Plaintiff and the Class are entitled to recover to the full amount of the meal period
21 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs
22 to the extent permitted by law.

23 **FOURTH CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

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

26 66. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
27 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be
28 authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which

1 further provide a private right of action for an employer’s failure to lawfully provide all rest
2 periods and/or pay rest period premiums at the lawful regular rate of compensation.

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

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

12 69. Plaintiff and the Class are entitled to recover to the full amount of the rest period
13 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs
14 to the extent permitted by law.

15 **FIFTH CAUSE OF ACTION**

16 **UNTIMELY PAYMENT OF WAGES**

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

18 71. This cause of action is brought on behalf of the Class to the IWC Wage Orders and
19 Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages
20 owed each pay period, and which further provide a private right of action for an employer’s failure
21 to comply with this obligation.

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

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

7 **SIXTH CAUSE OF ACTION**

8 **WAGE STATEMENT VIOLATIONS**

9 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

14 76. Defendants knowingly and intentionally failed in their affirmative obligation
15 provide accurate itemized wage statements to Plaintiff and Class Members resulting in injury to
16 Plaintiff and Class Members. Specifically, the wage statements issued to Plaintiff and Class
17 Members did not accurately state each pay period all of the information required by Labor Code
18 § 226(a)(1)-(9).

19 77. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
20 accurate itemized wage statements, causing confusion and concealing wage and premium
21 underpayments.

22 78. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of
23 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee
24 for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee,
25 in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
26 Labor Code section 226(e).

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 79. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 80. This cause of action is brought by the Waiting Time Subclass pursuant to Labor
5 Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
6 termination of employment, and which further provide a private right of action to recover statutory
7 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
8 of 30 days wages.

9 81. Defendants willfully failed and continue to fail in their affirmative obligation to pay
10 all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately
11 upon termination of employment or within 72 hours thereafter for employees who did not provide
12 at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for
13 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

14 82. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time
15 penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent
16 permitted by law.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 83. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

23 85. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
24 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the
25 Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class
26 Members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including
27 under Labor Code section 2802.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE RECORDS**

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

4 76. Plaintiff brings this cause of action exclusively *in his individual capacity*.

5 77. 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 request.”

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

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

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

19 81. Plaintiff issued a request to Defendants asking for all records due under the IWC
20 Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
21 Defendants failed to produce copies of the wage statements provided to Plaintiff or records that
22 contain all the categories of information required by Labor Code section 226. Defendants refused
23 to provide Plaintiff’s time records, and, on information and belief, have failed to provide all
24 documents signed by Plaintiff.

25 82. Defendants’ unlawful acts and omissions deprived Plaintiff of the ability review the
26 documents they received during their employment and to inspect and reconcile their actual time
27 worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover
28

1 penalties, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including
2 under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5

3 **TENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 83. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

6 84. Plaintiff brings this cause of action on behalf of all Classes.

7 85. Defendants have engaged and continue to engage in unfair and/or unlawful business
8 practices in the State of California in violation of California Business and Professions Code
9 § 17200 by failing committing the foregoing wage and hour violations alleged throughout this
10 Complaint.

11 86. Defendants' dependance on these unfair and/or unlawful business practices
12 deprived Plaintiff and continue to deprive other Class Members of compensation to which they are
13 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
14 to Defendants over competitors who have been and/or are currently employing workers in
15 compliance with California's wage and hour laws. These failures constitute unlawful, deceptive,
16 and unfair business acts and practices in violation of Business and Professions Code section 17200,
17 *et seq.*

18 87. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
19 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
20 restitution of the moneys as necessary and according to proof to restore all monies withheld,
21 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
22 and 17208.

23 88. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
24 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
25 interest and to prevent future damage and the public interest under Business and Professions Code
26 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
27 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES (PAGA)

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

90. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil 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 .”

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

92. 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.

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

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages.”

3 94. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
5 the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage
6 Order further provides that “[e]very employer shall pay to each employee, on the established
7 payday for the period involved, not less than the applicable minimum wage for all hours worked in
8 the payroll period, whether the remuneration is measured by time, piece, commission, or
9 otherwise.”

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

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

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

28

1 **TWELFTH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME (PAGA)**

3 98. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

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

16 **THIRTEENTH CAUSE OF ACTION**

17 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

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

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

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

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

5 **FOURTEENTH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

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

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

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

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

21 **FIFTEENTH CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

23 109. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 110. Defendants willfully failed in their affirmative obligation to timely pay all wages
25 and premiums earned by Plaintiff and aggrieved employees twice during each calendar month on
26 days designated in advance by the employer as regular paydays (for employees paid on a non-
27 weekly basis) and on the regularly-scheduled weekly payday for any weekly employees, as
28

1 applicable, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
2 “Minimum Wages” sections of the applicable orders).

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

7 **SIXTEENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

9 112. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

17 114. Defendants knowingly and intentionally failed in their affirmative obligation
18 provide accurate itemized wage statements to Plaintiff and aggrieved employees, resulting in to
19 Plaintiff and the aggrieved employees. Specifically, the wage statements issued to Plaintiff and the
20 aggrieved employees did not accurately state each pay period all of the information required by
21 Labor Code section 226(a)(1)-(9).

22 115. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved
23 employees of accurate itemized wage statements, causing confusion and concealing wage and
24 premium underpayments.

25 116. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
26 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
27 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and
28 costs to the extent permitted by law, including under Labor Code section 2699(g).

1 **SEVENTEENTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION (PAGA)**

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

4 118. Defendants willfully failed in their affirmative obligation to pay all wages earned
5 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
6 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
7 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
8 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
9 those due to Defendants' failure to pay employees for all hours worked and for meal and rest period
10 premiums.

11 119. 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 **EIGHTEENTH CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)**

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

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

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

25 ///

1 **NINETEENTH CAUSE OF ACTION**

2 **RECORDKEEPING VIOLATIONS (PAGA)**

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

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

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

15 126. Defendants willfully failed in their affirmative obligation to maintain accurate
16 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
17 Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the
18 applicable orders).

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

23 **TWENTIETH CAUSE OF ACTION**

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

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

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

1 130. Labor Code section 226(b) grants employees the right to inspect or receive “a copy
2 of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of
3 \$750 for an employer’s failure to comply with a request for records made under section 226.

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

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

13 133. Plaintiff issued a records request to Defendants requesting all records due under the
14 IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
15 Defendants willfully refused to provide Plaintiff’s time records, wage statements, and, on
16 information and belief, copies of all records signed by Plaintiff.

17 134. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
18 aggrieved employees and the State of California for civil penalties as required by Labor Code
19 section 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
20 by law, including under Labor Code section 2699(g).

21 **PRAYER FOR RELIEF**

22 Plaintiff prays for judgment as follows:

- 23 a. For certification of this action as a class action;
24 b. For appointment of Plaintiff as the representative of the Class;
25 c. For appointment of counsel for Plaintiff as Class Counsel;
26 d. For injunctive relief;
27 e. For compensatory damages in amount according to proof;
28 f. For all recoverable pre- and post-judgment interest;

- 1 g. For recovery of all statutory penalties and liquidated damages;
- 2 h. For disgorgement of all amounts wrongfully obtained;
- 3 i. For this action to be maintained as a representative action under the PAGA and for
- 4 Plaintiff and counsel to be provided with all enforcement capability as if the action
- 5 were brought by the State of California or the California Division of Labor
- 6 Enforcement;
- 7 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 8 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 9 permitted by law, including (without limitation) under California Labor Code
- 10 sections 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5;
- 11 l. For such other relief the Court deems just and proper.
- 12

13 Respectfully submitted,

14

15 Dated: May 18, 2022

Ferraro Vega Employment Lawyers, Inc.

16
17 

18 Nicholas J. Ferraro
19 Nicholas J. Ferraro
20 Attorney for Plaintiff Seth Chance
21
22
23
24
25
26
27
28

Exhibit 1

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

March 10, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- *Electronic Return Receipt* -

Colonna's Ship Yard, Incorporated
400 East Indian River Road
Norfolk, VA 23523

Colonna's Shipyard West, LLC
400 East Indian River Road
Norfolk, VA 23523

- *PAGA Notice & Filing Fee* -
Submitted electronically to the California
Labor and Workforce Development
Agency on **March 10, 2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of SETH MICHAEL CHANCE ("Claimant"), and all other "aggrieved employees" under California Labor Code section 2699.3 against COLONNA'S SHIP YARD, INCORPORATED, COLONNA'S SHIPYARD WEST, LLC, along with any other related employer entities, including those who may be later added upon further investigation (collectively, "Defendant").

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

Defendant's headquarters are in Norfolk, Virginia. Defendant's West Division is based in San Diego, and acts as a full-service marine contractor, offering the full spectrum of marine trades. Defendant employs aggrieved employees, like Claimant, in 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.

Defendant 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. Defendant legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendant and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant SETH MICHAEL CHANCE worked for Defendant from May 2021, to December 2021. Claimant worked in the position of Tool Room Clerk. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

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 Defendant 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 Defendant's 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 expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action.

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

Defendant 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.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. 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.

Defendant failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. Because of Defendant's practices, understaffing, and business needs, Claimant and the aggrieved employees were not allowed to start their meal breaks before the end of the fifth hour of work, or to receive a 30-minute meal break without work-related interruptions. Specifically, Claimant was not allowed to take compliant meal breaks because he was required to ensure that other workers had the materials they needed upon request, and such requests were continuous. Thus, Claimant had to work through his meal breaks or eat while driving to fulfill requests. When Defendant did not provide compliant meal periods, Defendant failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. On information and belief, Claimant alleges that Defendant failed to maintain accurate time records showing compliant meal periods, due to their non-compliance policies and practices relating to meal periods for its California workforce. Defendant did not pay all meal period premiums when due.

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

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

Defendant 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 rest 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. Defendant required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to staffing issues, employee's job responsibilities, and the steady flow of business, Claimant and the aggrieved employees were not always authorized and permitted to take all of their rest periods in compliance with California law. Claimant was unable to take all of his rest periods for the same reasons as described in the meal period section. Moreover, Defendant had a practice of not paying rest period premiums to employees who were unable to take rest periods. Defendant did not provide all rest period premiums when due.

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

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

Defendant 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, 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 section 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 section 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.

Claimant and the aggrieved employees were not compensated for the work performed off-the-clock during their meal periods. Defendant required Claimant and the aggrieved employees to work during uncompensated meal periods, off-the-clock. Claimant and the aggrieved employees usually worked shifts of at least eight hours. Thus, Defendant’s practice of not paying for work performed off-the-clock resulted in unpaid regular, overtime, and double-time wages for Claimant and the aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code §§ 210, 558, 1197.1 (\$100/\$250), and 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

Defendant failed in its affirmative legal obligation to reimburse Claimant 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.

Defendant required Claimant and the aggrieved employees to incur costs for work-related purposes, including expenses associated with cell phones, data, and internet. Specifically, Claimant and the aggrieved employees had to use their personal cell phone to communicate within the company about projects to be completed, instructions to complete such projects, and/or where to go to complete the projects. Although Claimant was provided with a company cell phone for some part of his employment, he was not given a company cell phone for the entirety of his employment and during those periods he and other employees who were not provided a cell phone incurred costs that were not reimbursed. As such, in direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendant did not fully and compliantly reimburse as a matter of policy and practice. To the extent Defendant reimbursed aggrieved employees, those amounts were underpaid. At all relevant times, Defendant was required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

To the extent Defendant argues 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. Labor Code § 2804 prohibits waiver of these rights.

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.

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

Defendant violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays 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 Defendant made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendant failed to pay all wages in each pay period in which such wages were earned at the lawful rate meal and rest premiums, and other forms of remuneration, Defendant 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, Defendant underpaid Claimant and other aggrieved employees' regular wages and meal and rest period premiums. Defendant 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 himself, 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

Defendant 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 Defendant failed to pay all wages and premiums owed to the aggrieved employees during their employment, Defendant 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 himself, 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.

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

Defendant 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 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 wages, premiums and sick leave—Defendant violated Labor Code

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).

section 226(a)(1) by not listing the correct “gross wages earned,” as the employees worked off the clock and earned premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendant 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, Defendant violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock during uncompensated meal periods, rendering the total hours listed as an inaccurate reflection of hours worked.

Lastly, Defendant’s pay stubs failed to include all applicable hourly rates. Claimant’s and the aggrieved employees’ paystubs show the total number of hours worked for each category of earning (*i.e.* regular rate, overtime rate) and the total amount paid for the category, but fail to include the applicable hourly rate for each category of payment in violation of Labor Code section 226(a)(9).

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, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of himself, 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 Defendant’s failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendant 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, Defendant is 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, 1198, 1198.5, IWC Wage Orders

Claimant issued a records request to Defendant requesting all records due under the IWC Wage Orders (including the Records sections), and Labor Code sections 226, 1198, and 432. In response to Claimant's records request, Defendant failed to provide the employee handbook and Claimant's time records and wage statements, in violation of California law.

Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 226(b) grants employees the right to inspect or receive "a copy of records pertaining to their employment." Labor Code section 1198.5 requires employers to provide an employee's "personnel records" within 30 days of receipt of the request.

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

On January 3, 2022, Claimant, through his attorneys of record, requested from Defendant a copy of his personnel and payroll files. Per Labor Code 226(c), Defendant's deadline to produce Claimant's wage statements was January 24, 2022. However, by this date, Defendant had only produced a copy of Claimant's payroll history, which did not contain the information required by section 226, and refused to produce any further documents in violation on Labor Code 226. On February 2, 2022, Defendant produced some but not all documents signed by Claimant. Defendant's failure to provide, upon request, a copy of all documents signed by an employee violates Labor Code section 432. Defendant's failure to provide copies of Claimant's wage statements violates Labor Code section 226. Finally, Defendant's failure to provide Claimant's time records violates Section 7(c) of the applicable IWC Wage Order.

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 himself, 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.

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

Claimant was compelled to retain the services of counsel to file this court action to protect his 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 Defendant
to Change Policies and Practices**

Claimant intends to pursue legal action against Defendant based on the violations set forth in this notice. Defendant is 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 his counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) their lawsuit was a catalyst in motivating Defendant to change its 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 Defendant will be liable at trial, and (3) that Claimant has hereby notified Defendant of its 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).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendant 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

Lara P. Besser
Lara.Besser@jacksonlewis.com
Attorney for Defendant