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5 *Attorneys for Plaintiff David Nguyen*
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 DAVID NGUYEN, as an individual and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 TRILINK BIOTECHNOLOGIES, LLC and
16 DOES 1 through 50, inclusive,

17 Defendants.
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Case No. 37-2022-00019578-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 PSL and Supp. PSL
10. Violations of the Unfair Competition Law
- 11-21. Claims for Civil Penalties under the
Private Attorneys General Act of 2004

1 Plaintiff DAVID NGUYEN (“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 TRILINK BIOTECHNOLOGIES, LLC; and DOES 1 through 50, inclusive
4 (collectively, “Defendants”), alleging as follows:

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 David Nguyen**

21 6. Plaintiff David Nguyen is an individual over 18 years of age who worked for
22 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until January 28, 2022.

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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 paid paid sick leave wage at a rate less than
28 what is required by statute (“Paid Sick Leave Subclass”).

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

3 h. All Class Members who were subject to Defendants’ unlawful or unfair
4 business acts or practices during the Class Period (“UCL Subclass”).

5 **C. The Defendants**

6 9. Defendant TRILINK BIOTECHNOLOGIES, LLC is a limited liability company
7 registered to do business in the State of California, doing business and employing labor throughout
8 San Diego County.

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

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

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

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

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

7 **GENERAL ALLEGATIONS**

8 15. Defendants failed to pay all overtime and doubletime wages owed to employees.

9 16. Plaintiff and Class Members earned shift differentials, bonuses, and other forms of
10 non-discretionary remuneration. When Defendants paid overtime and doubletime to Plaintiff and
11 other Class Members, Defendants failed to pay overtime using a correct calculation of the regular
12 rate of pay. In those pay periods when Plaintiff and Class Members earned additional
13 compensation, Defendants paid Class Members overtime and doubletime based on a multiple of the
14 *straight time hourly rate*, rather than “at the rate of no less than one and one-half times the regular
15 rate of pay for an employee[,]” or “at the rate of no less than twice the regular rate of pay for an
16 employee” for any applicable double time hours, as required by Labor Code section 510 and the
17 IWC Wage Orders. An illustrative example of the regular rate of pay violation is found on
18 Plaintiff’s 1/16/22 to 1/29/22 wage statement (pay date: 2/4/22), where he was paid a shift
19 differential. Despite the differential, Plaintiff was paid overtime at a rate of 1.5x his base hourly
20 rate of \$25.00 rather than at the regular rate of pay. The total damages are evident from
21 Defendants’ wage statements, pay records, and earning reports.

22 17. Furthermore, Defendants failed to pay Plaintiff for all hours suffered or permitted to
23 work throughout his employment. As one example, Plaintiff’s time sheets from January 16, 2022
24 through January 29, 2022 show that Plaintiff worked 6.66 double-time hours. However, Plaintiff’s
25 wage statement shows he was only compensated for 1.67 double-time hours. Hence, Plaintiff is
26 owed compensation for 4.99 double-time hours for the pay period. Due to the common payroll and
27 timekeeping practices, Plaintiff alleges that Defendants committed the same types of violations
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1 against the Class Members as well, which resulted in significant underpayments of wages to Class
2 Members.

3 18. Defendants failed to consistently provide timely, off-duty 30-minute meal periods to
4 Class Members within the first five hours of work, and timely second off-duty 30-minute meal
5 periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections
6 226.7, 512 and section 11 of the applicable IWC Wage Orders.

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

12 20. Plaintiff’s and the Class Member’s time sheets establish meal period liability on
13 their face. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of
14 meal period violations, including at the summary judgment stage.” (*Donohue v. AMN Servs., LLC*
15 (2021) 11 Cal. 5th 58, 61).

16 21. When Defendants did not provide fully compliant meal periods, Defendants failed
17 to pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
18 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
19 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under
20 section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
21 payments, not just hourly wages”). Although Defendants did pay some meal period premiums, the
22 did not pay all premiums to which employees were entitled. Further, Defendants paid the
23 premiums at employee’s base hourly rate, and not at the regular rate of compensation, which
24 would have factored in shift differential, bonus, and other payments made to employees.

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

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

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

11 25. Defendants required Plaintiff and the Class Members to use their personal vehicles
12 and personal devices for work-related purposes without reimbursement. Plaintiff and the Class
13 Members used their personal cell phones each shift they worked because Defendants implemented
14 a practice where employees were required to clock in and out using their personal cell phones.
15 Moreover, Defendants required Plaintiff and the Class Members, on a weekly basis, use their
16 personal vehicles to drive to a Covid testing center to be tested for Covid, including during working
17 hours. Plaintiff and the Class Members were not reimbursed for their gas mileage or the usage of
18 their vehicles. In direct consequence of their job duties, Plaintiff and the Class Members
19 unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did
20 not reimburse as a matter of policy and practice.

21 26. In pay periods where Defendants provided Plaintiff and other Class Members with
22 remuneration in addition to their respective base hourly rate for hours worked (such as shift
23 differentials)—excluding any forms of pay subject to any applicable statutory exclusions from the
24 “regular rate”—Defendants failed to properly calculate and pay paid sick leave and supplemental
25 paid sick leave at the appropriate regular rate of pay, in violation of Labor Code sections 246,
26 248.1, 248.2, and 248.6. Defendant’s paid sick leave and supplemental paid sick leave at
27 employees’ straight time hourly rate instead of one of the methods authorized by statute, which
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1 required Defendants to factor in employees' additional remuneration, such as shift differentials and
2 bonuses.

3 27. With respect to the unpaid wages, meal and rest period premiums, and sick leave
4 wages owed to Plaintiff and Class Members, Defendants failed to pay those wages on time each
5 pay period or upon separation of employment. Because Defendants did not pay Plaintiff and the
6 Class for all wages/premiums owed each pay period their employment, Defendants failed to timely
7 pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
8 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays). *See*
9 *also Naranjo v. Spectrum Security Services, Inc.* ___ Cal. ___ (May 23, 2022)

10 28. Defendants equally failed in their affirmative obligation to provide accurate itemized
11 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
12 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
13 several types of violations.

14 29. First, on each wage statement furnished, Defendants failed to accurately state the
15 "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1) and (5), as
16 Plaintiff and Class Members were not paid for all hours worked at the lawful rate and were
17 deprived of meal and rest period premiums, resulting in an inaccurate itemization of gross and net
18 wages earned on those wage statements.

19 30. Second, on each wage statement furnished to Plaintiff and, on information and
20 belief, the Class Members, Defendants failed to accurately list employees' "total hours worked," in
21 violation of Labor Code § 226(a)(2), as employees were not paid for all hours worked (*e.g.*,
22 overtime and doubletime underpayments), rendering the total hours worked on wage statements an
23 inaccurate reflection.

24 31. Third, on each wage statement furnished to Plaintiff and, on information and belief,
25 the Class Members, Defendants failed to accurately state "all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee," in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
28 Class Members do not accurately list the correct hourly overtime and doubletime rate in effect

1 using the regular rate of pay and do not include hours that employees worked and were not paid
2 for.

3 32. Defendants' wage statement issues described above rendered the wage statements
4 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
5 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
6 Members as the sole documentary evidence of their respective earnings.

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

11 34. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
12 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
13 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
14 led to believe that the total hours worked, hourly rates, and net and gross wages reflected were a
15 complete and accurate reflection of the wages actually earned under California law.

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

20 36. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
21 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
22 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
23 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
24 under California law.

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

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

8 CLASS ALLEGATIONS

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

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

17 41. *Manageability.* This class action is manageable because the liability and damages
18 to Class Members can be ascertained by review of corporate and employer timekeeping and payroll
19 records along with other evidence that Defendants maintained and is required by law to maintain
20 under the California Labor Code, IWC Wage Orders and federal law. This class action is
21 manageable because the contact information and identity of percipient witnesses—namely,
22 Defendants' employees (the putative class members)—is readily maintained by Defendants.

23 42. *Superiority.* A class action is superior to other means for adjudication of the claims
24 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
25 for the common issues to be resolved in a single forum, simultaneously and without duplication of
26 effort and expense.

1 43. **Commonality.** Common questions of law and fact and a community of interest
2 exists amongst Plaintiff and the Class. These common issues arise from the employment
3 relationship with Defendants and predominate over any individual issues.

4 44. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
5 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
6 resulted in losses to Plaintiff and Class Members.

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

10 **PAGA ALLEGATIONS**

11 46. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on
12 behalf of the State of California and the "aggrieved employees," defined as follows:

13 All current and former non-exempt hourly employees who worked for Defendants in the
14 State of California during the period of March 9, 2021 through the current date and the date
15 of final judgment in this action ("PAGA Period").

16 47. The State of California, via the Labor and Workforce Development Agency
17 ("LWDA"), is the real party in interest in this action with respect to Plaintiff's claims under the
18 Private Attorney's General Act. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The
19 "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

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

26 49. **On March 9, 2022**, Plaintiff gave written notice by online filing with the LWDA
27 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
28 been violated, including the facts and theories to support the alleged violations (the "PAGA

1 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
2 Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit 1**.

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

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

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

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY ALL MINIMUM WAGES**

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

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

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

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

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

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

19 **THIRD CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

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

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

27 62. Defendants willfully failed in their affirmative obligation to consistently provide
28 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes

1 beginning before the fifth hour of hour for each work period of more than five hours per day and a
2 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour
3 of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the
4 “Meal Periods” sections of the applicable orders).

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

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

13 **FOURTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

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

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

8 76. Defendants knowingly and intentionally failed in their affirmative obligation
9 provide accurate itemized wage statements to Plaintiff and Class Members resulting in injury to
10 Plaintiff and Class Members. Specifically, the wage statements issued to Plaintiff and Class
11 Members did not accurately state each pay period all of the information required by Labor Code
12 § 226(a)(1)-(9).

13 77. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
14 accurate itemized wage statements, causing confusion and concealing wage and premium
15 underpayments.

16 78. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of
17 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee
18 for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee,
19 in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
20 Labor Code section 226(e).

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

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

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

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

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

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE PSL AND SUPPLEMENTAL PSL**

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

23 87. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

24 88. Defendants knowingly and intentionally failed in their affirmative obligation
25 provide and pay paid sick leave to Plaintiff and the Paid Sick Leave Class in violation of Labor
26 Code section 246.

1 89. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
2 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
3 entitles employees to use any accrued sick leave beginning on their 90th day of employment.

4 90. Labor Code section 246(1) governs how Defendants were required to calculate paid
5 sick leave:

6 [A]n employer shall calculate paid sick leave using any of the following
7 calculations:

8 (1) Paid sick time for nonexempt employees shall be calculated in the same
9 manner as the regular rate of pay for the workweek in which the employee
10 uses paid sick time, whether or not the employee actually works overtime in
11 that workweek.

12 (2) Paid sick time for nonexempt employees shall be calculated by dividing
13 the employee's total wages, not including overtime premium pay, by the
14 employee's total hours worked in the full pay periods of the prior 90 days of
15 employment.

16 (3) Paid sick time for exempt employees shall be calculated in the
17 same manner as the employer calculates wages for other forms of paid leave
18 time.

19 91. Defendants failed to pay Plaintiff and the Paid Sick Leave Subclass paid sick leave
20 at one of the lawful rates set forth in the statute because Defendants failed to include in their sick
21 leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
22 Subclass.

23 92. Furthermore, Defendants knowingly and intentionally failed in their affirmative
24 obligation to pay Covid-19 Supplemental Sick Leave to the Paid Sick Leave Subclass at the
25 correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

26 93. Pursuant to Labor Code section 248.1, Defendants were required to provide up to
27 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020
28 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours

1 of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
2 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
3 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
4 January 1, 2022 to September 30, 2022, and may be extended thereafter.

5 94. Under Labor Code section 248.1, employees must be paid for Covid-19
6 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
7 last pay period, (2) state minimum wage, (3) local minimum wage.

8 95. Under Labor Code section 248.2, non-exempt employees must be paid
9 supplemental paid sick leave according to the highest of the following four methods:

10 (I) Calculated in the same manner as the regular rate of pay for the workweek in
11 which the covered employee uses COVID-19 supplemental paid sick leave,
12 whether or not the employee actually works overtime in that workweek.

13 (II) Calculated by dividing the covered employee's total wages, not including
14 overtime premium pay, by the employee's total hours worked in the full pay
15 periods of the prior 90 days of employment.

16 (III) The state minimum wage.

17 (IV) The local minimum wage to which the covered employee is entitled.

18 75. Labor Code section 248.6 requires employers to pay supplemental sick leave using
19 either method (I) or (II), as identified above.

20 76. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
21 Leave in the manner described above because Defendants failed to include in their sick leave
22 calculation the additional remuneration received by the Paid Sick Leave Subclass.

23 77. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
24 Paid Sick Leave subclass for underpaid sick leave earnings, in addition to interest, attorneys' fees,
25 and costs.

26 **TENTH CAUSE OF ACTION**

27 **UNFAIR COMPETITION**

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

1 76. Plaintiff brings this cause of action on behalf of all Classes.

2 77. Defendants have engaged and continue to engage in unfair and/or unlawful business
3 practices in the State of California in violation of California Business and Professions Code
4 § 17200 by failing committing the foregoing wage and hour violations alleged throughout this
5 Complaint.

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

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

18 80. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
19 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
20 interest and to prevent future damage and the public interest under Business and Professions Code
21 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
22 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

23 **ELEVENTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES (PAGA)**

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

26 82. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Section 2699.3 .”

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

10 84. Labor Code § 204(a) states that all wages earned are due and payable twice during
11 each calendar month on days designated in advance by the employer as regular pay days. Overtime
12 wages are to be paid no later than the payday for the next regular payroll period. (Labor Code §
13 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee
14 as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation
15 and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

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

24 86. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
26 the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage
27 Order further provides that “[e]very employer shall pay to each employee, on the established
28 payday for the period involved, not less than the applicable minimum wage for all hours worked in

1 the payroll period, whether the remuneration is measured by time, piece, commission, or
2 otherwise.”

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

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

17 89. 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, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
20 and costs to the extent permitted by law, including under Labor Code section 2699(g).

21 **TWELFTH CAUSE OF ACTION**

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

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

24 91. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
25 employees no less than one and one-half times their respective “regular rate of pay” for all hours
26 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked
27 on the seventh day of work in any one workweek, and no less than twice their respective “regular
28 rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any

1 seventh day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage
2 Orders and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable
3 orders).

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

8 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

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

25 **FOURTEENTH CAUSE OF ACTION**

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

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

28

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

6 99. Further, Defendants willfully failed in their affirmative obligation to consistently
7 pay Plaintiff and aggrieved employees 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 the IWC Wage Orders.

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

14 **FIFTEENTH CAUSE OF ACTION**

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

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

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

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

27 ///

1 **SIXTEENTH CAUSE OF ACTION**

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

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

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

11 106. Defendants knowingly and intentionally failed in their affirmative obligation
12 provide accurate itemized wage statements to Plaintiff and aggrieved employees. Specifically, the
13 wage statements issued to Plaintiff and the aggrieved employees did not accurately state each pay
14 period all of the information required by Labor Code section 226(a)(1)-(9).

15 107. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved
16 employees of accurate itemized wage statements, causing confusion and concealing wage and
17 premium underpayments.

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

22 **SEVENTEENTH CAUSE OF ACTION**

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

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

25 110. Defendants willfully failed in their affirmative obligation to pay all wages earned
26 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
27 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
28 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of

1 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
2 those due to Defendants' failure to pay employees for all hours worked and for meal and rest period
3 premiums.

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

8 **EIGHTEENTH CAUSE OF ACTION**

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

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

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

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

18 **NINETEENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)**

20 **Labor Code § 246 *et seq.***

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

22 116. Defendants knowingly and intentionally failed in their affirmative obligation to
23 provide notice of and provide and pay paid sick leave to Plaintiff and the aggrieved employees in
24 violation of Labor Code sections 246 through 248.5.

25 117. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
26 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
27 entitles employees to use any accrued sick leave beginning on their 90th day of employment.

1 118. Labor Code section 246(l) governs how Defendants were required to calculate paid
2 sick leave and states: [A]n employer shall calculate paid sick leave using any of the following
3 calculations:

4 (1) Paid sick time for nonexempt employees shall be calculated in the
5 same manner as the regular rate of pay for the workweek in which the
6 employee uses paid sick time, whether or not the employee actually
7 works overtime in that workweek.

8 (2) Paid sick time for nonexempt employees shall be calculated by
9 dividing the employee's total wages, not including overtime premium
10 pay, by the employee's total hours worked in the full pay periods of the
11 prior 90 days of employment.

12 (3) Paid sick time for exempt employees shall be calculated in the
13 same manner as the employer calculates wages for other forms of paid
14 leave time.

15 119. Labor Code section 246(i) requires employers to provide employees with written
16 notice every pay period "that sets forth the amount of paid sick leave available, or paid time off in
17 lieu of sick leave." The notice can either be on the employees' wage statements or a separate
18 written notice.

19 120. Defendants failed to pay sick leave to Plaintiff and the aggrieved employees at the
20 correct rate, which should have factored in employees' commissions, bonuses, and other forms of
21 remuneration. Defendants instead paid sick leave at the straight time hourly rate.

22 121. 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 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
25 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
26 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
27 amounts in addition to interest, attorneys' fees, and costs to the extent permitted by law.

28 ///

1 **TWENTIETH CAUSE OF ACTION**

2 **CIVIL PENALTIES FOR SUPP. PAID SICK LEAVE VIOLATIONS (PAGA)**

3 **Labor Code § 246 *et seq.***

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

5 123. Defendants knowingly and intentionally failed in their affirmative obligation to
6 provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the
7 aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.2, and 248.6.

8 124. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80
9 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
10 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
11 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
12 January 1, 2022 to September 30, 2022, and may be extended thereafter.

13 125. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
14 supplemental paid sick leave according to the highest of the following four methods: (1) the regular
15 rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave,
16 (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state
17 minimum wage, or (4) the local minimum wage.

18 126. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
19 leave under either one of the following methods (1) regular rate of pay or (2) the employee's total
20 wages in a 90-day period divided by total hours worked.

21 127. As with paid sick leave, Defendants failed to pay Covid-19 Supplemental Sick
22 Leave at the correct rate because Defendants failed to factor in employees' commissions and other
23 forms of remuneration. Defendants instead paid such sick leave at the straight time hourly rate
24 rather than one of the methods authorized by statute.

25 128. 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). Plaintiff is also entitled to penalties under

1 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
2 amounts in addition to interest, attorney's fees and costs to the extent permitted by law.

3 **TWENTY-FIRST CAUSE OF ACTION**

4 **RECORDKEEPING VIOLATIONS (PAGA)**

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

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

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

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

21 133. 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 1174.5, in addition to attorneys' fees, costs, and interest to the extent permitted by law,
24 including under Labor Code section 2699(g).

25 **PRAYER FOR RELIEF**

26 Plaintiff prays for judgment as follows:

- 27 a. For certification of this action as a class action;
- 28 b. For appointment of Plaintiff as the representative of the Class;

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

16
17 Respectfully submitted,

18
19 Dated: May 23, 2022

Ferraro Vega Employment Lawyers, Inc.

20
21 
22 _____
Nicholas J. Ferraro
23 Attorney for Plaintiff David Nguyen
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

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www.ferrarovega.com

March 09, 2022

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

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Trilink Biotechnologies, LLC
10770 Wateridge Circle, Suite 200
San Diego, CA 92121

- PAGA Notice & Filing Fee -

Submitted electronically to the California
Labor and Workforce Development
Agency on **03/09/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of DAVID NGUYEN (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against TRILINK BIOTECHNOLOGIES, 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 is a subdivision of Maraval LifeSciences, and a contract development and manufacturing company engaged in the synthesis and scale-up of nucleic acids, NTP’s and MRNA capping analogs. Defendant employs aggrieved employees like Claimant in 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.

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 its 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 DAVID NGUYEN worked for Defendant from December 2021 through January 2022. Claimant worked in the position of Manufacturing Associate 1. 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.

Overtime and Minimum Wage Violations

Violation of Labor Code §§ 200, 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.

When Claimant and the aggrieved employees worked overtime or double-time, Defendant failed to pay overtime or double-time for all overtime or double-time hours suffered or permitted to work. As one example, Claimant’s time sheets from January 16, 2022 through January 29, 2022 show that Claimant worked 6.66 double-time hours. However, Claimant’s wage statement shows he was only compensated for 1.67 double-time hours. Hence, Claimant is owed compensation for 4.99 double-time hours for the pay period. Due to the common payroll and timekeeping practices, Claimant alleges that Defendant committed this same violation against the other aggrieved employees as well, which resulted in significant underpayments of wages to employees in those pay periods.

P	Mon	01/17/2022	08:00 AM - 04:00 PM	8.00	HOLIDAY	001190
P	Wed	01/19/2022	05:42 AM - 10:39 AM	4.95		001190
W	Wed	01/19/2022	11:09 AM - 06:48 PM	8.65		001190
P	Thu	01/20/2022	05:44 AM - 10:42 AM	4.97		001190
W	Thu	01/20/2022	11:12 AM - 06:32 PM	8.33		001190
P	Fri	01/21/2022	05:44 AM - 10:35 AM	4.85		001190
W	Fri	01/21/2022	11:05 AM - 06:52 PM	8.78		001190
P	Sat	01/22/2022	05:54 AM - 10:52 AM	4.97		001190
P	Sat	01/22/2022	11:22 AM - 06:23 PM	7.02		001190
W	Thu	01/27/2022	05:48 AM - 11:30 AM	6.70		001190
W	Thu	01/27/2022	12:00 PM - 06:26 PM	7.43		001190
P	Fri	01/28/2022	05:43 AM - 10:46 AM	5.05		001190
P	Fri	01/28/2022	11:16 AM - 05:43 PM	6.45		001190

Extract from Claimant's Time Sheets Showing the Number of Hours Worked from 01/16/2022 through 01/29/2022

TRILINK BIOTECHNOLOGIES
10770 WATERIDGE CIRCLE STE 200
SAN DIEGO, CA 92121

Period Beginning: 01/16/2022
Period Ending: 01/29/2022
Pay Date: 02/04/2022

DAVID NGUYEN

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX-7017

Earnings	rate	hours	this period	year to date
Regular	25.0000	48.00	1,200.00	3,450.00
Overtime	37.5000	22.13	829.88	1,945.51
DT Shift 2	52.5000	1.67	87.68	144.38
Holiday	25.0000	8.00	200.00	1,000.00
OT Shift 2	39.3750	1.35	53.16	123.25
Pd Lunch Awd	25.0000	5.00	125.00	350.00
Vac Payout	25.0000	12.32	308.00	308.00
Co Pd Closure				600.00
Gross Pay			\$2,803.72	7,921.14

Your federal taxable wages this period are \$2,798.22

Other Benefits and Information	this period	total to date
Den Er	23.30	69.90
Ltd Er	4.12	12.36
Max Elig/Comp	2,803.72	7,921.14
Med Er	319.04	957.12
Vis Er	2.55	7.65
Tax Withd	73.45	

Claimant's Pay Stub from 01/16/2022 through 01/29/2022 Showing He is Owed Compensation for Overtime and Doubletime Hours

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.

Underpaid Meal Period Premiums
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.

Defendant failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. The aggrieved employees’ time records establish meal period liability on their face. Claimant’s time records show that he experienced missed and late meal periods regularly during his employment with Defendant. To illustrate this, Claimant experienced numerous meal breaks violations that are evident from the records during the two months that he was employed by Defendant. On those occasions 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.

P	Mon	12/06/2021	07:00 AM - 11:30 AM	4.50	001190
P	Mon	12/06/2021	12:00 PM - 03:30 PM	3.50	001190
P	Tue	12/07/2021	06:31 AM - 11:24 AM	4.88	001190
P	Tue	12/07/2021	11:54 AM - 03:00 PM	3.10	001190
P	Wed	12/08/2021	06:33 AM - 11:38 AM	5.08	001190
P	Wed	12/08/2021	12:08 PM - 02:59 PM	2.85	001190
P	Thu	12/09/2021	06:36 AM - 11:27 AM	4.85	001190
P	Thu	12/09/2021	11:57 AM - 04:00 PM	4.05	001190
P	Fri	12/10/2021	06:26 AM - 10:43 AM	4.28	001190
P	Fri	12/10/2021	11:13 AM - 03:17 PM	4.07	001190
P	Mon	12/13/2021	06:23 AM - 11:19 AM	4.93	001190
P	Mon	12/13/2021	11:49 AM - 02:54 PM	3.08	001190
P	Tue	12/14/2021	06:23 AM - 11:30 AM	5.12	001190
P	Tue	12/14/2021	12:01 PM - 02:23 PM	2.37	001190
P	Tue	12/14/2021	03:26 PM - 04:00 PM	0.57	001190
P	Wed	12/15/2021	05:51 AM - 10:58 AM	5.12	001190
P	Wed	12/15/2021	11:38 AM - 02:53 PM	3.25	001190
P	Thu	12/16/2021	05:44 AM - 10:44 AM	5.00	001190
P	Thu	12/16/2021	11:14 AM - 03:29 PM	4.25	001190
P	Fri	12/17/2021	05:51 AM - 10:39 AM	4.80	001190
P	Fri	12/17/2021	11:09 AM - 03:45 PM	4.60	001190

Extract from Claimant’s Time Sheets Showing Meal Period Violations

TRILINK BIOTECHNOLOGIES 10770 WATERIDGE CIRCLE STE 200 SAN DIEGO, CA 92121		Period Beginning: 12/05/2021 Period Ending: 12/18/2021 Pay Date: 12/23/2021					
Filing Status: Single/Married filing separately Exemptions/Allowances: Federal: Standard Withholding Table		DAVID NGUYEN <div style="background-color: black; width: 150px; height: 20px; margin: 5px auto;"></div>					
Social Security Number: XXX-XX-7017							
Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	25.0000	79.92	1,998.00	1,998.00	Max Elig/Comp	2,160.38	2,160.38
Overtime	37.5000	4.33	162.38	162.38	Totl Hrs Worked	84.25	
			Gross Pay	2,160.38	Sick Available	80.00	

Extract from Claimant's Pay Stub from 12/05/2021 Through 12/18/2021 Showing No Meal Period Premiums Were Paid

Additionally, as illustrated below, Claimant also worked shifts of more than 10 hours in a workday, and exceeding 12 hours in workday and was not provided with a second meal period. On information and belief, Claimant alleges that Defendant's non-compliant meal period practices extended to aggrieved employees' second meal periods for shifts exceeding 10 and/or 12 hours, respectively, though he did receive some meal period premiums for shifts exceeding 12 hours in length.

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.

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

Defendant failed to pay rest period premiums 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, employees' 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. Specifically, Claimant and some aggrieved employees were not allowed to take compliant or all of their rest periods because they were monitoring experiments which lasted hours and did not have someone to cover for them. This reality is reflected by the fact that the time records reveal the busy nature of Claimant and the aggrieved employees' work, rendering breaks impractical. Defendant had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

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.

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

Defendant failed in their 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, internet, or for the use of their personal vehicles. Claimant and the aggrieved employees used their personal cell phones each shift they worked because Defendant implemented a practice where employees clocked in and out through their personal cell phones. Moreover, Defendant required that Claimant and the aggrieved employees, on a weekly basis, use their personal vehicles to drive to a Covid testing center to be tested for Covid, including during working hours. Specifically, starting in January 2022, each week, Claimant drove a total of 4.6 miles traveling between Defendant's offices and the Covid Test Center. 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 for overtime, double-time, meal/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, overtime, double-time, sick, and premium pay. Defendant is 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 and failed to properly pay regular and overtime wages at the lawful respective rates, 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, overtime wages, double-time wages, and premiums—Defendant violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, double-time, and 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.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime and double-time hours, meal and rest period premiums, as those hours were underpaid and as such inaccurately reflected the wage statements of the aggrieved employees.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statements 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 and concealed the underlying problems and underpayments 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.

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).

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.

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 their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his lawsuit was a catalyst in motivating Defendant 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 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,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive style with a horizontal line at the end.

Nicholas J. Ferraro

Cc Claimant
Lauren N. Vega, Esq.