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

NATALIA PEREZ, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

INVESTMENT CONCEPTS, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00005209-CU-OE-CTL

Representative Action Complaint

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

1 Plaintiff NATALIA PEREZ (“Plaintiff”), as the State of California’s designated proxy under
2 the Private Attorneys General Act brings this REPRESENTATIVE ACTION COMPLAINT against
3 Defendants INVESTMENT CONCEPTS, INC. and DOES 1 through 50, inclusive (collectively
4 “Defendants” or “Investment Concepts”), alleging as follows:

5 **INTRODUCTION**

6 1. Defendants underpaid aggrieved employees’ wages by failing to include all forms of
7 remuneration, including nondiscretionary bonuses and an apartment allowance, in their hourly
8 overtime, sick pay, and premium rates, resulting in underpayments of wages.

9 2. Defendants also required the aggrieved employees to work off-the-clock, failing to
10 properly compensate the aggrieved employees for all hours worked.

11 3. Additionally, Defendants failed to maintain compliant meal and rest period policies,
12 resulting in a failure to pay wages and premiums. Defendants routinely required aggrieved employees
13 to report meal and rest periods (or revised records), regardless of whether they continued to work, to
14 avoid the payment of meal and rest period premiums.

15 4. Defendants are further liable for derivative claims for wage statement, untimely
16 payment, and other associated violations.

17 5. Plaintiff seeks to recover civil penalties and other recoverable amounts for these Labor
18 Code violations on behalf of the State of California and the aggrieved employees.

19 **JURISDICTION & VENUE**

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

22 7. The monetary damages and restitution sought by Plaintiff exceed the minimal
23 jurisdiction limits of the Superior Court.

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

9. Venue is proper in this Court under Code of Civil Procedure section 395 because Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiff Natalia Perez

10. Plaintiff Perez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2022 to September 2022. Plaintiff worked as a Leasing Agent.

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

B. Defendants

12. Defendant Investment Concepts, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this Complaint to reflect their true names and capacities once ascertained.

14. Plaintiff is informed, believes, and alleges that all Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of Plaintiff and other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Plaintiff is informed, believes, and alleges that at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally

1 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
2 558.1, and 1197.1

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

7 **GENERAL ALLEGATIONS**

8 17. The aggrieved employees in this PAGA action worked for Defendants.

9 18. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum
10 rate for all hours worked, resulting in unpaid minimum wages.

11 19. Defendants required Plaintiff and, upon information and belief, other aggrieved
12 employees living on the premises to maintain constant vigilance, correct, and report any lease
13 violations on property (such as parking violations, trespassing, soliciting, and noise complaints)
14 without compensation for time worked while off-the-clock and during their scheduled time off.
15 Plaintiff was additionally required to perform tasks for Defendants as needed while off-the-clock,
16 including allowing vendors into units they were working on during Plaintiff's days off. Defendants
17 additionally subjected Plaintiff to assisting residents while she was off-the-clock.

18 20. Defendants also required Plaintiff and other aggrieved employees to perform daily
19 cleaning tasks while off-the-clock, such as stocking and cleaning the office, taking out the trash, and
20 washing towels. The time spent completing these duties was uncompensated, and the aggrieved
21 employees were disciplined for not completing them. Plaintiff and other aggrieved employees were
22 also required to complete the onboarding process, including reviewing and signing new hire
23 paperwork, the employee handbook, and other procedure documentation, online without
24 compensation.

25 21. Defendants paid Plaintiff and the aggrieved employees additional compensation,
26 including, but not limited to, nondiscretionary bonuses and an apartment allowance that were not
27 included in the regular rate of pay for purposes of overtime, meal and rest period premiums, and sick
28

1 pay. Instead, Defendants paid aggrieved employees' overtime, paid sick pay, and meal and rest period
2 premiums at their base hourly rate (or multiple thereof), resulting in an underpayment of wages.

3 22. Defendants further underpaid aggrieved employees' minimum and overtime wages, as
4 applicable, for hours worked during meal periods as a result of non-complaint meal period policies.
5 Plaintiff and the aggrieved employees experienced missed, late, short, and interrupted meal periods
6 due to staffing issues at Defendants' locations. For example, Plaintiff and the aggrieved employees
7 were required to assist vendors who arrived unannounced, "walk-in" prospective tenants, current
8 tenants, and people with appointments, regardless of their entitlement to a meal break. Defendants
9 routinely subjected Plaintiff to manage the leasing office without support, hindering her ability to
10 take compliant meal periods. For those time periods, Plaintiff and the aggrieved employees were not
11 paid minimum wage or provided meal period premiums at the lawful rate.

12 23. Defendants maintained a policy and practice of requiring Plaintiff and, on information
13 and belief, other employees to clock out for meal breaks, even if they continued to work through their
14 "meal period" to avoid the payment of a meal period premium.

15 24. Due to lack of support, staffing issues, employees' job responsibilities, and the steady
16 flow of business, Plaintiff and the aggrieved employees were not permitted to take all rest periods to
17 which they were entitled.

18 25. Defendants required Plaintiff and, on information and belief, other aggrieved
19 employees to complete an "Office Daily Duties Check List" every day. Two of these tasks were
20 "scheduled breaks." Due to her inability to take compliant rest periods, Plaintiff often left those tasks
21 unchecked, and signed and submitted her checklist to Defendants. Despite Plaintiff's submission,
22 Defendants had the policy and practice of editing the checklist after submission to falsely indicate that
23 rest breaks were taken, to avoid payment of rest period premiums. On information and belief,
24 Defendants engaged in the same fraudulent practice with other aggrieved employees.

25 26. In lieu of such meal and rest periods, Plaintiff and the aggrieved employees were not
26 paid all meal or rest period premiums. When meal and/or rest period premiums were paid, they were
27 not at the lawful rate as a result of the foregoing regular rate violations.

1 27. Because of these violations, Defendants failed provide accurate itemized wage
2 statements to the aggrieved employees that included the accurate total hours, gross or net wages
3 earned, as the employees earned sick leave wages, overtime, premium, minimum wages, that were not
4 paid or otherwise not paid at the lawful rate in light of the regular rate violations. Likewise, these sick
5 pay, overtime, and premium wages were paid at inaccurate hourly wage rates (*i.e.*, the base rate or a
6 multiple of the base rate for overtime instead of the regular rate) which violates the wage statement
7 requirement to include the correct hourly rate in effect each pay period along with the correct number
8 of hours. As a result of the foregoing issues, and because of the compulsory off-the-clock work,
9 Defendants failed to include the total hours worked and the hourly rate in effect along with the
10 corresponding number of hours worked at each rate. Therefore, Defendants have provided inaccurate
11 and non-compliant wage statements to the aggrieved employees.

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

14 29. As a result of the foregoing violations, Defendants also failed to timely pay all wages
15 as they were due to Plaintiff and the aggrieved employees while they were employed and also failed
16 to timely pay all wages due to Plaintiff and the aggrieved employees at their separation of employment.

17 30. Through this action, Plaintiff seeks to enforce the rights of the State of California,
18 through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants' Labor Code
19 violations.

20 **FIRSTCAUSE OF ACTION**

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

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

23 **(By Plaintiff on behalf of the State and the Aggrieved Employees Against All Defendants)**

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

25 32. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
26 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
27 codified as Labor Code section 2698 *et seq.*:
28

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

4 33. Plaintiff reserves the right to amend, supplement, or add to this description of the
5 aggrieved employees according to proof.

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

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

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

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

25 38. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
26 penalties under the PAGA.

27 39. On or about November 22, 2022, Plaintiff paid the requisite PAGA filing fee and
28 provided written notice (by online electronic filing with the LWDA and by certified mail to

1 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
2 the alleged violations.

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

6 41. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
7 written PAGA notice from the LWDA.

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

11 43. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
12 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
13 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
14 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

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

- 18 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
19 1197, 1198; IWC Wage Orders.
- 20 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
21 Orders.
- 22 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.5.
- 23 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
24 1198; IWC Wage Orders.
- 25 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
26 1198; IWC Wage Orders.
- 27 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
28 §§ 204, 204b, 210.

- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;
- f. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- h. For restitution and injunctive relief;
- i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 2699 and Code of Civil Procedure section 1021.5; and
- j. For such other relief the Court deems just and proper.

1 Dated: February 6, 2023

Ferraro Vega Employment Lawyers, Inc.

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3 Nicholas J. Ferraro

4 *Attorneys for Plaintiff Natalia Perez*

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EXHIBIT 1

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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November 22, 2022

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

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

Investment Concepts, Inc.
1667 E Lincoln Avenue
Orange, CA 92685

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **NATALIA SOLEDAD PEREZ** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

INVESTMENT CONCEPTS, INC.

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to

correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Leasing Agent from about March 1, 2022 to September 20, 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

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

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

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those

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

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

Plaintiff and, on information and belief, other employees living on the premises were subject to working around the clock without being paid the minimum wage for all hours worked while off-the-clock and during their scheduled time off. Defendants had a policy and practice of requiring Plaintiff and other aggrieved employees to maintain vigilance, correct, and report any lease violations on the property while off-the-clock and even on scheduled time off. This included addressing parking violations, trespassing, soliciting, and noise complaints. Plaintiff was additionally required to complete tasks as needed by Defendants while off-the-clock, for example allowing vendors into certain units they were working on during Plaintiff’s days off. Defendants additionally subjected Plaintiff to residents showing up at her front door while she was off-the-clock and asking for help. Defendants failed to pay Plaintiff and, on information and belief, other aggrieved employees the minimum wage for the time it took them to complete these daily tasks off-the-clock.

Defendants also requiring Plaintiff, and on information and belief, other aggrieved employees, to conduct daily cleaning duties while off the clock, which included stocking and cleaning the office, taking out the trash, and washing towels. The time spent completing these duties was uncompensated. Plaintiff and other aggrieved employees were subject to discipline for not completing these duties.

Finally, prior to starting with work with Defendants, Defendants required Plaintiff and other aggrieved employees to complete the onboarding process, including reviewing and signing various new hire forms and agreements, the employee handbook, and the company’s other procedure documentation. The onboarding was done online and it was uncompensated.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Defendants also paid Plaintiff and the aggrieved employees’ additional compensation, including, but not limited to bonuses and an apartment allowance. When Defendants and other employees worked overtime, Defendants failed to pay overtime “at the rate of no less than ***one and one half times the regular rate of pay*** for an employee” as required by the plain language of the Labor Code section 510(a) and the IWC Wage Orders. Defendants failed to include Plaintiff and the aggrieved employees’ additional compensation in the calculation of the “regular rate of pay” and instead Defendants paid Plaintiff and the aggrieved employees’ at 1.5 times their base hourly rate. An illustrative example of this practice is seen below:

Gross Pay	Deductions	Net Pay/Net Check
\$3,122.40	\$673.43	\$2,448.97

Hours and Earnings

Description	Hours	This Period
Regular Earnings	95,35	1,620.95
Overtime Earnings	0,22	5,61
APT FEE		189.50
BONUS		558.34
HOLIDAY	8,00	136.00
PTO	36,00	612.00

Hours and Earnings Rates

Description	Hours	Rate	This Period
Regular	95.35	17.0000	1,620.95
Overtime	0.22	25.5000	5.61
PTO	36.00	17.0000	612.00
HOLIDAY	8.00	17.0000	136.00
BONUS			558.34
APT FEE			189.50

In the example above, Plaintiff earned a bonus and an apartment allowance, however, Defendants paid her overtime at 1.5x her base hourly rate of \$17.00 rather than at the regular rate of pay.

Further, Defendants failed to pay Plaintiff and the aggrieved employees overtime wages that resulted from working through mandated meal periods and work done off-the-clock often after working an 8-hour shift. When Plaintiff and other employees were required to work during their uncompensated meal periods, this resulted in unpaid overtime wages.

For each overtime hour worked during the periods in which Plaintiff and the aggrieved employees earned bonuses or were paid additional remunerations, Defendants should have (but failed to) pay overtime “at a rate of no less than one and one-half the regular rate of pay for an employee” as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Defendants failed to provide compliant meal periods to Plaintiff and aggrieved employees. Plaintiff experienced missed, late, short, and interrupted meal periods due to staffing issues at Defendants' locations. As one example, Plaintiff and the aggrieved employees were required to deal with vendors who would show up announced, "walk-in" prospective tenants, current tenants, as well as people with appointments.

Defendants failed to provide Plaintiff and, on information and belief, other employees with the adequate support necessary for Plaintiff to be permitted to take a fully compliant meal period. Further, this is not the type of work that could lawfully fit the on-duty meal period exception in Section 11(A) of the IWC Wage Orders. Defendants routinely subjected Plaintiff to manage the leasing office on her own without support, hindering her ability to take a compliant meal period. Despite often not being able to take a fully compliant meal period, Defendants had a policy and practice of requiring Plaintiff and, on information and belief, other employees to clock out for lunch even if they continued to work through their "meal period" in order to avoid the payment of meal period premiums.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section

226.7. To the extent Defendants paid any meal period premiums, the premiums were not paid at the “regular rate of compensation” but at a lesser amount because, as explained above, Defendant’s failed to properly calculate Plaintiff’s and the aggrieved employee’s “regular rate of compensation”.

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

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

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

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

Defendants failed to authorize and permit all rest periods to which employees were entitled and failed to pay rest period premiums to Plaintiffs and other aggrieved employees. Due to lack of support, staffing issues, employees’ job responsibilities, and the steady flow of business, Plaintiff and the aggrieved employees were not permitted to take all of the rest periods to which they were entitled.

Additionally, Defendants had a policy and practice of making edits to Plaintiff’s daily tasks list to make it appear as if she took compliant rest periods. Defendants required Plaintiff, and on information and belief, other aggrieved employees to complete an “Office Daily Duties Check List” throughout and before leaving for the day. Two of the tasks listed were “scheduled breaks.” Due to Plaintiff’s inability to take compliant rest periods, Plaintiff often left those tasks unchecked, signed, and submitted her check list to Defendants. Despite Plaintiff’s submission, Defendants had a policy and practice of making edits to the checklist after the

fact to indicate that breaks were taken in order to avoid payment of rest period premiums. On information and belief, Defendants engaged in the same practice with other aggrieved employees.

Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants ever paid rest period premiums, Defendants violated Labor Code section 226.7 because such premiums were not paid at the “regular rate of compensation” to aggrieved employees due to Defendant’s incorrect regular rate of compensation calculations.

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

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code sections 246 through 248.5 with respect to the aggrieved employees.

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

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.”

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

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. Defendants failed to comply with their paid sick leave obligations in at least two ways. First, for full-time employees, including Plaintiff, Defendants did not permit accrual of paid sick leave until *after* employees worked 90 days. Defendants' Employee Handbook explains that Defendants provide full-time employees with PTO and use the PTO to comply with their sick leave obligations. Employees do not start accruing the PTO until after 90 days of employment. This delayed accrual violates Labor Code section 246(b)(1), which requires that paid sick leave begins accruing *at the commencement of employment*. Second, Defendants provided paid sick leave (instead of PTO) to part-time employees but, on information and belief, Defendants failed to pay their paid sick leave wages at the correct rate required by section 246. On information and belief, the part-time employees earned additional remuneration such as bonuses and other payments, which Defendants failed to factor into their calculation of employees' sick leave wages.

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

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

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

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

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

As explained above, Defendants underpaid Plaintiff and other aggrieved employees' minimum, regular, overtime, sick leave and meal and rest period premium pay, including at the lawful regular rate of compensation. Defendants are separately liable for not paying the

full amount owed to Plaintiff and other aggrieved employees each pay day in violation of Labor Code sections 204 and/or 204b.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and 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, 256

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

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

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

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California 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.

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

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

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

an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

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

Defendants also violated section 226(a)(2) by not accurately listing the total hours worked on the wage statement. This was due to Defendants’ policy and practice of requiring Plaintiff, and on information and belief other employees to routinely perform off-the-clock work without compensation.

Additionally, Defendants violated Labor Code section 226(a)(8) by failing to properly list the name of the legal employer on each respective wage statement.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees use their personal cell phone for business purposes.

First, Plaintiff, and on information and belief, other aggrieved employees were required to use their personal cell phones to take photos of vacated apartment units to document the condition of the apartment as well as for advertising vacant units for Defendants. Defendants did not provide employees with a camera or other device to fulfill this duty or reimburse employees for using their personal devices to fulfill this duty, despite Plaintiff's requests. In fact, Plaintiff was subject to discipline for not completing these duties as required by Defendants.

Second, Plaintiff and other aggrieved employees were required to use their cell phones to communicate with Defendants at all hours in connection with their job duties. For example, Plaintiff was subject to discipline for not communicating any possible lease violations or trespassing while out of the office.

Finally, Plaintiff and other aggrieved employees were required to download and use the ADP application on their personal cell phones. This application was used to clock in and out daily.

In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

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

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

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

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

- LITIGATION HOLD NOTICE -

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

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

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

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Natalia Soledad Perez
Lauren N. Vega, Esq. – lauren@ferrarovega.com