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Superior Court of California,
County of San Diego

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

JESUS SALAZAR, as the State of California's
designated proxy under the Private Attorneys
General Act,

Plaintiff,

vs.

WESTCOTT ENTERPRISES, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2022-00048854-CU-OE-CTL

Representative Action Complaint

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

1 Plaintiff JESUS SALAZAR (“Plaintiff”), as the State of California’s designated proxies under
2 the Private Attorneys General Act brings this REPRESENTATIVE ACTION COMPLAINT against
3 Defendants WESTCOTT ENTERPRISES, INC. and DOES 1 through 50, inclusive (collectively,
4 “Westcott” or “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. The aggrieved employees in this PAGA action worked for Westcott Enterprises, Inc.,
7 which does business as Westcott Mazda. Westcott underpaid aggrieved employees’ wages by failing
8 to include all forms of remuneration, including commissions, in their hourly overtime, sick pay, and
9 premium rates, resulting in underpayments of wages. Additionally, Westcott failed to provide timely,
10 uninterrupted, 30-minute meal and 10-minute rest periods, resulting in a failure to pay wages and
11 premiums. Westcott also failed to provide the time records upon request to Plaintiff, in violation of
12 the California statutes requiring timely production of employee records upon request. Westcott is
13 further liable for derivative claims for wage statement, untimely payment, and associated violations.

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

16 **JURISDICTION & VENUE**

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

19 4. The monetary damages and restitution sought by Plaintiff exceed the minimal
20 jurisdiction limits of the Superior Court.

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

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

1 **PARTIES**

2 **A. Plaintiff Salazar**

3 7. Plaintiff Salazar is an individual over 18 years of age who worked for Westcott in
4 California as a non-exempt employee until about June 2022. Plaintiff worked as a service advisor and
5 earned commissions.

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

10 **B. Defendant Westcott Enterprises, Inc.**

11 9. Defendant Westcott Enterprises, Inc. is a California corporation that maintains
12 operations and conducts business throughout the State of California, including in this county.

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

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

24 12. Plaintiff is informed, believes, and alleges that at least some of the Defendants have
25 common ownership, common management, interrelationship of operations, and centralized control
26 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
27 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
28 558.1, and 1197.1

1 requirement to include the correct hourly rate in effect each pay period along with the correct number
2 of hours. As a result of the foregoing issues, and because in certain pay periods Westcott failed to
3 include the total hours worked and the hourly rate in effect along with the corresponding number of
4 hours worked at each rate, Westcott has provided inaccurate and non-compliant wage statements to
5 the aggrieved employees.

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

8 20. As a result of the foregoing violations, Westcott also failed to timely pay all wages as
9 they were due to Plaintiff and the aggrieved employees while they were employed and also failed to
10 timely pay all wages due to Plaintiff and the aggrieved employees at their separation of employment.

11 21. Through this action, Plaintiff seeks to enforce the rights of the State of California,
12 through the LWDA, to enforce the Labor Code and collect civil penalties for Westcott's Labor Code
13 violations.

14 **FIRST CAUSE OF ACTION**

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

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

17 **(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)**

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

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

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

25 24. Plaintiff reserves the right to amend, supplement, or add to this description of the
26 aggrieved employees according to proof.

27 25. The State of California, via the Labor and Workforce Development Agency
28 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”)]

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

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

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

18 29. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
19 penalties under the PAGA.

20 30. On or about **September 28, 2022**, Plaintiff paid the requisite PAGA filing fee and
21 provided written notice (by online electronic filing with the LWDA and by certified mail to
22 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
23 the alleged violations.

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

27 32. To date, neither Plaintiff nor Plaintiffs’ counsel has received a response to Plaintiff’s
28 written PAGA notice from the LWDA.

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

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

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

- 11 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
12 1194.2, 1197, 1197.1, 1198; 1199, IWC Wage Orders.
- 13 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
14 Orders.
- 15 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.5.
- 16 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
17 1198; IWC Wage Orders.
- 18 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
19 1198; IWC Wage Orders.
- 20 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
21 §§ 204, 204b, 210.
- 22 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
23 Labor Code §§ 201, 202, 203, 256.
- 24 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 25 i. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432,
26 1174, 1198.5; IWC Wage Orders.
- 27 j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
28 Wage Orders.

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA
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September 28, 2022

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

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

WESTCOTT ENTERPRISES, INC.
dba Westcott Mazda
2800 National City Blvd
National City, CA 91950

- 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 **JESUS ANTONIO SALAZAR** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

WESTCOTT ENTERPRISES, INC.
dba WESTCOTT MAZDA

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 Service Advisor from about April 2022 to June 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. Defendants required Plaintiff and other aggrieved employees to work during their meal periods without compensation. Although Defendants were aware that Plaintiff and the aggrieved employees were working, Defendants nonetheless required Plaintiff and the aggrieved employees to clock out for a one hour meal period.

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 paid Plaintiff and the aggrieved employees additional compensation, including but not limited to commissions. When Defendant and other aggrieved employees worked overtime, Defendants failed to pay the overtime at “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 – because they failed to include Plaintiff and the aggrieved employees’ additional compensation in their calculation for the “regular rate of pay.” Instead, Defendants paid Plaintiff and the aggrieved employees’ base at 1.5 times their base hourly rate. An illustrative example of this practice is seen on Plaintiff’s wage statement dated April 20, 2022. On this wage statement, Plaintiff worked overtime and received commissions of \$926.37, yet his overtime was paid at 1.5 times his base hourly rate of \$16.00 rather than the regular rate of pay.

Further, Defendants required Plaintiff and, on information and belief others to work through their mandated lunch breaks, resulting in unpaid overtime on days when employees worked over 8 hours. Plaintiff and others worked shifts that exceeded 10 hours in length. When Plaintiff and other employees were required to work during their uncompensated meal periods, this resulted in unpaid overtime 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 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 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 its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth

in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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. On information and belief, Defendants failed to provide sick leave at the rate required by statute. To the extent Defendants paid sick leave, Plaintiff is also informed and believes that Defendants failed to pay sick leave at the correct rate, which would have included Plaintiff and the aggrieved employees’ commissions payments. Instead, Defendants paid sick leave at employees’ base hourly rate.

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 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.

Defendant failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced missed, short, and late first and second meal periods in order to keep up with the demands of the job. Customers were scheduled for appointments at all times throughout the day and there were also customers who would walk in without an appointment at various times. Plaintiff and the aggrieved employees were required to assist all customers as they came in, however, Defendants failed to provide any coverage for Plaintiff or others to take an uninterrupted meal period. Instead, Plaintiff was told to clock out before the fifth hour of work or else he would be written up. Even when Plaintiff clocked out for a meal period, he was nonetheless required to work without compensation and Defendants were aware of this work. On information and belief, the other aggrieved employees were also required to work during their uncompensated meal periods.

Additionally, when Defendants did not provide Plaintiff and the aggrieved employees compliant meal periods, Defendants failed to pay them a meal period premium in violation of Labor Code section 226.7. To the extent Defendants ever paid any meal period premiums, the premiums were not paid at the “regular rate of compensation” because the premium did not factor in all forms of remuneration, including commissions paid to Plaintiff and the aggrieved employees.

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 provide all rest periods to which employees were entitled and failed to pay rest period premiums at the lawful regular rate of compensation to Plaintiff and other aggrieved employees. Due to the heavy workload and pressures from Defendants, Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods. 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 a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in employees' additional compensation that they received each pay period, including commissions.

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

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

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

Because Defendants failed to pay sick leave pay, and premiums, and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, 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 not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees at the correct rate and also failed to pay employees for all hours worked. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ total hours worked, as the wage statements did not include the uncompensated time that Plaintiff and other aggrieved employees worked during their unpaid meal periods. Defendants also violated Labor Code section 226(a)(8) by failing to list the correct legal name of the employer on the wage statement. Defendants wage statements inaccurately identify

Westcott Mazda as the employer, however, the correct employer entity is Westcott Enterprises, Inc.

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.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 226, 1198.5, 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 226, 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. On July 13, 2022, Plaintiff through his attorneys, issued a request to Defendants for production of his personnel and payroll records pursuant to Labor Code section 226, 432, 1198.5 and the IWC Wage Orders. To comply with the statutory deadlines, Defendants were required to produce Plaintiff’s records within 21 and 30 days of the request date. Despite Plaintiff’s multiple written requests, as of the date of this notice, Defendants have failed to produce Plaintiff’s time records and wage statements containing all the information required by section 226.

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), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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 Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Jesus Antonio Salazar
Lauren N. Vega, Esq.