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Attorneys for Plaintiff and the Proposed Class

FILED/ENDORSED

MAY 08 2020

By: K. Spichka
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

LUIS H. CASTRO CARDENAS, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

AARON'S, INC.; and DOES 1 to 50,
inclusive,

Defendants.

Case No.: 34-2020-00274403

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1197, and 1199
2. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

Plaintiff LUIS H. CASTRO CARDENAS, an individual, on behalf of himself, all others similarly situated, complains of Defendant AARON'S, INC. ("Defendant") and each of them, as follows:

I

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of

1 Plaintiff and a Proposed Class defined as:

2 All persons who are employed or have been employed as an
3 hourly employee by AARON'S, INC. in the State of
4 California since four (4) years prior to the filing of this action
to the present.

5 2. From at least four (4) years prior to the filing of this action continuing to the
6 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
7 hourly employees for all work perform at the proper rate of compensation. Defendant has had a
8 consistent policy of failing to pay proper wages and/or overtime to Plaintiff and the Proposed
9 Class. Defendant failed to include the incentive pay in Plaintiff's and the Proposed Class
10 Members' regular rate of pay in pay periods where they also worked overtime and/or double
11 time. Defendant's policies and procedures resulted in the underpayment of wages and/or
12 overtime.

13 3. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has had a consistent policy of failing to inform employees of their right to
15 take meal periods and requiring employees within the State of California, including Plaintiff, to
16 work at least five (5) hours without a meal period and failing to pay such employees one (1)
17 hour of pay at the employees' regular rate of compensation for each workday that the meal
18 period is not provided or provided after five (5) hours, as required by California state wage and
19 hour laws.

20 4. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform employees of their right to
22 take rest periods and of failing to provide employees within the State of California, including
23 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
24 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
25 compensation for each workday that the rest period was not provided, as required by California
26 state wage and hour laws.

27 5. For at least four (4) year prior to the filing of this action continuing to the
28 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include

1 necessary and required information on wage statements provided to Plaintiff and the Proposed
2 Class. Defendant failed to include the total hours worked, all applicable hourly rates in effect
3 during the pay period, and the corresponding number of hours worked at each hourly rate by the
4 employee.

5 6. Based on the allegations alleged above, from at least four (4) years prior to the
6 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
7 time of termination or resignation to Plaintiff and the Proposed Class.

8 7. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
9 pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199; Wage Order 4-2001;
10 and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages and/or
11 overtime, meal break premiums, rest break premiums, penalties for accurate itemized wage
12 statements, wages upon termination or resignation, other penalties, injunctive and other
13 equitable relief, and reasonable attorneys' fees and costs.

14 8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
15 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
16 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

17 9. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this
18 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
19 violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, and 1199.

20 II

21 JURISDICTION AND VENUE

22 10. This Court has subject matter jurisdiction over all causes of action asserted
23 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
24 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
25 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
26 arises under the laws of the State of California or is subject to adjudication in the courts of the
27 State of California.

28 11. This Court has personal jurisdiction over Defendant because Defendant has

caused injuries in the County of Sacramento and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Sacramento County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the County of Sacramento.

13. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III

PARTIES

A. PLAINTIFF

14. Plaintiff LUIS H. CASTRO CARDENAS is a resident of California.

15. Plaintiff and the Proposed Class Members were regularly required to:

- a. Work without being paid for all hours worked at the appropriate rate;
- b. Work without being provided their meal periods;
- c. Work without being provided their rest periods; and
- d. Work without Defendant maintaining accurate time records showing when the employee begins and ends each work period, meal periods, and total daily hours worked and work without being provided an accurate itemized wage statement that reflects all deductions from payment of wages and accurately report total hours worked, including when the employee begins and ends each work period, meal periods, and total daily hours worked, and the applicable rates of pay by Plaintiff and Proposed Class Members.

16. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

17. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

18. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197 and 1199.

B. DEFENDANTS

19. Defendant AARON'S, INC. is believed to be a Georgia corporation operating within the State of California. Defendant's corporate address is believed to be 400 Galleria Parkway, S.E., Suite 300, Atlanta, GA 30339. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

IV

FACTUAL BACKGROUND

22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been

1 classified as employees by Defendant.

2 23. Upon information and belief, Plaintiff and the Proposed Class are covered by
3 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
4 Code of Regs. § 11040).

5 24. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
6 at the proper rate of compensation. Defendant has had a consistent policy of failing to pay
7 proper wages and/or overtime to Plaintiff and the Proposed Class. Defendant failed to include
8 the incentive pay in Plaintiff's and the Proposed Class Members' regular rate of pay in pay
9 periods where they also worked overtime and/or double time. Defendant's policies and
10 procedures resulted in the underpayment of wages and/or overtime.

11 25. Plaintiff and the Proposed Class Members have been forced by Defendant to
12 work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
13 meal break and not being compensated one (1) hour of pay at the regular rate of compensation
14 for each workday that a meal period was not provided or provided after five (5) hours, all in
15 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
16 Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
17 to take meal periods by way of a lawful policy.

18 26. Plaintiff and the Proposed Class have been required to work four hour increments
19 (or major fractions thereof) without being provided with a ten (10) minute rest period.
20 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take
21 rest periods by way of a lawful policy.

22 27. Defendant has failed to provide accurate itemized wage statements in compliance
23 with Labor Code § 226(a) by failing to maintain time records showing when the employee
24 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
25 statements all deductions from payment of wages, accurately reporting total hours and
26 applicable rates of pay for Plaintiff and Proposed Class Members.

27 28. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
28 Proposed Class Members quit or were discharged. Defendant failed to pay the wages described

1 above at the time of termination or resignation. This failure was willful, without legal
2 justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

3 29. As a result of the facts alleged above, Defendant has engaged in unfair
4 competition and unlawful business practices.

5 30. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et*
6 *seq.*

7 **V**

8 **CLASS ACTION ALLEGATIONS**

9 31. Plaintiff brings this action on behalf of himself and all others similarly situated as
10 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent
11 proposed class composed of and defined as follows:

12 All persons who are employed or have been employed as a non-
13 exempt employee by AARON'S, INC. in the State of California
14 since four (4) years prior to the filing of this action to the present.

15 32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court
16 to amend or modify the class description with greater specificity, by division into subclasses, or
17 by limitation to particular issues.

18 33. This action has been brought and may properly be maintained as a class action
19 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
20 community of interest in the litigation and the Proposed Class is easily ascertainable.

21 **A. Numerosity**

22 34. The potential members of the Proposed Class as defined are so numerous that
23 joinder of all the members of the Proposed Class is impracticable. While the precise number of
24 Proposed Class Members has not been determined at this time, Plaintiff is informed and believes
25 that Defendant currently employ, and during the relevant time periods employed 50 to 99
26 members of the Proposed Class at any given time.

27 35. Plaintiff alleges that Defendant's employment records would provide information
28 as to the number and location of all Proposed Class Members. Joinder of all members of the

1 Proposed Class is not practicable.

2 **B. Commonality**

3 36. There are questions of law and fact common to the Proposed Class that
4 predominate over any questions affecting only individual Proposed Class Members. These
5 common questions of law and fact include, without limitation:

6 a. Whether Defendant failed to pay wages and/or overtime to Plaintiff and
7 the Proposed Class as required by the Labor Code and Wage Orders under Labor Code §§ 510,
8 1194, 1197, and 1199;

9 b. Whether Defendant failed to provide all lawful meal periods or pay one
10 hour of wages in lieu thereof statements to Plaintiff and Proposed Class Members;

11 c. Whether Defendant failed to provide all lawful rest periods or pay one
12 hour of wages in lieu thereof statements to Plaintiff and Proposed Class Members;

13 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
14 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
15 failing to issue accurate and complete itemized wage statements;

16 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
17 pay compensation due and owing at the time that any Proposed Class Member's employment
18 with Defendant terminated;

19 f. Whether Defendant violated § 17200, *et seq.* of the Business &
20 Professions Code by engaging in the acts previously alleged;

21 g. Whether Plaintiff and the members of the Proposed Class are entitled to
22 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

23 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in
24 the acts alleged herein.

25 **C. Typicality**

26 37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff
27 and all members of the Proposed Class sustained injuries and damages arising out of and caused
28 by Defendant's common course of conduct in violation of laws, regulations that have the force

1 and effect of law, and statutes as alleged herein.

2 **D. Adequacy of Representation**

3 38. Plaintiff will fairly and adequately represent and protect the interests of the
4 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are
5 competent and experienced in litigating large employment class actions.

6 **E. Superiority of Class Action**

7 39. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the
11 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
12 policy and/or practice of failing to pay wages for all hours worked at the proper rate, failing to
13 provide meal periods, failing to provide rest periods, failing to provide accurate itemized wage
14 statements, and failing to pay all wages upon resignation or termination.

15 40. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial
17 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

19 **VI**

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES/OVERTIME**

22 **VIOLATION OF LABOR CODE §§ 510, 1194, AND 1199**

23 41. Plaintiff incorporates each and every allegation set forth in all of the foregoing
24 paragraphs as if fully set forth herein.

25 42. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
26 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
27 one workweek must be compensated at the rate of no less than one and one-half times the
28 regular rate of pay for an employee. Labor Code §§ 1194, 1197, and 1199 require an employer

1 to pay its employees the legal minimum wage and the legal overtime compensation applicable.
2 California law also requires that any compensation, including a health and welfare fringe
3 benefits, must be included in the regular rate of pay.

4 43. Defendant has had a consistent policy of failing to pay wages and/or overtime to
5 Plaintiff and the Proposed Class when they worked overtime. Defendant has had a consistent
6 policy of failing to pay proper wages and/or overtime to Plaintiff and the Proposed Class.
7 Defendant failed to include the incentive pay in Plaintiff's and the Proposed Class Members'
8 regular rate of pay in pay periods where they also worked overtime and/or double time.
9 Defendant's policies and procedures resulted in the underpayment of wages and/or overtime.

10 44. Plaintiff and the Proposed Class were forced to work on a regular and consistent
11 basis without receiving compensation for all hours worked at the proper rate. Specifically,
12 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were
13 working more than eight (8) hours in one day or forty (40) hours in one week.

14 45. By their policy of requiring Plaintiff and the Proposed Class to work in excess of
15 eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
16 at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
17 provisions of Labor Code §§ 510, 1194, 1197, and 1199.

18 46. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
19 have been deprived of wages and overtime in amounts to be determined at trial, and are entitled
20 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

21 VII

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7**

24 **AND LABOR CODE § 512**

25 47. Plaintiff incorporates each and every allegation set forth in all of the foregoing
26 paragraphs as if fully set forth herein.

27 48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
28 compensation for each meal period the employer fails to provide. Employees are entitled to a

1 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
2 within the first five (5) hours of the shift. Defendant failed to maintain a policy informing
3 Plaintiff and the Proposed Class of these rights.

4 49. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

5 50. Defendant failed to provide Plaintiff and the Proposed Class with proper meal
6 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant
7 time period. When Defendant provided these meal periods, they were often less than thirty (30)
8 minutes in length.

9 51. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
10 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum
11 to be proven at trial.

12 VIII

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

15 52. Plaintiff incorporates each and every allegation set forth in all of the foregoing
16 paragraphs as if fully set forth herein.

17 53. Labor Code § 226.7 require an employer to pay an additional hour (1) of
18 compensation for each rest period the employer fails to provide. Employees are entitled to a
19 paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).
20 Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

21 54. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or
22 with only some of their required rest breaks, and Defendant failed to maintain an accurate policy
23 advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and
24 the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor
25 Code during the relevant time period.

26 55. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
27 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
28 proven at trial.

IX

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

56. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

57. California Labor Code § 226(a) requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by Plaintiff and the Proposed Class.

58. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage statements that do not state the total hours worked during the pay period.

59. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

60. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

61. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

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1 X

2 **FIFTH CAUSE OF ACTION**

3 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

4 62. Plaintiff incorporates each and every allegation set forth in all of the foregoing
5 paragraphs as if fully set forth herein.

6 63. Numerous members of the Proposed Class including the Plaintiff are no longer
7 employed by Defendant. They were either fired or quit Defendant's employ.

8 64. Defendant's failure to pay wages, as alleged above was willful in that Defendant
9 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
10 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
11 penalty until paid for a period of up to thirty (30) days from the time they were due.

12 65. Defendant has failed to pay Plaintiff and others a sum certain at the time of
13 termination or within seventy-two (72) hours of their resignation and have failed to pay those
14 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
15 and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
16 Class Members' daily wage multiplied by thirty (30) days.

17 XI

18 **SIXTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION PURSUANT TO**

20 **BUSINESS & PROFESSIONS CODE § 17200**

21 66. Plaintiff incorporates each and every allegation set forth in all of the foregoing
22 paragraphs as if fully set forth herein.

23 67. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
24 himself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
25 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
26 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
27 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
28 public interest within the meaning of Code of Civil Procedure § 1021.5.

1 68. Plaintiff is a “person” within the meaning of Business & Professions Code
2 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
3 and other appropriate equitable relief.

4 69. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
5 business practices.

6 70. California’s wage and hour laws express fundamental public policies. Providing
7 employees with proper wages and compensation are fundamental public policies of this State
8 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
9 enforce vigorously minimum labor standards, to ensure that employees are not required or
10 permitted to work under substandard and unlawful conditions, and to protect law-abiding
11 employers and their employees from competitors who lower their costs by failing to comply
12 with minimum labor standards.

13 71. Defendant has violated statutes and public policies as alleged herein. Through
14 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
15 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
16 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
17 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
18 privileges guaranteed to all employees under law.

19 72. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
20 violation of § 17200, *et seq.* of the Business & Professions Code.

21 73. Defendant, by engaging in the conduct herein alleged, either knew or in the
22 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 74. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
25 others similarly situated have been damaged in a sum as may be proven.

26 75. Unless restrained, Defendant will continue to engage in the unlawful conduct as
27 alleged above. Pursuant to the Business & Professions Code, this court should make such
28 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the

1 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
2 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
3 restitution and disgorgement of profits which may be necessary to restore Plaintiff and the
4 Proposed Class the money Defendant has unlawfully failed to pay.

5 XII

6 **SEVENTH CAUSE OF ACTION**

7 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

8 76. Plaintiff incorporates each and every allegation set forth in all of the foregoing
9 paragraphs as if fully set forth herein.

10 77. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
11 § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 226(a), 226.7, 510, 512,
12 1194, 1197, and 1199, which call for civil penalties.

13 78. For each such violation, Plaintiff and all other aggrieved employees are entitled
14 to penalties in an amount to be shown at the time of trial subject to the following formula:

- 15 a. \$100 for the initial violation per employee per pay period; and
- 16 b. \$200 for each subsequent violation per employee per pay period.

17 79. These penalties will be allocated 75% to the Labor Workforce Development
18 Agency and 25% to the affected employees.

19 80. On January 29 2020, in compliance with Labor Code § 2699.3(a)(1), Plaintiff
20 gave written notice by online filing to the LWDA, setting forth the facts and theories of the
21 violations alleged against Defendant ("Notice Letter", see Exhibit "1") and paid the filing fee.
22 Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the
23 address listed on the California Secretary of State's website as the entity address for AARON'S
24 INC., which is 400 Galleria Parkway, S.E., Suite 300, Atlanta, GA 30339. (See Exhibit "2").

25 81. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff
26 from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of
27 January 29, 2020. Therefore, Plaintiff is entitled to commence a civil action as though the
28 LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-

1 stamped copy of the First Amended Complaint immediately.

2 **RELIEF REQUESTED**

3 **WHEREFORE**, Plaintiff prays for the following relief:

4 1. For compensatory damages in the amount of unpaid wages and/or overtime not
5 paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing
6 of this action to the present as may be proven;

7 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
8 Members' hourly wage for each meal period missed or taken late from at least four (4) years
9 prior to the filing of this action to the present as may be proven;

10 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
11 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
12 to the filing of this action to the present as may be proven;

13 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
14 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
15 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
16 exceeding an aggregate penalty of four thousand dollars (\$4,000);

17 5. For penalties pursuant to Labor Code § 203 for all employees who were
18 terminated or resigned equal to their daily wage times thirty (30) days;

19 6. An award of prejudgment and post judgment interest;

20 7. An order enjoining Defendant and its agents, servants, and employees, and all
21 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
22 with proper wages and/or overtime at the proper rate, meal periods, rest periods, accurate
23 itemized wage statements, and wages upon termination/resignation pursuant to Labor Code
24 §§ 203, 226(a), 226.7, 510, 512, 1194, 1199, and IWC 4-2001;

25 8. For restitution for unfair competition pursuant to Business & Professions Code
26 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

27 9. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

28 10. An award providing for payment of costs of suit;

11. An award of attorney's fees; and

12. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: April 24, 2020

KINGSLEY & KINGSLEY, APC

By: 

DARREN M. COHEN

Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, January 29, 2020 4:21:54 PM

1/29/2020

LWDA Case No. LWDA-CM-769508-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Luis H. Castro Cardenas
Employer: Aaron's, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



January 29, 2020

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/260>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

AARON'S, INC.
400 Galleria Parkway, S.E., Suite 300
Atlanta, GA 30339
Certified Mailing: # 7018 1130 0001 5815 1307

Re: LUIS H. CASTRO CARDENAS V. AARON'S, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Luis H. Castro Cardenas ("Plaintiff") for the violations of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, and 1199. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Aaron's, Inc. ("Defendant") engaged in with respect to our client and all of their California employees.

Specifically, Defendant has violated Labor Code §§ 510, 1194, 1197, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. On a regular and consistent basis, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant issued incentive pay to Plaintiff and the aggrieved employees. However, Defendant failed to include any such incentive pay in Plaintiff's and the aggrieved employees' regular rate of pay in pay periods where they also worked overtime. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law.

In addition, Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not

less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is aggrieved employees within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

Lastly, Defendant failed to pay Plaintiff and the aggrieved employees all wages at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

LABOR & WORKFORCE DEVELOPMENT AGENCY

AARON'S, INC.

California Labor Code § 2699 Penalties

January 29, 2020

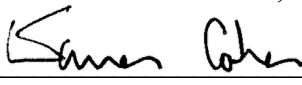
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Defendant's failure to provide wages and/or overtime for all hours worked and at the proper rate, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

DARREN M. COHEN

DMC/mt

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/260>

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

AARON'S, INC. # 7018 1130 0001 5815 1307

EXHIBIT 2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Aaron's Inc.
400 Galleria Parkway, S.E., Suite 300
Atlanta, GA 30339



9590 9402 4353 8190 4076 97

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

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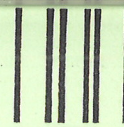
D. Is delivery address different from item 1? ☐ Yes
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KINGSLEY & KINGSLEY

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16133 VENTURA BOULEVARD, SUITE 1200
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PAGA LETTER
AARON'S, INC.

