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13 on behalf of herself and all others similarly situated

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **FOR THE COUNTY OF SAN DIEGO**

18 ARIANA MAULEON, on behalf of
19 herself and all others similarly situated,
20
21 Plaintiff,

22 v.

23 HANKEN, CONO ASSAD & CO., INC.,
24 a California Corporation, and DOES 1
25 through 100, inclusive,
26 Defendants

Case No. 37-2020-00015664-CU-OE-CTL

PAGA REPRESENTATIVE ACTION

Assigned To:

Dept.:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, ARIANA MAULEON, on behalf of herself and in her representative capacity as
2 private attorney general, complains of defendants HANKEN CONO ASSAD & CO., INC., a
3 California corporation and DOES 1-50, inclusive (collectively "HCA" or "Defendants") as
4 follows:

5 I. INTRODUCTION

6 1. This is a representative action for recovery of penalties under the Private Attorneys General
7 Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq.* PAGA permits "aggrieved
8 employees" to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer's
10 violations of the California Labor Code.

11 2. Plaintiff was employed by Defendant HANKEN CONO ASSAD & CO., INC., a California
12 Corporation, (hereinafter "HCA" or "Defendant") as an hourly, non-exempt employee in the State
13 of California. Plaintiff brings this action pursuant to the PAGA on a representative basis. All
14 current and former hourly, non-exempt employees in California are aggrieved employees.

15 3. The California Labor Code and IWC Wage Orders require employers to provide to their
16 employees, among other things, properly paid minimum wages and overtime wages, lawful meal
17 and rest periods, meal and rest period premiums when meals and/or rest periods are not lawfully
18 provided, accurate itemized wage statements, prompt payment of wages at the time of termination,
19 reimburse employees for necessary expenditures, and keep accurate time-keeping and payroll
20 records.

21 4. In this case, Defendants violated various provisions of the California Labor Code and
22 relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices
23 which led to Defendants' (1) failure to accurately calculate and pay all wages owed, including
24 overtime wages and minimum wages; (2) failure to provide lawful meal periods, (3) failure to
25 provide compensation when lawful meal periods were not provided; (4) failure to authorize and
26 permit lawful rest periods; (5) failure to provide compensation when lawful rest periods were not
27 provided; (6) failure to timely pay all owed wages at separation; (7) failure to provide accurate,
28 itemized wage statements; and (8) failure to keep accurate records.

5. As set forth in greater detail herein, Defendants engaged in conduct and adopted policies that were and continue to be in violation of the California Labor Code and applicable law. Plaintiff, on behalf of herself and all other aggrieved employees, brings this PAGA action and seeks penalties for violations of the California Labor Code, including without limitation sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, 2698 *et. seq.*, Business and Professions Code section 17200 and 17203, applicable IWC California Wage Orders (including Wage Order 5-2001) and California Code of Regulations, Title 8, section 11000 *et seq.*

6. Plaintiff in her representative capacity seeks civil penalties on behalf of herself and other aggrieved employees pursuant to PAGA for Defendants' failure to comply with California Labor Code and IWC Wage Order requirements.

7. This action is timely because Plaintiff suffered from a violation or numerous violations of the California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA via online submission. More than 65 days have passed and no response has been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting Plaintiff to proceed with this action in a representative capacity.

II. PARTIES

8. Upon information and belief, Defendant, HANKEN, CONO ASSAD & CO., INC., is a California corporation in good standing and authorized to do business in California and operates in San Diego County and throughout California. HCA's headquarters are located at 5550 Baltimore Drive, Suite 200, La Mesa, California 91942.

9. Upon information and belief, HCA is a real estate investment and management firm.

10. Plaintiff Ariana Mauleon is and during the liability period has been, a resident of California.

11. Plaintiff worked as a non-exempt, hourly employee of Defendants during the liability period. Plaintiff was a property manager/leasing consultant, with duties related to leasing rental units, managing ongoing tenant relationships, and managing the properties under her care.

1 12. Plaintiff and the members of the members of the aggrieved group were employed by
2 Defendants as non-exempt employees, however titled, (the "Aggrieved Group" or "Non-Exempt
3 Employees") during the liability period in the state of California. Aggrieved employees include
4 without limitation, employees in the positions of property managers, leasing consultants,
5 maintenance workers, housekeeping, administrative staff, and in similar and incidental related
6 positions.

7 13. Whenever in this complaint reference is made to any act, deed, or conduct of
8 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
9 through one or more of Defendants' officers, directors, agents, employees, or representatives,
10 who was actively engaged in the management, direction, control, or transaction of the ordinary
11 business and affairs of Defendants.

12 14. The true names and capacities of Defendants, whether individual, corporate, associate, or
13 otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who
14 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff
15 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
16 Defendants designated hereinafter as DOES when such identities become known.

17 15. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the
18 partners, agents, or principals and co-conspirators of Defendants and of each other; that
19 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly,
20 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
21 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
22 of the liability of the Defendants as alleged herein.

23 16. Plaintiff is further informed and believes, and thereon alleges, that at all times material
24 herein, each Defendant was completely dominated and controlled by its co-Defendants and each
25 was the alter ego of the other. Whenever and wherever reference is made in this complaint to
26 any conduct by Defendant or Defendants, such allegations and references shall also be deemed to
27 mean the conduct of each of the Defendants, acting individually, jointly, and severally.
28 Whenever and wherever reference is made to individuals who are not named as Defendants in

1 this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
2 times acted on behalf of Defendants named in this complaint within the scope of their respective
3 employments.

4 III. JURISDICTION AND VENUE

5 17. The penalties sought by Plaintiff exceed the minimum jurisdiction limits of the
6 California Superior Court and will be established according to proof at trial.

7 18. This Court has jurisdiction over this action pursuant to the California Constitution
8 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
9 except those given by statute to other courts. The statutes under which this action is brought do
10 not give jurisdiction to any other court.

11 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 20. This Court has jurisdiction over Plaintiff's claims for civil penalties under PAGA.

14 21. This Court has jurisdiction over Defendants because, upon information and belief, each
15 Defendant is either a resident of California, has sufficient minimum contacts in California, or
16 otherwise intentionally avails itself of the California market so as to render the exercise of
17 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
18 substantial justice. Defendants have done and are doing business throughout California.

19 22. Defendants have done and are doing business throughout the State of California, as it
20 maintains facilities throughout the state, including without limitation in the City of La Mesa,
21 County of San Diego, where Plaintiff worked. Defendant is within the jurisdiction of this Court
22 for service of process purposes.

23 23. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
24 situated within the State of California and within San Diego County. Defendant employs or has
25 employed Plaintiff and numerous aggrieved employees in San Diego County.

26 24. The California Superior Court also has jurisdiction in this matter because the individual
27 claims of the Aggrieved Employees described herein are presently believed to be under the
28 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the

1 penalties may not be aggregated to satisfy the amount in controversy requirement to establish
2 diversity jurisdiction. Further, there is no federal question at issue, as the issues herein are based
3 solely on California statutes and law, including the Labor Code, and IWC Wage Orders.

4 25. Venue is proper in the Superior Court of San Diego County pursuant to Code of Civil
5 Procedure section 395.5 because one or more of the violations alleged in this Complaint arise in
6 that county. Venue as to Defendant is also proper in this judicial district pursuant to Code of
7 Civil Procedure section 395.

8 26. Venue is proper in this Court because upon information and belief, one or more of the
9 Defendants transact business, or have offices in this County and the acts or omissions alleged
10 herein took place in this County and because Plaintiff is presently a resident of this County.

11 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 27. On February 14, 2020, Plaintiff gave written notice by online submission to the LWDA
13 and by certified mail to Defendant of Defendants' violations of numerous provisions of the
14 California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid
15 as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto
16 as **Exhibit A**.

17 28. The LWDA did not provide notice of intention to investigate HCA's alleged violations
18 within 65 calendar days of the February 14, 2020, notice. Labor Code section 2699.3(a)(2)(A).
19 Thus, this action is timely.

20 **VI. FACTUAL ALLEGATIONS**

21 29. Plaintiff and all other aggrieved employees were employed by HCA in non-exempt
22 positions at their facilities in the State of California. They were employed as non-exempt
23 property managers, leasing consultants, maintenance workers, house-keeping staff,
24 administrative staff, or related positions with similar job duties, however titled, in the State of
25 California during the liability period.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
27 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
28 the requirements of California's wage and employment laws.

1 31. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
2 Employees based upon an hourly rate.

3 **Failure to Pay All Wages, Including Minimum Wages and Overtime**

4 32. This action is brought under Labor Code section 510, 515, 1194, 1197, 1198 and
5 the IWC Wage Order.

6 33. Labor Code § 1182.12 sets the minimum wage.

7 34. Labor Code §1194 provides that “Notwithstanding any agreement to work for a
8 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
10 of the full amount of this minimum wage or overtime compensation, including interest thereon,
11 reasonable attorney’s fees, and costs of suit.”

12 35. Labor Code § 1197 states that “The minimum wage for employees fixed by the
13 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
14 and the payment of a lower wage than the minimum so fixed is unlawful.”

15 36. Labor Code § 1198 provides: “The maximum hours of work and the standard
16 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
17 conditions of labor for employees. The employment of any employee for longer hours than those
18 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

19 37. The Labor Code and the Wage Orders require that employers pay employees at
20 least minimum wage for every hour worked, and overtime for hours worked over eight hours in a
21 day and over forty hours in a week.

22 38. Labor Code §510, 515 and Section 3(A) of Wage Order 5-2001, requires employers
23 to pay employees one-and-one-half (1-1/2) times the regular hour rate for all those hours worked
24 in excess of forty (40) hours in one work week and/or in excess of eight (8) in one work day, and
25 two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day,
26 unless such employees are exempt from the requirements of Wage Order 5.

27 39. Plaintiff and the aggrieved employees were not exempt from the requirement to be
28 paid minimum wages and overtime wages in accordance with the law.

1 40. Plaintiff, and on information and belief all aggrieved employees of Defendants,
2 were regularly compelled to work off-the-clock due to Defendants' staffing and scheduling
3 practices, lack of coverage, and work demands.

4 41. Defendants maintained a policy where Plaintiff and, upon information and belief,
5 the Aggrieved Employees were required to perform work off the clock, i.e. before clocking in or
6 after clocking out or during purportedly provided meal breaks.

7 42. For example, Plaintiff, and upon information and belief, the Aggrieved Employees
8 were often required to work eight (8) hour shifts without being provided a meal period or
9 authorized and permitted to take a rest period. Plaintiff and the Aggrieved Employees were
10 required to work through such purported breaks but were not compensated for such time.

11 43. During the relevant time frame, Plaintiff and Aggrieved Employees frequently
12 worked over eight (8) hours in a day or over forty (40) hours in a workweek without being paid
13 overtime at a rate of 1.5 times the employee's regular rate of pay for hours worked in excess of 8
14 hours in a day or 40 hours in a week. In part, such violations were due to Defendant's failure to
15 accurately log all hours worked by Plaintiff and the Aggrieved Employees.

16 44. During the relevant time frame, Plaintiff and Aggrieved Employees on occasion
17 worked over twelve (12) hours in a workday and for seven consecutive days in a workweek without
18 being paid overtime at a rate of 2.0 times the employee's regular rate of pay for hours worked as
19 required by law.

20 45. Defendants knew or should have known that Plaintiff and the Aggrieved Employees
21 were required to work hours off the clock, and worked hours for which they were not paid.

22 46. Plaintiff and the aggrieved employees worked certain hours for which they were not
23 paid and were required to work hours off the clock. This time amounts and amounted to the times
24 Plaintiff and the aggrieved employees spent working through meal periods and/or being forced to
25 shorten such breaks due to work demands. Because Plaintiff and the aggrieved employees spent eight
26 hours or more working on "compensated" time, this uncompensated time for time worked through
27 meal periods should have been compensated at the overtime rate in all shifts over eight hours.

28 47. Defendants also failed to compensate overtime hours at the proper rate of pay, as

1 Defendants improperly calculated the regular rate and failed to include all applicable forms of
2 compensation.

3 48. Plaintiff and the aggrieved employees are or were employees in the State of
4 California and Defendants were and are employers employing persons in the State of California.
5 As such, Plaintiff and the aggrieved employees were the type of persons contemplated to be
6 protected by the Labor Code and said provisions were intended to apply to Defendants and to
7 prevent the type of injury and damage set forth herein.

8 49. As a result of Defendants' conduct in not paying Plaintiff and aggrieved employees
9 all wages earned, Plaintiff and the aggrieved employees have been deprived of minimum wages
10 for off the clock hours and the legal overtime wage for all overtime hours they worked and for
11 which they were not compensated.

12 **Failure to Provide Timely, Legally Compliant Meal Periods**

13 50. This action is brought under Labor Code §§226.7 and 512.

14 51. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
15 period of more than five (5) hours without providing a meal break of not less than thirty (30)
16 minutes in which the employee is relieved of all of his or her duties, except that when a work
17 period of not more than six (6) hours will complete the day's work the meal period may be
18 waived by mutual consent of the employer and employee.

19 52. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
20 for a work period of more than ten (10) hours without providing a second meal break of not less
21 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second
22 meal break may only be waived by mutual consent, and if the employee did not waive his or her
23 first meal period, and the employee's work day will not exceed twelve hours.

24 53. Pursuant to Labor Code §226.7(b), if an employer fails to provide an employee
25 with a thirty (30) minute meal period, the employer shall pay the employee one hour of pay for
26 each work day that a thirty (30) minute meal period was missed.

27 54. During the relevant time frame, Defendant failed to provide Plaintiffs and the
28 aggrieved employees with thirty (30) minute meal periods as required by law during their

1 employment with Defendants.

2 55. In addition, Defendants automatically deducted time from hours worked for
3 purportedly provided meal periods, even though such meal periods were not actually taken.

4 56. During the liability period, Defendant failed to provide Plaintiff and Aggrieved
5 Employees with timely and uninterrupted first meal periods of not less than thirty (30) minutes
6 within the first five hours of a shift.

7 57. During the liability period, Defendant also failed to provide Plaintiff and the
8 Aggrieved Employees with timely and uninterrupted second meal periods of not less than thirty
9 (30) minutes on shifts longer than ten hours.

10 58. Indeed, during the relevant time, as a consequence of Defendant's staffing and
11 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
12 Plaintiff and the Aggrieved Employees were not provided with timely, legally required
13 uninterrupted meal periods.

14 59. Meal periods, to the extent they were provided in the first instance, were often late
15 or interrupted.

16 60. Aggrieved Employees were frequently required to work through purported meal
17 breaks.

18 61. In addition, employees were required to remain on premises during meal and rest
19 breaks, carry cellular phones to respond to calls during meal and rest breaks, and/or to respond to
20 inquiries and said calls during breaks.

21 62. In addition, during the relevant time frame, Plaintiff and the other aggrieved
22 employees often worked shifts in excess of ten (10) hours, yet were not provided a second,
23 uninterrupted meal period of thirty (30) minutes for those shifts.

24 63. Despite the above-mentioned meal period violations, Defendants failed to
25 compensate Plaintiff, and on information and belief, did not compensate other aggrieved
26 employees one additional hour of pay at their regular rate as required by California law when meal
27 periods were not provided.

Failure to Authorize and Permit Legally Compliant Rest Breaks

64. Labor Code section 226.7(b) reads: "No employer shall require any employee to work during any meal or rest period ...mandated by an applicable... order of the Industrial Welfare Commission."

65. Labor Code section 516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods for any workers in California consistent with the health and welfare of those workers.

66. The applicable IWC Wage Order 5-2001 requires employers to authorize and permit employees to take a net 10-minute rest period for every four hours worked or major fraction thereof, which insofar as practicable shall be taken in the middle of each work period.

67. Such rest periods constitute compensable time.

68. This action is further brought under Labor Code §226.7(b), which provides that if an employer fails to provide an employee with a rest period, the employer shall pay the employee one hour of pay for each work day that a rest period was missed.

69. Despite said requirements of the IWC wage orders applicable to Plaintiff's and the Aggrieved Employees' employment with Defendants, Defendants failed and refused to authorize and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

70. Indeed, as a consequence of Defendants' staffing and scheduling practices, lack of coverage, work demands, and Defendants' policies and practices, Plaintiff and the Aggrieved Employees were not authorized and permitted to take legally required rest periods.

71. In addition, Plaintiff and the Aggrieved Employees were not allowed to leave the premises during certain rest periods and were not free from employer control during certain purported rest periods.

72. Moreover, employees were required to carry cellular phones to respond to calls during meal and rest breaks, and/or to respond to inquiries and said calls during breaks. E

1 73. As a matter of Defendants' established company policy, Defendants failed to
2 authorize and permit the required paid rest periods established by Labor Code section 226.7 and
3 Labor Code section 516 and the IWC Wage Order(s).

4 74. By their failure to provide rest periods for every four hours or major fraction
5 thereof worked per day by Plaintiffs and the Aggrieved Employees, and by failing to provide
6 compensation for such non-provided rest periods, as alleged above, Defendants willfully violated
7 the provisions of Labor Code section 226.7, 512 and the applicable IWC Wage Orders.

8 75. As a direct and proximate result of Defendants' conduct as alleged above,
9 Plaintiffs and the aggrieved employees have sustained damages in the amount of one hour of
10 wages for each day they missed their ten (10) minute rest periods.

11 **Failure to Timely Pay Wages During Employment**

12 **Failure to Timely Pay Wages**

13 76. In addition, Plaintiff alleges that Defendants violated section 204 of the Labor
14 Code, as Defendant willfully failed to pay on time to Plaintiff and the aggrieved employees the
15 legal wages (including minimum wages and overtime wages) they earned, and failed to pay one
16 hour wages in lieu of required, but not lawfully provided, meal and rest periods, twice per
17 calendar month as required by law.

18 **Failure to Keep Accurate Payroll and Timekeeping Records**

19 77. Wage Order No. 5, Labor Code sections 226(a), 1174, and 1174.5 require that the
20 Defendant keep accurate payroll and timekeeping information.

21 78. By virtue of the above-specified violations, including the failure to record hours
22 worked off the clock and hours worked during purportedly provided meal breaks, and based
23 upon Defendants' auto-deduct policy, Defendants failed to keep accurate timekeeping
24 information for Plaintiff and the Aggrieved Employees.

25 79. Defendant also failed to keep accurate payroll information as a consequence of
26 the above specified violations, including the failure to pay premiums for missed meal and rest
27 breaks as required by law.
28

1 **Failure to Provide Accurate Itemized Wage Statements**

2 80. In relevant part, Labor Code section 226(a) requires: An employer, semimonthly
3 or at the time of each payment of wages, shall furnish to his or her employee, an accurate
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions , (5) net wages earned, (6) the inclusive
7 dates of the period for which the employee is paid, (7) the name of the employee and only the
8 last four digits of his or her social security number or an employee identification number other
9 than a social security number, (8) the name and address of the legal entity that is the employer,
10 and (9) all applicable hourly rates in effect during the pay period and the corresponding number
11 of hours worked at each hourly rate by the employee.

12 81. Defendant violated Labor Code section 226 in part because of the above specified
13 violations, including the failure to pay for all hours worked, and the failure to pay one hour of
14 premium pay at the employee's regular rate of pay for rest breaks and meal breaks that were not
15 legally provided.

16 **Failure to Pay All Wages At the Time of Termination**

17 82. In part as a result of the above specified violations, Defendants have also failed to
18 pay all wages owed at the time of separation as required by Labor Code §§ 201-202.

19 83. Plaintiff and the Aggrieved Employees also did not receive waiting time penalties
20 as required by Labor Code § 203.

21 84. All Aggrieved Employees who were separated from employment are entitled to
22 compensation for all forms of wages earned, including but not limited to unpaid straight time
23 wages, minimum wage, overtime compensation and compensation for non-provided meal and
24 rest periods, but to date have not received such compensation, therefore entitling them to civil
25 penalties under PAGA for violations of Labor Code sections 201-203.

26 **Failure to Reimburse Expenses**

27 85. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
28 Employees for necessary expenditures incurred in direct consequence of the discharge of his or

1 her duties.

2 86. Plaintiff, and on information and belief members of the Aggrieved Employee
3 group, were required to incur expenses in the performance of their assigned job duties. For
4 example, Plaintiff and the Aggrieved Employees were required to incur numerous out of pocket
5 expenses, including cellular phone charges.

6 87. Upon information and belief, the Defendants did not reimburse Plaintiffs or the
7 Aggrieved Employees for such expenses.

8 **V. CAUSES OF ACTION**

9 **First Cause of Action**

10 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR** 11 **CODE SECTION 2698 ET SEQ.**

12 88. Plaintiff incorporates by reference each and every paragraph above, and realleges
13 each and every allegation contained above as though fully set forth herein.

14 89. On February 14, 2020 Plaintiff gave written notice by online submission to the
15 LWDA and by certified mail to Defendant of Defendants' violations of numerous provisions of
16 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
17 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
18 hereto as **Exhibit A**.

19 90. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(a), as
20 she was employed by Defendants during the statutory period and suffered one or more of the Labor
21 Code violations set forth herein. She seeks to recover on behalf of herself and all other aggrieved
22 employees (hourly, non-exempt employees of Defendants in California) of Defendants the civil
23 penalties provided by PAGA, plus reasonable attorney's fees and costs.

24 91. 65 days have passed and no response has been received from the LWDA.
25 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

26 92. Plaintiff has exhausted all administrative procedures required of them under Labor
27 Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing forward
28 this cause of action.

1 93. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
3 969. Class certification of the PAGA claims is not required.

4 94. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
5 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
6 violations as set forth in this Complaint.

7 95. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
8 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 9 a. Defendants' failure to comply with the requirement of Labor Code
10 §1182.12, 1194, 1197, 1198, and Wage Order 5-2001 to pay at least
11 minimum wage for every hour worked;
- 12 b. Defendants' failure to comply with the requirement of Labor Code §510,
13 1194, 1197, 1198, and Wage Order 5-2001 to pay all wages earned
14 including overtime wages;
- 15 c. Defendants' failure to comply with the requirement of Labor Code §216 to
16 pay wages after demand was made by Plaintiffs;
- 17 d. Defendants' failure to comply with the requirement of Labor Code §§204
18 and 210 to pay, without condition and within the time set by the applicable
19 article, all wages earned;
- 20 e. Defendants' failure to comply with the requirement of Labor Code §225.5
21 to pay wages due;
- 22 f. Defendants' failure to comply with the requirement of Labor Code §§201
23 and 202 to pay wages due to former employees;
- 24 g. Defendants' failure to comply with the requirement of Labor Code §203 to
25 pay waiting time penalties to former employees for violating Labor Code
26 §§201-202.

- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Order 5-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- l. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- m. Defendants' failure to provide accurate compliant wage statements under Labor Code § 226.
- n. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802.
- o. Defendants unlawful deduction of wages from aggrieved employees in violation of Labor Code § 221 and 223.

96. As a result of the acts alleged above, Plaintiff seek penalties under Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders.

97. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per

1 employee for violations in subsequent pay periods plus 25% of the amount
2 unlawfully withheld.

3 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants
4 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
5 per aggrieved employee for the initial pay period where a violation occurs and one
6 thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay
7 periods.

8 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf
9 of an employer who violates, or causes to be violated, a section of this chapter or
10 any provision regulating hours and days of work in any order of the Industrial
11 Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a
12 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
13 for initial violations for each underpaid employee for each pay period for which the
14 employee was underpaid and one hundred dollars (\$100) for each subsequent
15 violation for each underpaid employee for each pay period for which the employee
16 was underpaid.

17 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
18 Defendants are subject to a civil penalty of five hundred dollars (\$500).

19 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to
20 any employee a wage less than the minimum fixed by an order of the commission,
21 shall be subject to a civil penalty as follows: for any initial violation that is
22 intentionally committed, one hundred dollars (\$100) for each underpaid employee
23 for each pay period for which the employee is underpaid; and for each subsequent
24 violation of the same offense, two hundred fifty dollars (\$250) for each underpaid
25 employee for each pay period for which the employee is underpaid regardless of
26 whether the initial violation was intentionally committed.

27 98. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to \$100
28 for any initial violation and \$200 for all subsequent violations of the above-mentioned

1 provisions of the California Labor Code for which no other civil penalty is specifically
2 provided.

3 99. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be awarded
4 twenty-five percent (25%) of all penalties due under California law, as well as interest,
5 attorneys' fees and costs.

6 100. Under Labor Code §2699, the State of California should be awarded seventy-five
7 percent (75%) of the penalties due under California law.

8
9 **VI. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 11 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
12 violations specified above;
- 13 2. For penalties under Labor Code sections 204, 210, 226, 226.3, 558, 1174.5, 1197.1,
14 and 2699(a) and (f);
- 15 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
16 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
17 judgment interest;
- 18 4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226,
19 218.5, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable
20 provisions providing for attorneys' fees and costs; and

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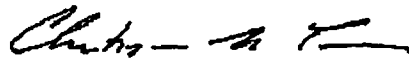
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1 5. For such other and further relief as the Court deems proper.
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3 Respectfully submitted,
4

5 Dated: April 20, 2020

6 

7 _____
8 Christina M. Lucio, Esq.
9 Chad F. Edwards, Esq.
10 David Rosenberg, Esq.

11 Attorneys for Plaintiff ARIANA MAULEON,
12 on behalf of herself, and all others similarly situated
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