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on behalf of himself and all others aggrieved

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 29 2020

BY Sulma Torres
SULMA TORRES, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 CHARLES NOE, on behalf of himself
and all others aggrieved,

12
13 Plaintiff,

14 v.

15 MY PILLOW INC., a corporation; and
DOES 1 through 100, inclusive,

16 Defendants.
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CASE NO. **CIV DS 2011360**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR:**

1. CIVIL PENALTIES UNDER
LABOR CODE § 210;
2. CIVIL PENALTIES UNDER
LABOR CODE § 226.3;
3. CIVIL PENALTIES UNDER
LABOR CODE § 226.8;
4. CIVIL PENALTIES UNDER
LABOR CODE § 558;
5. CIVIL PENALTIES UNDER
LABOR CODE § 1197.1; and
6. CIVIL PENALTIES UNDER
LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

27 COMES NOW Plaintiff Charles Noe ("Plaintiff" or "Noe"), on behalf of himself and all
28 other aggrieved employees, and alleges as follows:

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2. At all relevant times mentioned herein, Defendants had and have a policy or practice of misclassifying Plaintiff and other non-exempt employees as independent contractors when in fact, they were, employees.

4. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay minimum wages to Plaintiff and other non-exempt employees in violation of California state wage and hour laws as a result of, among other things, failing to pay Plaintiff and other non-exempt employees for all time during which they worked for Defendants.

5. At all relevant times mentioned herein, Defendants failed to pay for non-productive time worked by Plaintiff and other aggrieved employees separate and apart from commissions earned in violation of Labor Code section 226.2.

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1 6. At all relevant times mentioned herein, Defendants failed to pay for rest and recovery
2 periods separate and apart from other wages earned by Plaintiff and other aggrieved employees in
3 violation of Labor Code section 226.2.

4 7. At all relevant times mentioned herein, Defendants failed to separately state the total
5 hours of compensable rest and recovery periods and the total hours of other nonproductive time, as
6 well as the rate of compensation of each, and the gross wages paid for those times during the pay
7 period, as required under Labor Code section 226.2, subdivision (a)(2).

8 8. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to provide Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted,
10 timely, and complete meal period for days on which the employee worked in excess of five (5) hours
11 in a workday; a second thirty (30) minute uninterrupted, timely, and complete meal period for days
12 on which the employee worked in excess of ten (10) hours in a workday; or compensation in lieu
13 thereof, as required by California wage and hour laws.

14 9. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely, and
16 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
17 thereof, or compensation in lieu thereof, as required by California wage and hour laws.

18 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
20 Plaintiff and other aggrieved employees with itemized wage statements that accurately reflect gross
21 wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the
22 pay period and the corresponding number of hours worked at each hourly rate; failing and other
23 such information as required by Labor Code section 226, subdivision (a).

24 11. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to reimburse Plaintiff and other aggrieved employees for costs they incurred in furtherance
26 of their work duties, including, without limitation, cell phone hardware and usage expenses, and gas
27 and mileage expenses in connection with the use of their personal cars, as required by Labor Code
28 section 2802.

12. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to timely pay Plaintiff and other aggrieved employees, at the conclusion of their employment, among other wages, overtime wages, minimum wages, and/or premium wages, as required by Labor Code sections 201 and 202.

13. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to timely pay Plaintiff and other aggrieved employees all wages due and owing as required under Labor Code section 204.

14. At all relevant times mentioned herein, Defendants withheld wages and compensation from Plaintiff and other aggrieved employees in violation of Labor Code sections 221 and 223.

15. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 226.8, 558, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of himself and other aggrieved employees pursuant to PAGA.

PARTIES

A. Plaintiff

16. Plaintiff is a resident of the State of California. At all relevant times herein, Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, promoting Defendants' products in stores and other locations, from approximately December of 2017 through on or about November 10, 2019.

B. Defendants

17. Plaintiff is informed and believes, and based thereon alleges, that defendant My Pillow is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Minnesota. My Pillow is not registered with the California Secretary of State to conduct business within the State of California although it regularly conducts business in California, including, without limitation, by hiring California employees, sending employees to promote its products, regularly advertising, and selling those products in California.

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18. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as 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. 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 defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to the other defendants. As employers of Plaintiff and all others aggrieved, Defendants, and each of them, are either solely, or jointly and severally liable for the damages alleged in Plaintiff's operative complaint. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include My Pillow, and any of its parents, subsidiaries or affiliated companies within the State of California, as well DOES 1 through 100 identified herein.

JURISDICTION

19. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

20. Venue is proper in San Bernardino County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where: the causes of action complained of herein arose. Finally, venue is proper in San Bernardino County as the unlawful acts alleged herein have a direct effect on Plaintiff and others aggrieved within San Bernardino County and the State of California.

21. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior*

1 *Court* (2019) 8 Cal.5th 175.

2 22. Plaintiff seeks to recover the PAGA civil penalties through a representative action
3 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
4 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
5 allegations described herein is not required.

6 23. During the period beginning one (1) year preceding the provision of notice to the
7 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
8 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 223, 226,
9 226.2, 226.3, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 2699 and 2802, among others.

10 24. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
11 such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within
12 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
13 specified in Labor Code section 2699.3.

14 25. On February 4, 2019, Plaintiff provided written notice under Labor Code section
15 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of
16 various, including the herein-described, provisions of the Labor Code, to the Labor and Workforce
17 Development Agency (“LWDA”), as well as by certified mail, with return receipt requested to
18 Defendants, and each of them.

19 26. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
20 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
21 calendar days of the February 4, 2020 postmarked date of the herein-described notice sent by
22 Plaintiff to the LWDA and Defendants.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 27. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
25 aggrieved employees were intentionally misclassified throughout their employment as independent
26 contractors when in reality, they were employees of Defendants. As such, Plaintiff is informed and
27 believed, and based thereon alleges, that Defendants violated Labor Code section 226.8(a) and
28 Defendants are liable for civil penalties pursuant to Labor Code sections 226.8(b) and (c).

1 28. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
2 aggrieved employees were not paid and have not been paid, during the relevant time period, wages
3 for all time worked, including overtime wages, as a result of, without limitation, Defendants failing
4 to pay overtime wages or proper overtime wages to Plaintiff and other non-exempt employees for
5 each hour worked over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
6 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
7 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
8 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all
9 hours worked on the seventh consecutive workday in a workweek including by, among other things,
10 failing to pay for all time worked, including, without limitation, non-productive time. As such,
11 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor Code
12 sections 510 and 1194, and applicable Wage Orders based on their practice of providing total
13 compensation that is less than the required legal overtime compensation, entitling Plaintiff and other
14 aggrieved employees to relief under, without limitation, these sections. In addition, Defendants
15 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

16 29. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
17 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
18 including minimum wages, as a result of, without limitation, Defendants failing to pay minimum
19 wages to Plaintiff and other non-exempt employees for all hours they worked, including, without
20 limitation, non-productive time, as well as rest and recovery periods. As such, Plaintiff is informed
21 and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
22 section 1197 and applicable Wage Orders, based on their continued failure to pay minimum wages,
23 entitling Plaintiff and other aggrieved employees to relief under, without limitation, Labor Code
24 sections 1194 and 1194.2. Defendants would also be liable for civil penalties pursuant to Labor
25 Code sections 558, 1197.1, and 2699.

26 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and have policy or practice of failing to authorize and permit Plaintiff and other aggrieved
28 employees to take a thirty (30) minute uninterrupted, timely, and complete meal period for days on

1 which the employee worked in excess of five (5) hours in a workday; a second thirty (30) minute
2 uninterrupted, timely, and complete meal period for days on which the employee worked in excess
3 of ten (10) hours in a workday; or compensation in lieu thereof. As such, Plaintiff is informed and
4 believes, and based thereon alleges, that Defendants violated Labor Code section 512, entitling
5 Plaintiff and other aggrieved employees to premium payments under Labor Code section 226.7.
6 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

7 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
8 and have a policy or practice of failing to authorize and permit Plaintiff and other aggrieved
9 employees to take paid, uninterrupted, timely, and complete rest periods of at least ten (10) minutes
10 per four (4) hours worked or major fractions thereof, or compensation in lieu thereof as required
11 under (the) applicable Wage Order(s). As such, Plaintiff is informed and believes, and based
12 thereon alleges, that he and other aggrieved employees are entitled to relief under, without
13 limitation, Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant
14 to Labor Code sections 558 and 2699.

15 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
16 and have a policy or practice of failing to furnish Plaintiff other aggrieved employees with itemized
17 wage statements that accurately reflect gross wages earned; total hours worked; net wages earned;
18 all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate; the total hours of compensable rest and recovery periods and the total
20 hours of other nonproductive time, as well as the rate of compensation of each, and the gross wages
21 paid for those times during the pay period; and other such information as required by Labor Code
22 section 226, subdivision (a) and Labor Code section 226.2, subdivision (a)(2). Consequently, since
23 Defendants would have failed to comply with Labor Code section 226, subdivision (a) and Labor
24 Code section 226.2, subdivision (a)(2), Plaintiff and other aggrieved employees would be entitled
25 to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Defendants
26 would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

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1 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have a policy or practice of failing or refusing to timely pay compensation to Plaintiff and other
3 terminated or resigned employees within the State of California, among other wages, overtime
4 wages, minimum wages, and/or premium wages. As such, Defendants would be liable for waiting
5 time penalties for having violated California Labor Code sections 201, 202, and 203. Defendants
6 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
8 and have a policy or practice of failing to reimburse Plaintiff and other aggrieved employees for
9 their costs incurred in furtherance of their work duties (including, without limitation, in connection
10 with telephone hardware and usage, as well as gas and mileage), as required by Labor Code section
11 2802. Defendants would be liable to reimburse said expenses with interest under Labor Code
12 section 2802. Defendants would also be liable for civil penalties pursuant to Labor Code sections
13 558 and 2699.

14 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
15 to timely pay wages each pay period as required under Labor Code section 204, entitling Plaintiff
16 and other aggrieved employees to civil penalties pursuant to Labor Code sections 210, 558 and 2699.

17 36. Plaintiff is informed and believes, and based thereon alleges that Defendants
18 withheld wages in violation of Labor Code sections 221 and 223 from Plaintiff and other aggrieved
19 employees, entitling Plaintiff and other aggrieved employees to civil penalties pursuant to Labor
20 Code sections 210, 558 and 2699.

21 37. Plaintiff and other aggrieved employees at all times pertinent hereto were not exempt
22 from receiving overtime wages, minimum wages, meal breaks or compensation in lieu thereof, rest
23 breaks or compensation in lieu thereof, accurate wage statements, full and timely pay, indemnifying
24 work expenses, and other such provisions of California law and the implementing rules and
25 regulations of the IWC California Wage Orders. As a result of these violations, Defendants are
26 liable for civil penalties, including in the form of unpaid wages, under PAGA.

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1 **FIRST CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

3 38. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

5 39. Defendants have had a consistent policy or practice of failing to comply with Labor
6 Code section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive,
7 of any calendar month shall be paid for between the 16th and 26th day of the month during which the
8 labor was performed, and labor performed between the 16th and the last day, inclusive, of any
9 calendar month, shall be paid for between the 1st and 10th day of the following month.”

10 40. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
11 independent and apart from, any other penalty provided in this article, every person who fails to pay
12 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5,
13 shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100)
14 for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or
15 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
16 percent of the amount unlawfully withheld.”

17 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants did not
18 and do not pay their employees in accordance with Labor Code section 204.

19 42. Pursuant to Labor Code section 210, Plaintiff and other similarly aggrieved
20 employees or former employees she seeks to represent are entitled to recover civil penalties for
21 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for
22 each aggrieved employee or former employee for each initial violation per employee, and two
23 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
24 violation in connection with each payment that was made in violation of Labor Code section 204,
25 in addition to any other relief available as permitted under *ZB N.A. v. Superior Court* (2019) 8
26 Cal.5th 175.

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1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

3 43. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereat.

5 44. Defendants had and have a policy or practice of failing to comply with Labor Code
6 section 226, subdivision (a) and Labor Code section 226, subdivision (a)(2) by intentionally failing
7 to furnish Plaintiff with itemized wage statements that accurately reflect gross wages earned; total
8 hours worked; net wages earned; the name and address of each direct employer with whom they
9 have been placed to work; all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate; the name and legal address of
11 Defendants; separately stating the total hours of compensable rest and recovery periods and the total
12 hours of other nonproductive time, as well as the rate of compensation of each, and the gross wages
13 paid for those times during the pay period; and other such information as required by Labor Code
14 section 226, subdivision (a) and Labor Code section 226, subdivision (a)(2).

15 45. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
17 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
19 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

20 46. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
21 this section are in addition to any other penalty provided by law.”

22 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
23 and have a policy or practice of failing to furnish non-exempt employees, including, without
24 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
25 hours worked; net wages earned; the name and address of each direct employer with whom they
26 have been placed to work; all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate; the legal name and address of
28 Defendants; separately stating the total hours of compensable rest and recovery periods and the total

1 hours of other nonproductive time, as well as the rate of compensation of each, and the gross wages
2 paid for those times during the pay period and other such information as required by Labor Code
3 section 226, subdivision (a) and Labor Code section 226.2, subdivision (a)(2).

4 48. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees he
5 seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code
6 section 226, subdivision (a) and Labor Code section 226.2, subdivision (a)(2) in the amount of two
7 hundred fifty dollars (\$250) for each aggrieved current or former employee per pay period for the
8 initial violation, and one thousand dollars (\$1,000) for each aggrieved current or former employee
9 per pay period for each subsequent violation.

10 **THIRD CAUSE OF ACTION**

11 **(Civil Penalties Under Labor Code § 226.8 – Against All Defendants)**

12 49. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs of this Complaint as though fully set forth hereat.

14 50. Plaintiff is informed and believes that Defendants had and have a policy or practice
15 of failing to comply with Labor Code section 226.8 as Defendants willfully misclassified Plaintiff
16 and other aggrieved employees as independent contractors.

17 51. Labor Code section 226.8(b) states: "If the Labor and Workforce Development
18 Agency or a court issues a determination that a person or employer has engaged in any of the
19 enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty
20 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000)
21 for each violation, in addition to any other penalties or fines permitted by law."

22 52. Labor Code section 226.8(c) states: "If the Labor and Workforce Development
23 Agency or a court issues a determination that a person or employer has engaged in any of the
24 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
25 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
26 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
27 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

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53. Thus, pursuant to Labor Code section 226.8, Plaintiff and other aggrieved employees he seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code section 226.8, subdivision (a) in the amount specified in Labor Code sections 226.8, subdivisions (b) and (c).

FOURTH CAUSE OF ACTION

(Violation of Labor Code § 558 – Against All Defendants)

54. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

55. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- b. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- c. Wages recovered pursuant to this section shall be paid to the affected employee.”

56. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum wages (including failing to separately pay for non-productive time and rest and recovery periods); receive meal and rest periods or compensation in lieu thereof; be paid timely wages during and after their employment separation; receive accurate, itemized wage statements that includes, among other things, all time worked, non-productive time worked, and rest and recovery periods that are separately itemized, and be reimbursed for work expenses.

57. As a direct and proximate result of Defendants' conduct, Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to Labor Code section 558 in amounts to be determined at trial.

FIFTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

58. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

59. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

- a. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- b. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- c. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

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60. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and aggrieved employees not be paid minimum wages as a result of Defendants, without limitation, failing to pay or improperly paying overtime wages for overtime hours worked, to the detriment of Plaintiff and other aggrieved employees, including, without limitation, by failing to pay for all hours worked at the minimum wage, non-productive time, and rest and recovery periods, and by wrongfully withholding moneys from Plaintiff and other aggrieved employees. As a direct and proximate result of Defendants' conduct, Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to Labor Code section 1197.1.

SIXTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 2699 – Against All Defendants)

61. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

62. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or himself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

63. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

64. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to pay overtime wages and minimum wages, including non-productive time and separate pay for rest and recovery periods; provide meal and rest periods or compensation in lieu thereof; be

1 paid timely wages during and after their employment separation; receive accurate, itemized wage
2 statements that includes all required information; receive pay without improper withholding; and be
3 reimbursed for work expenses entitling Plaintiff and other aggrieved employees to civil penalties
4 for each of these Labor Code violations in the amounts set forth in Labor Code section 2699,
5 subdivision (f).

6 65. Moreover, Plaintiff and other aggrieved current and former employees within the
7 State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees
8 and costs in connection with their herein-described claims for civil penalties.

9 **REQUEST FOR JURY TRIAL**

10 66. Plaintiff hereby requests a trial by jury.

11 **PRAYER**

12 **WHEREFORE**, on behalf of himself and all others aggrieved, Plaintiff prays for
13 judgment against Defendants as follows:

- 14 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
15 1197.1 and 2699;
16 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
17 210, 226.3, 226.8, 558, 1197.1 and 2699;
18 C. Pre-judgment and post-judgment interest;
19 D. For costs of suit incurred herein; and
20 E. Such other and further relief as the Court deems just and proper.

21
22 Dated: April 10, 2020

MALATESTA LAW

23
24 BY: Andrew Malatesta
25 ANDREW J. MALATESTA, ESQ.
26 Attorneys for Plaintiff CHARLES NOE, on behalf of
27 himself and all other aggrieved employees
28