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SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 39, FOR ALL
PURPOSES.

PAULA DURAN, ELIZABETH RAMIREZ, and
ESTHER RODRIGUEZ, on behalf of themselves
and other aggrieved employees,

Plaintiffs,

v.

RATNAKAR & SONS, a California Company;
RATNAKAR, INC., a California Company;
NIMESH VAKHARIA, an individual; DOES 1
through 10, inclusive,

Defendants.

Case No. **C 20-01172**

CLASS ACTION COMPLAINT:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Failure to Provide Accurate, Itemized Wage Statements
6. Failure to Timely Pay All Final Wages
7. Unfair Competition
8. Violation of the Private Attorneys General Act ("PAGA"), Cal. Labor Code Sections 2698, et seq.

Jury Trial Demanded

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Jury Trial Demanded

1 Plaintiff PAULA DURAN, ELIZABETH RAMIREZ, and ESTHER RODRIGUEZ
2 (“Plaintiffs”), on behalf of themselves and all other persons similarly situated, and as aggrieved
3 employees under the Labor Code Private Attorneys General Act of 2004, California Labor Code
4 section 2698, et seq. (“PAGA”), allege and complain as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this class and representative action against Defendants RATNAKAR
7 & SONS and RATNAKAR, INC., dba “FIVE STAR CLEANERS,” “FIVE STAR TEXTILE
8 RESTORATION,” and “GREAT AMERICAN DRY CLEANERS & ALTERATIONS”; NIMESH
9 VAKHARIA; and DOES 1 through 10 inclusive (collectively, “Defendants”), for alleged violations
10 of the California Labor Code, Industrial Welfare Commission Wage Order No. 6-2001 (“IWC Wage
11 Order No. 6-2001”), and the Business and Professions Code. As set forth below, Plaintiffs allege that
12 Defendants have:

- 13 i. Failed to provide them and all other similarly situated individuals with overtime
14 and double time wages at the correct rate;
- 15 ii. Failed to pay them at least minimum wage for all hours worked;
- 16 iii. Failed to provide them with compliant meal periods;
- 17 iv. Failed to provide them with compliant rest periods;
- 18 v. Failed to pay them premium wages for missed meal and/or rest periods;
- 19 vi. Failed to provide them with accurate, itemized wage statements;
- 20 vii. Failed to timely pay them all final wages following separation of employment;
- 21 viii. Failed to timely pay them wages during their employment; and
- 22 ix. Failed to maintain required records.

23 2. Based on these alleged Labor Code violations, Plaintiffs now bring this class and
24 representative action to recover unpaid wages, penalties, restitution and other related relief on behalf
25 of themselves and all others similarly situated.

26 **JURISDICTION AND VENUE**

27 3. This Court has original jurisdiction over this action pursuant to California Constitution,
28 Article VI, Section 10, which grants the Superior Court of California “original jurisdiction in all other

causes” except those causes given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. This Court has jurisdiction over all Defendants in this action because each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because Plaintiffs’ claims arise under and are based solely on California law.

5. Venue is proper in the County of Contra Costa pursuant to California Code of Civil Procedure section 395.5. Plaintiffs are/were employed and perform/performed work for Defendants in the County of Contra Costa, California, during the time period relevant to this action. Moreover, Defendants maintain offices and facilities and transact business in the County of Contra Costa, and Defendants’ illegal policies and practices which are the subject of this action were applied, at least in part, in the County of Contra Costa.

6. California Labor Code sections 2698 et seq., the “Labor Code Private Attorneys General Act of 2004,” authorize aggrieved employees to sue as private attorney generals their current or former employers for various civil penalties for violations of numerous provisions of the California Labor Code.

PARTIES

7. Plaintiffs PAULA DURAN, ELIZABETH RAMIREZ, and ESTHER RODRIGUEZ, are, and at all relevant times mentioned herein, individuals residing in the State of California.

8. Plaintiffs are informed and believe and thereon allege that Defendant RATNAKAR & SONS was and is, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged in this County and the State of California.

9. Plaintiffs are informed and believe and thereon allege that Defendant RATNAKAR, INC. was and is, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged in this County and the State of California.

10. Plaintiffs are informed and believe and thereon allege that Defendant NIMESH VAKHARIA was and is, an individual residing in the State of California, and at all times hereinafter

mentioned, an employer whose employees are engaged in this County and the State of California. Notably, NIMESH VAKHARIA's name recurrently appeared in Plaintiffs' wage statements.

11. Plaintiffs are informed and believe and thereon allege that Defendants RATNAKAR & SONS, RATNAKAR, INC. and NIMESH VAKHARIA currently operate under the following fictitious business names: "FIVE STAR CLEANERS," "FIVE STAR TEXTILE RESTORATION," and "GREAT AMERICAN DRY CLEANERS & ALTERATIONS."

12. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names, DOES 1 through 10, inclusive, and therefore sue said Defendants under such fictitious names. Once Plaintiffs ascertain the true names and capacities of these DOE Defendants, Plaintiffs will seek leave of court to file an amended Complaint and serve such fictitiously named Defendants.

13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of RATNAKAR & SONS and RATNAKAR, INC., at all relevant times.

14. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, RATNAKAR & SONS, RATNAKAR, INC., NIMESH VAKHARIA, and/or DOES 1 through 10, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

1 17. Under California law, Defendants are jointly and severally liable as employers for the
2 violations alleged herein because they have each exercised sufficient control over the wages, hours,
3 working conditions, and employment status of Plaintiffs and all other similarly situated employees.
4 Each Defendant had the power to hire and fire Plaintiffs and all other similarly situated employees,
5 supervised and controlled their work schedule and/or conditions of employment, determined their rate
6 of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and all
7 other similarly situated employees to work and/or “engaged” them so as to create a common-law
8 employment relationship. As joint employers of Plaintiffs and all other similarly situated employees,
9 Defendants are jointly and severally liable for the civil penalties available under the law.

10 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
11 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and all other
12 similarly situated employees because Defendants have:

- 13 i. Jointly exercised meaningful control over the work performed by Plaintiffs and
14 all other similarly situated employees;
- 15 ii. Jointly exercised meaningful control over Plaintiffs and all other similarly
16 situated employees’ wages, hours, and working conditions, including the
17 quantity, quality standards, speed, scheduling, and operative details of the tasks
18 performed;
- 19 iii. Jointly required that Plaintiffs and all other similarly situated employees
20 perform work which is integral to Defendants’ businesses; and
- 21 iv. Jointly exercised control over Plaintiffs and all other similarly situated
22 employees as a matter of economic reality in that Plaintiffs and all other
23 similarly situated employees were dependent on Defendants, who shared the
24 power to set their wages and determined their working conditions, and who
25 jointly reaped the benefits from the underpayment of their wages and
26 noncompliance with other statutory provisions governing their employment.

27 19. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there
28 has existed a unity of interest and ownership between Defendants such that any individuality and

separateness between the entities has ceased.

20. RATNAKAR & SONS, RATNAKAR, INC., NIMESH VAKHARIA and DOES 1 through 10 are therefore alter egos of each other.

21. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them jointly.

22. At all times relevant to this action, Defendants were subject to IWC Wage Order No. 6-2001 because their employees worked in the County of Contra Costa and throughout the State of California.

CLASS ALLEGATIONS

23. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below. Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class action.

24. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

25. **Class Definitions:**

i. Overtime Class: All of Defendants' current and former non-exempt employees in California who worked more than eight hours per day and/or forty hours per week and were subjected to Defendants' timekeeping policies and practices, during the Relevant Time Period.

ii. Minimum Wage Class: All of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, during the Relevant Time Period.

iii. Meal Period Class: All of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of five (5.0) hours during the Relevant Time Period.

iv. Rest Period Class: All of Defendants' current and former non-exempt

employees in California who worked at least one shift in excess of three and one-half (3.5) hours during the Relevant Time Period.

v. Wage Statement Penalty Class: All of Defendants' current and former non-exempt employees in California who received a wage statement from Defendants, during the period beginning one year before the filing of this action and ending when final judgment is entered.

vi. Waiting Time Penalty Class: All of Defendants' non-exempt employees in California who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

vii. UCL Class: All members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Penalty Class; and (vi) Waiting Time Penalty Class.

26. Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the Class Definitions with greater specificity, by further division into sub-classes and/or by limitations to particular issues.

27. Members of the Classes described above will be collectively referred to as "Class Members" in this Complaint.

28. **Numerosity**: The Class Members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs are informed and believe, and thereupon allege that the actual number exceeds the minimum required for numerosity under California law.

29. **Commonality and Predominance**: Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These common questions include, but are not limited to:

i. Whether Defendants failed to pay minimum and/or overtime wages to employees for all time worked;

ii. Whether Defendants maintained a policy or practice of failing to provide

- 1 employees with legally compliant meal periods;
- 2 iii. Whether Defendants maintained a policy or practice of failing to provide
- 3 employees with legally compliant rest periods;
- 4 iv. Whether Defendants failed to pay premium wages to employees when they have
- 5 not been provided with required meal and/or rest periods;
- 6 v. Whether Defendants failed to pay minimum and/or overtime wages to class
- 7 members as a result of policies that fail to provide meal periods in accordance
- 8 with California law;
- 9 vi. Whether Defendants failed to provided accurate, itemized wage statements to
- 10 employees as required by California law;
- 11 vii. Whether Defendants' policies and/or practices for the timing and amount of
- 12 payment of final wages to members of the Waiting Time Penalty Class at the
- 13 time of their separation of employment were lawful;
- 14 viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
- 15 business practices by and through the wage and hour policies and practices
- 16 described above, and whether as a result Defendants owe the UCL Class
- 17 restitution.

18 30. **Typicality**: Plaintiffs' claims are typical of the claims of other Class Members.

19 Plaintiffs are informed and believe and thereupon allege that Defendants have a policy or practice of

20 failing to comply with the Labor Code, IWC Wage Order No. 6-2001 and the Business and Professions

21 Code as alleged in this Complaint.

22 31. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of each Class

23 Member, with whom they have a well-defined community of interest and typicality of claims.

24 Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the

25 proposed class counsel, are versed in the rules governing class action discovery, certification, and

26 settlement. Plaintiffs have incurred and will continue to incur during the pendency of this Complaint,

27 costs and attorneys' fees that have been, are, and will necessarily be expended for the prosecution of

28 this Complaint for the substantial benefit of each Class Member.

32. **Superiority:** The Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and Class Members make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class Member to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

GENERAL ALLEGATIONS

33. Defendants own and operate a chain of dry-cleaning, alteration and textile restoration business locations in Northern California. These businesses serve walk-in customers as well as various commercial motel and hotel clients throughout the area.

34. Plaintiff PAULA DURAN worked for Defendants as a non-exempt, hourly-paid Laundry Assistant and Assistant Manager from May 2000 to approximately September 2016. Plaintiff

1 Duran worked for Defendants at their San Pablo dry-cleaning facility located at 2145 Rumrill
2 Boulevard, San Pablo, California 94806. Plaintiff Duran regularly worked more than eight (8) hours
3 per day and more than forty (40) hours per week. Plaintiff Duran's job duties included ironing and
4 pressing shirts, assisting with processing of laundry, and other related dry-cleaning duties. As an
5 Assistant Manager, Plaintiff Duran was also in charge of quality control and together with
6 management, was responsible for ensuring that hourly employees met production demand quotas.
7 This included forcing employees to work rapidly at the request of management to ensure that one
8 thousand five hundred to two thousand (1,500-2,000) laundry and dry-cleaning items were completed
9 by workers each day.

10 35. Plaintiff ELIZABETH RAMIREZ worked for Defendants as a non-exempt, hourly-
11 paid Laundry Assistant from approximately June 2013 to March 30, 2018. Plaintiff Ramirez also
12 worked for Defendants at their San Pablo dry-cleaning facility located at 2145 Rumrill Boulevard, San
13 Pablo, California 94806. Plaintiff Ramirez regularly worked more than eight (8) hours per day and
14 more than forty (40) hours per week. Plaintiff Ramirez's job duties similarly included ironing and
15 pressing shirts, assisting with processing of laundry, and other related dry-cleaning duties.

16 36. Plaintiff ESTHER RODRIGUEZ presently works for Defendants as a non-exempt,
17 hourly-paid Laundry Assistant. She has worked for Defendants from approximately October 2014 to
18 the present. Plaintiff Rodriguez works for Defendants at their San Pablo dry-cleaning facility located
19 at 2145 Rumrill Boulevard, San Pablo, California 94806. Plaintiff Rodriguez regularly works more
20 than eight (8) hours per day and more than forty (40) hours per week. Plaintiff Rodriguez's job duties
21 similarly include ironing and pressing shirts, assisting with processing of laundry, and other related
22 dry-cleaning duties.

23 37. Upon information and belief, Defendants maintain a single, centralized Human
24 Resources ("HR") department at their corporate headquarters in San Pablo, California, which is
25 responsible for recruiting and hiring of new employees, and communicating and implementing
26 Defendants' company-wide policies, including timekeeping policies and meal and rest period policies
27 to employees throughout Northern California.

28 38. In particular and based on information and belief, Plaintiffs and other Class Members

1 received the same standardized documents and/or written policies. Upon information and belief, the
2 usage of standardized documents and/or written policies including new-hire documents, indicate that
3 Defendants dictated policies at the corporate level and implemented them company-wide, regardless
4 of their employees' assigned locations or positions. Upon information and belief, Defendants set forth
5 uniform policies and procedures in several documents provided at an employee's time of hire.

6 39. On information and belief, all transactions regarding hiring, terminations, promotions,
7 and pay increases etc., relating to Defendants' California employees were submitted to and processed
8 by Defendants' HR department in San Pablo, California. Additionally, on information and belief,
9 Defendants' corporate records, business records, data, and other information related to Defendants,
10 including, in particular, HR records pertaining to Defendants' California employees, are also
11 maintained at Defendants' corporate headquarters in San Pablo, California.

12 40. Upon information and belief, Defendants maintain a centralized Payroll department at
13 its corporate headquarters, which processes payroll for all non-exempt, hourly paid employees
14 working for Defendants at their various locations in California, including Plaintiffs and other Class
15 Members. Based upon information and belief, Defendants issued the same formatted wage statements
16 to all non-exempt employees in California, irrespective of their work location. Upon information and
17 belief, Defendants process payroll for departing employees in the same manner throughout the State
18 of California, regardless of the manner in which each employee's employment ends.

19 41. Defendants continue to employ non-exempt, hourly paid employees within California.

20 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
22 advisors knowledgeable about California labor and wage law, employment and personnel practices,
23 and about the requirements of California law.

24 **Failure to Overtime Wages**

25 43. First, Defendants had, and continue to have, a company-wide policy and/or practice of
26 not paying appropriate overtime anytime Plaintiffs and Class Members worked more than eight (8)
27 hours in one day or more than forty (40) hours in one week. For example, Plaintiffs' paystubs show
28 they regularly worked more than eighty (80) hours every two weeks and were not paid at the overtime

1 rate for all hours they worked over forty (40) hours per week or all hours they worked over eight (8)
2 hours a day. Defendants instead paid Plaintiffs and Class Members their regular rate for hours which
3 should have been paid at an overtime premium.

4 44. Second, Defendants consistently understaff their locations to maximize profits. This
5 practice has resulted in chronic understaffing, such that there are too few employees on duty to handle
6 the workload and provide uninterrupted meal period coverage. Thus, Class Members were not
7 provided adequate meal period coverage to allow them to be relieved of their duties for compliant
8 meal periods. Indeed, Plaintiffs and Class Members were often interrupted and forced to work during
9 their respective meal periods – forcing them to work without pay. Additionally, given that the
10 employee break room was located at the furthest end of the back of the dry-cleaning warehouse and
11 the only time clock was at the front of the large warehouse, Plaintiffs and Class Members regularly
12 had their meal periods cut short while they walked to and from the breakroom and waited in line to
13 clock in and out. The single time clock was located on a computer which also was used to service
14 walk-in customers, forcing Plaintiffs and Class Members to wait to use it to clock in and out when
15 there were customers present. As a result, Plaintiffs and Class Members missed meal periods and/or
16 had their meal periods cut short but were not compensated for this time.

17 45. Third, Defendants did not pay Plaintiffs and Class Members the correct overtime rate
18 for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants
19 regularly paid Plaintiffs and Class Members nondiscretionary bonuses and/or incentive pay for
20 finishing a certain number of laundry and dry-cleaning pieces each day. However, in violation of the
21 Labor Code, Defendants failed to incorporate all remunerations, including nondiscretionary bonuses
22 and/or incentive pay, into the calculation of the regular rate of pay for purposes of calculating the
23 overtime wage rate. Therefore, during times when Plaintiffs and Class Members worked overtime
24 and received nondiscretionary bonuses and/or incentive pay, Defendants failed to pay all overtime
25 wages by paying a lower overtime rate than required by law.

26 46. Specifically, Defendants paid Plaintiffs and Class Members bonus pay, denoted on their
27 paystubs as “Bonus.” In the same pay periods in which nondiscretionary bonuses and/or incentive
28 pay were earned, Plaintiffs, and on information and belief Class Members, also worked overtime hours

1 for which they were paid overtime wages. However, Defendants failed to incorporate these other
2 earned forms of pay into Plaintiffs' and Class Members' regular rate of pay and, as a result, paid them
3 at an incorrect and lower rate of pay for overtime hours worked. Specifically, Defendants paid them
4 at 1.5 times their hourly rate of pay instead of at 1.5 times their regular rate of pay. Defendants' failure
5 to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an
6 underpayment of overtime wages to Plaintiffs and Class Members.

7 **Failure to Pay Minimum Wages**

8 47. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and Class
9 Members were not paid for all hours worked because all hours worked were not recorded. As stated
10 above, due to Defendants' company-wide understaffing practices and resultant lack of meal period
11 coverage, Class Members were forced to forego meal periods and/or had their meal periods interrupted
12 by work. This practice was further compounded by the fact that there was a single time clock at the
13 front of the warehouse which was on a computer that was also used to service walk-in customers and
14 employees had to wait in line to clock in at the beginning of their shifts – time which was not
15 compensated by Defendants.

16 48. Additionally, employees' meal breaks were regularly cut short while they waited in
17 line to clock back in from their meal periods and for the time it took them to walk from the back-end
18 breakroom to the only time clock located at the front end of the large warehouse – time which was not
19 compensated. As stated above, the single time clock was located on a computer which also was used
20 to service walk-in customers, forcing Plaintiffs and Class Members to wait to use it to clock in and out
21 when there were customers present.

22 49. Defendants did not pay minimum wages for meal periods and other off-the-clock hours
23 that Plaintiffs and Class Members worked through that qualified for overtime premium payment. To
24 the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants
25 did not pay at least minimum wages for those hours worked off-the-clock in violation of the Labor
26 Code. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs and Class
27 Members for all the hours they worked.

Failure to Provide Compliant Meal Periods

50. As stated, Defendants have, and continue to have, a company-wide policy and/or practice of understaffing locations which resulted in a lack of meal period coverage and prevented Plaintiffs and Class Members from taking all timely, uninterrupted meal periods to which they were entitled. As a result of Defendants' practices and/or policies and the layout of its breakrooms and limited time clocks, Plaintiffs and Class Members had to: 1) work through part or all of their meal periods; 2) had their meal periods cut short waiting in line to clock back in to work – especially when walk-in customers were being serviced on the Company's computer; 3) had their meal periods interrupted by management; and/or 4) waited extended periods of time before taking meal periods.

51. Additionally, Defendants did not provide Plaintiffs and Class Members with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Based on information and belief, Plaintiffs and other Class Members did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

52. Defendants knew or should have known that as a result of their policies, including understaffing, breakroom layout, limited time clocks and failure to provide second meal periods, that Plaintiffs and Class Members were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiffs and Class Members meal period premium wages when they were missed, late, short, and/or interrupted.

53. Defendants also have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiffs and Class Members have not received premium pay for missed meal periods. Accordingly, Defendants failed to provide all meal periods in violation of the Labor Code.

Failure to Provide Compliant Rest Periods

54. As with meal periods, Defendants' company-wide policy and practice of understaffing and resulting lack of break coverage prevented Plaintiffs and Class Members from being relieved of all duty to take compliant rest periods. This practice was further compounded by the fact that Defendants did not have a compliant rest period policy during the relevant time period. Specifically, Defendants' Employee Handbook provided that if employees worked during their rest periods, they

1 would not be paid additional compensation in strict violation of the Labor Code. Plaintiffs and other
2 Class Members were regularly deprived of compliant rest periods and were not provided with
3 additional compensation when forced to work during their rest breaks.

4 55. As a result of Defendants' practices and policies, Plaintiffs and other Class Members
5 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
6 receiving all uninterrupted 10 minute rest periods to which they were entitled. For example,
7 throughout their employment, Plaintiffs were frequently not permitted to take full and complete ten
8 (10) minute rest periods, and instead would miss their rest periods or have their rest periods interrupted
9 to meet the warehouse's and management's demands.

10 56. Defendants also have engaged in a company-wide practice and/or policy of not paying
11 all rest period premiums owed when compliant rest periods are not provided. Because of this practice
12 and/or policy, Plaintiffs and other Class Members have not received premium pay for all missed rest
13 periods. Accordingly, Defendants failed to authorize and permit all rest periods in violation of the
14 Labor Code.

15 **Failure to Provide Compliant Wage Statements**

16 57. Plaintiffs and the other Class Members were not provided with accurate wage
17 statements as required by law pursuant to Labor Code section 226.

18 58. Defendants have knowingly and intentionally provided Plaintiffs and the other Class
19 Members with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants
20 violated sections 226, subdivision (a)(1), 226, subdivision (a)(2), 226, subdivision (a)(5), and 226,
21 subdivision (a)(9). Defendants deducted time worked from Class Members' wage statements and
22 employment records for meal periods that were interrupted or missed (and therefore time for which
23 they should have been paid), and did not record time Plaintiffs and Class Members spent working off
24 the clock, the result of which was an unlawful deduction of wages earned and meal period premiums
25 that should have been paid. Thus, Defendants did not furnish wage statements to Plaintiffs and the
26 other Class Members containing accurate totals of the hours worked (Lab. Code, § 226 subd. (a)(2)),
27 number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)), net wages earned (Lab.
28 Code, § 226, subd. (a)(5)) and gross wages earned (Lab. Code, § 226, subd. (a)(1)).

1 59. Because Defendants did not calculate Plaintiffs' and other Class Members' regular rate
2 of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of gross
3 wages in compliance with section 226, subdivision (a)(1). For the same reason, Defendants also failed
4 to list the correct amount of net wages in violation of section 226, subdivision (a)(5). Further,
5 Defendants failed to list the correct amount of net wages earned by Plaintiffs and Class Members in
6 violation of section 226, subdivision (a)(5). Defendants also failed to correctly list all applicable
7 hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of
8 section 226, subdivision (a)(9). The wage statement deficiencies also include, among other things:
9 failing to list the name and address of the legal entity that is the employer; and/or failing to state all
10 hours worked as a result of not recording or stating the hours they worked off-the-clock.

11 60. Because Defendants failed to provide the accurate number of total hours worked on
12 wage statements, Plaintiffs and Class Members have been prevented from verifying, solely from
13 information on the wage statements themselves, that they were paid correctly and in full. Instead,
14 Plaintiffs and Class Members have had to look to sources outside of the wage statements themselves
15 and reconstruct time records to determine whether in fact they were paid correctly and the extent of
16 underpayment, thereby causing them injury.

17 **Failure to Timely Pay All Final Wages Upon Separation**

18 61. On information and belief, Defendants have a company-wide practice or policy of not
19 paying departing employees their final wages on their last day of employment or within seventy-two
20 (72) hours of resigning without prior notice, instead of abiding by the time requirements required by
21 Labor Code sections 201 and 202. Thus, Defendants failed to timely pay Plaintiffs' and Class
22 Members' owed wages within the required time limit, in violation of Labor Code section 201.

23 62. Additionally, Defendants willfully failed to pay Plaintiffs and Class Members who are
24 no longer employed by Defendants all their earned wages, including, but not limited to, overtime
25 wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or
26 within seventy-two (72) hours of their leaving Defendants' employ in violation of California Labor
27 Code sections 201, 202, and 203.

1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, IWC Wage Order No. 6-2001, § 3]**

4 **(Against All Defendants and DOES 1-10)**

5 63. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 64. This cause of action is brought pursuant to Labor Code sections 204, 510, 558, 1194
7 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
8 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right
9 of action for the failure to pay all overtime compensation for overtime work performed.

10 65. At all times relevant herein, Defendants were required to properly compensate
11 Plaintiffs and the members of the Overtime Class for all overtime hours worked pursuant to California
12 Labor Code sections 510 and 1194, and IWC Wage Order No. 6. Labor Code section 510 and IWC
13 Wage Order No. 6, Section 3 require an employer to pay “one and one-half (1½) times the employee’s
14 regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per
15 workweek. Labor Code section 510 and IWC Wage Order No. 6, Section 3 also require an employer
16 to pay an employee double the employee’s regular rate for work in excess of 12 hours each workday
17 and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants
18 caused Plaintiffs and the members of the Overtime Class to work in excess of 8 hours in a workday
19 and/or 40 hours in a workweek but did not properly compensate Plaintiffs and the members of the
20 Overtime Class at one and one-half or double their regular rate of pay for such hours.

21 66. The foregoing practices and policies are unlawful and create entitlement to recovery by
22 Plaintiffs and the members of the Overtime Class in a civil action for the unpaid amount of overtime
23 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’
24 fees and costs of suit, pursuant to Labor Code sections 204, 218.5, 218.6, 510, 558, 1194 and 1198,
25 IWC Wage Order No. 6, California Code of Civil Procedure section 1021.5, and Civil Code sections
26 3287(b) and 3289.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 **[Cal. Labor Code §§ 204, 558, 1194, 1198; IWC Wage Order No. 6-2001, § 4]**

4 **(Against All Defendants and DOES 1-10)**

5 67. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 68. This cause of action is brought pursuant to Labor Code sections 204, 558, 1194 and
7 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours
8 worked, and provide a private right of action for the failure to pay all minimum wage compensation for
9 all work performed.

10 69. At all times relevant herein, Defendants were required to properly compensate
11 Plaintiffs and the members of the Minimum Wage Class for all hours worked pursuant to Labor Code
12 sections 1194, 1197 and 1198, and IWC Wage Order No. 6. IWC Wage Order No. 6, Section 4 requires
13 an employer to pay to every employee on the established payday for the period involved not less than
14 the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiffs
15 and the members of the Minimum Wage Class to work hours in a workweek but did not properly
16 compensate Plaintiffs and the members of the Minimum Wage Class with at least minimum wages for
17 such hours.

18 70. At all times relevant herein, Defendants lacked good faith and had no reasonable
19 grounds for believing that their practices in failing to pay all minimum wages owed at the applicable
20 rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of
21 the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to
22 Plaintiffs and the members of the Minimum Wage Class, also owe liquidated damages in an amount
23 equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code section 1194.2.

24 71. The foregoing practices and policies are unlawful and create entitlement to recovery by
25 Plaintiffs and the members of the Minimum Wage Class in a civil action for the unpaid amount of
26 minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,
27 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code sections 204, 218.5, 218.6,
28 558, 1194, 1194.2, 1197, 1197.1 and 1198, IWC Wage Order No. 6, California Code of Civil Procedure

1 section 1021.5, and Civil Code sections 3287(b) and 3289.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Provide Meal Periods**

4 **[Cal. Labor Code §§ 226.7 and 512 subd. (a); IWC Wage Order No. 6-2001, § 11]**

5 **(Against All Defendants and DOES 1-10)**

6 72. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 73. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in
8 their affirmative obligation to provide all of their non-exempt employees in California, including
9 Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance
10 with the mandates of the Labor Code and IWC Wage Order No. 6, section 11. Despite Defendants'
11 violations, Defendants did not pay an additional hour of pay to Plaintiffs and members of the Meal
12 Period Class at their respective regular rates of pay, in accordance with Labor Code sections 204,
13 226.7, and 512.

14 74. As a result, Defendants are responsible for paying premium compensation for meal
15 period violations pursuant to Labor Code sections 226.7, 512, and IWC Wage Order No. 6, including
16 interest thereon, statutory penalties, civil penalties, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Provide Rest Periods**

19 **[Cal. Labor Code §§ 226.7; IWC Wage Order No. 6-2001, § 12]**

20 **(Against All Defendants and DOES 1-10)**

21 75. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 76. IWC Wage Order No. 6, section 12 and Labor Code sections 226.7 and 516 establish
23 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
24 minutes net rest time for each four (4) hour period worked, *or major fraction thereof*.

25 77. As alleged herein, Defendants failed to authorize and permit Plaintiffs and members of
26 the Rest Period Class to take all required rest periods.

27 78. The foregoing violations create an entitlement to recovery by Plaintiffs and members
28 of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing,

1 including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to
2 Labor Code sections 226.7, 516, IWC Wage Order No. 6, California Code of Civil Procedure section
3 1021.5, and Civil Code sections 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Provide Accurate, Itemized Wage Statements**

6 **[Cal. Labor Code § 226; IWC Wage Order No. 6-2001, § 7]**

7 **(Against All Defendants and DOES 1-10)**

8 79. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

9 80. Labor Code section 226, subdivision (a), provides that every employer, like
10 Defendants, must provide each of their employees, like Plaintiffs and Class Members, with an accurate
11 itemized wage statement in writing detailing the following information: (1) gross wages earned; (2)
12 total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece
13 rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all a deductions
14 made on written orders of the employee may be aggregated and shown as one item; (5) net wages
15 earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the
16 employee and his or her social security number, except that by January 1, 2008, only the last four
17 digits of his or her social security number or an employee identification number other than a social
18 security number may be shown on the itemized statement; (8) the name and address of the legal entity
19 that is the employer; and (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 81. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs and
23 members of the Wage Statement Penalty Class with complete and accurate wage statements with
24 respect to their actual regular and overtime hours worked, total gross wages earned, total net wages
25 earned, and hourly rates of pay, in violation of Labor Code section 226 et seq.

26 82. Defendants' failures in furnishing Plaintiffs and members of the Wage Statement
27 Penalty Class with complete and accurate itemized wage statements resulted in actual injury, as said
28 failures led to, among other things, the non-payment of all earned overtime and minimum wages, and

1 deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

2 83. Defendants' failures create an entitlement to recovery by Plaintiffs and members of the
3 Wage Statement Penalty Class in a civil action for all damages and/or penalties pursuant to Labor
4 Code section 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and
5 costs of suit according to Labor Code section 226 et seq.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Pay All Wages Upon Separation of Employment**

8 **[Cal. Labor Code §§ 201, 202, 203]**

9 **(Against All Defendants and DOES 1-10)**

10 84. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

11 85. This cause of action is brought pursuant to Labor Code sections 201-203, which require
12 an employer to pay all wages immediately at the time of separation of employment in the event the
13 employer discharges the employee or the employee provides at least 72 hours of notice of their intent
14 to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said
15 employee's wages become due and payable not later than 72 hours upon said employee's last date of
16 employment.

17 86. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to
18 timely pay Plaintiffs and members of the Waiting Time Penalty Class all final wages due to them at
19 their separation from employment, including, unpaid minimum wages and overtime wages.

20 87. Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter
21 of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members of the
22 Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant
23 to the requirements of Labor Code sections 201-203.

24 88. Defendants' failure to pay all final wages was willful within the meaning of Labor Code
25 section 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting Time
26 Penalty Class their earned wages upon separation from employment results in a continued payment of
27 wages up to thirty days from the time the wages were due. Therefore, Plaintiffs and members of the
28 Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code section 203, plus

1 reasonable attorneys' fees and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **[Cal. Business & Professions Code, §§ 17200, et seq.]**

5 **(Against All Defendants and DOES 1-10)**

6 89. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 90. Defendants have engaged and continue to engage in unfair and/or unlawful business
8 practices in California in violation of California Business and Professions Code section 17200 et seq.,
9 by failing to properly pay all minimum and overtime wages, provide all required meal and rest periods,
10 or pay premium payments in lieu thereof.

11 91. Defendants' utilization of these unfair and/or unlawful business practices deprived
12 Plaintiffs and continues to deprive members of the **UCL Class** of compensation to which they are
13 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
14 Defendants' competitors who have been and/or are currently employing workers and attempting to do
15 so in honest compliance with applicable wage and hour laws.

16 92. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
17 herein, Plaintiffs for themselves and on behalf of the members of the **UCL Class**, seek full restitution
18 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
19 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

20 93. The acts complained of herein occurred within the last four years immediately
21 preceding the filing of the lawsuit in this action.

22 94. Plaintiffs were compelled to retain the services of counsel to file this court action to
23 protect their interests and those of the **UCL Class**, to obtain restitution and injunctive relief on behalf
24 of Defendants' current non-exempt employees, and to enforce important rights affecting the public
25 interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they
26 are entitled to recover under Code of Civil Procedure section 1021.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of the Private Attorneys General Act of 2004 ("PAGA")**

3 **[Cal. Lab. Code, §§ 2698, et seq.]**

4 **(Against All Defendants and DOES 1-10)**

5 95. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 96. Defendants have committed several Labor Code violations against Plaintiffs, Class
7 Members, and other aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of
8 Labor Code § 2698 et seq., acting on behalf of themselves and other aggrieved employees, bring this
9 representative action against Defendants to recover the civil penalties due to Plaintiffs, the Class
10 Members, other aggrieved employees, and the State of California according to proof pursuant to Labor
11 Code sections 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial
12 violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful
13 or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee,
14 plus 25% of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for
15 each subsequent violation pursuant to Labor Code section 1197.1; (3) \$250.00 for each initial violation
16 and \$1,000.00 for each subsequent violation pursuant to Labor Code section 226.3 per employee per
17 pay period; (4) \$50.00 for each initial violation for each underpaid employee for each pay period for
18 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages
19 and \$100.00 for each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages pursuant to Labor Code section 558;
21 (5) \$500 for failure to maintain accurate and complete records required by Labor Code section 1174;
22 and/or (6) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee
23 per pay period for those violations of the Labor Code for which no civil penalty is specifically
24 provided, based on the following Labor Code violations:

25 i. Defendants violated Labor Code sections 204, 510, 558, 1194, and 1198 by
26 failing to pay Plaintiffs and other aggrieved employees all overtime
27 compensation earned;

28 ii. Defendants violated Labor Code sections 1194, 1194.2, and 1197 by failing to

1 pay Plaintiffs and other aggrieved employees the statutory minimum wage for
2 all hours worked;

3 iii. Defendants violated Labor Code sections 226.7, 512, 516, and 558 by failing to
4 authorize and permit all legally required meal and rest periods and failing to
5 pay meal and rest period premiums to Plaintiffs and other aggrieved employees;

6 iv. Defendants violated Labor Code section 226 by failing to furnish Plaintiffs and
7 other aggrieved employees with accurate and compliant itemized wage
8 statements;

9 v. Defendants violated Labor Code section 204 by failing to pay Plaintiffs and
10 other aggrieved employees all earned wages at least twice during each calendar
11 month;

12 vi. Defendants violated Labor Code section 1174 by failing to maintain accurate
13 records on behalf of Plaintiffs and other aggrieved employees; and

14 vii. Defendants violated Labor Code sections 201, 202 and 203 by failing to timely
15 pay all final wages due to Plaintiffs and other aggrieved employees.

16 97. On March 18, 2020, counsel for Plaintiffs notified Defendants via certified mail, and
17 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
18 Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil
19 penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor
20 Code. A true and correct copy of Plaintiffs’ letter is attached hereto as **Exhibit 1**. Now that at least
21 sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations,
22 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs have
23 exhausted their administrative requirements for bringing a claim under the Private Attorneys General
24 Act with respect to these violations.

25 **PRAYER FOR RELIEF**

26 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is
27 brought against Defendants, jointly and severally, as follows:

28 1. For an order that the action be certified as a class action;

2. For an order appointing Plaintiffs as representatives of the classes;
3. For appointment of Macias Rodriguez LLP as class counsel for all purposes;
4. An award of compensatory damages, including but not limited to, lost and unpaid wages;
5. An award of statutory penalties provided by law, including but not limited to those in California Labor Code sections 203 and 226(e);
6. An award of unpaid premium wages pursuant to California Labor Code 226.7(c);
7. An award of liquidated damages pursuant to California Labor Code section 1194.2, in an equal amount to the unpaid minimum wages;
8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair business practices within the meaning of the California Business and Professions Code, and declaring Defendants have unlawfully treated Plaintiffs and Class Members by failing to pay all wages in violation of California law, failing to provide meal and rest periods or compensation in lieu thereof, failing to provide accurate itemized wage statements, and failing to provide wages due at termination.
9. Restitution to Plaintiffs and members of the UCL Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code section 17200 et seq.;
10. Disgorgement of profits and all other appropriate equitable relief authorized by California Business and Professions Code section 17200 et seq;
11. For an award of civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code sections 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code section 1197.1; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; (4) \$50.00 for each initial violation for each underpaid employee for each pay period for which the employee was underpaid in

1 addition to an amount sufficient to recover underpaid wages and \$100.00 for each underpaid employee
2 for each pay period for which the employee was underpaid in addition to an amount sufficient to
3 recover underpaid wages pursuant to Labor Code section 558; (5) \$500 for failure to maintain accurate
4 and complete records required by Labor Code section 1174; and/or (6) \$100.00 for each initial
5 violation and \$200.00 for each subsequent violation per employee per pay period for those violations
6 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
7 violations cited above;

8 12. Attorneys' fees and litigation expenses as provided by Labor Code section 218.5,
9 226(h), 1194(a), and Code of Civil Procedure section 1021.5 and all other applicable statutes;

10 13. Pre-judgment and post-judgment interest on all sums awarded;

11 14. Costs of suit; and

12 15. For such other and further relief the Court may deem just and proper.

13 **REQUEST FOR A JURY TRIAL**

14 Plaintiffs hereby demand a jury trial on all causes of action and claims so triable.

15
16 Dated: June 26, 2020



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19 JOSE MACIAS, JR.
20 HECTOR RODRIGUEZ
21 TRAVIS M. ADAMS
22 **MACIAS RODRIGUEZ LLP**
23 Attorneys for Plaintiffs
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EXHIBIT 1
NOTICE OF PAGA VIOLATIONS



Macías Rodríguez LLP
— ATTORNEYS AT LAW —

March 18, 2020

VIA ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA CERTIFIED MAIL

Ratnakar & Sons
Nimesh Vakharia
2145 Rumrill Blvd., Ste B
San Pablo, CA 94806

Ratnakar, Inc.
Nimesh Rajendra Vakharia
215 El Cerrito Plaza
El Cerrito, CA 94530

Five Star Cleaners
2145 Rumrill Blvd., San Pablo, CA 94806

Five Star Textile Restoration
2145 Rumrill Blvd.
San Pablo, CA 94806

Great American Dry Cleaners & Alterations
215 El Cerrito Plaza
El Cerrito CA 95430

**Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO THE PRIVATE
ATTORNEY GENERAL ACT (LABOR CODE SECTION 2699.3)**

Dear Administrator:

This office represents Esther Rodriguez in connection with her claims under the California Labor Code. Ms. Rodriguez was an employee of Ratnakar & Sons dba Five Star Cleaners (hereinafter, "Five Star").

Ms. Rodriguez intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698 et seq., the Private Attorneys General Act of 2004 ("PAGA"). Ms. Rodriguez seeks relief on behalf of herself, the State of California, and other persons who were employed by Five Star in California as non-exempt, hourly-paid employees and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

Five Star employed Ms. Rodriguez as a non-exempt, hourly-paid Laundry Assistant from approximately October 2014 to the present. Ms. Rodriguez works for Five Star at their San Pablo dry cleaning location located at 2145 Rumrill Blvd, San Pablo, CA 94806. Ms. Rodriguez regularly works more than eight (8) hours per day and more than forty (40 hours) per week. Her job duties include all the following: ironing and pressing shirts, assisting with processing of laundry and other related dry-cleaning duties.

Five Star committed one or more of the following Labor Code violations against Ms. Rodriguez, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699, subdivision (c).

Five Star's Company-Wide and Uniform Payroll and HR Practices

Five Star is a California corporation, with its principal place of business and corporate headquarters located in San Pablo, California. Five Star operates a chain of dry-cleaning locations throughout Northern California. Upon information and belief, Five Star maintains a centralized Human Resources (HR) department at its corporate headquarters in San Pablo, California, which implements uniform, standardized policies and practices affecting all of its non-exempt, hourly-paid employees in California, including Ms. Rodriguez and other aggrieved employees. At all relevant times, Five Star issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Ms. Rodriguez and other aggrieved employees, regardless of their location or position.

Upon information and belief, Five Star maintains a centralized Payroll department at its corporate headquarters in San Pablo, California, which processes payroll for all non-exempt, hourly-paid employees working for Five Star in California, including Ms. Rodriguez and other aggrieved employees. Further, Five Star issues the same uniform and formatted wage statements to all nonexempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee's employment ended. Five Star's centralized Payroll department processed payroll for non-exempt, hourly-paid employees in the same manner throughout California. In other words, Five Star utilized the same methods and formulas when calculating wages due to Ms. Rodriguez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 - Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a workday or more than forty (40) hours in a workweek at the rate of one-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all compensation for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

Five Star willfully failed to pay all overtime wages owed to Ms. Rodriguez and other aggrieved employees. During the relevant time period, Ms. Rodriguez and other aggrieved employees were

not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week.

First, Five Star had, and continues to have, a company-wide policy and/or practice of not paying appropriate overtime anytime Ms. Rodriguez and other aggrieved employees worked more than eight (8) hours in one day or more than forty (40) hours in one week. For example, Ms. Rodriguez' paystubs show she regularly worked more than eighty (80) hours every two weeks and was not paid at the overtime rate for all time she worked over forty (40) a week or all time she worked over eight (8) hours a day.

Second, Five Star consistently understaffs its locations to maximize profits. This practice has resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal break coverage. Thus, other aggrieved employees were not provided adequate meal break coverage to allow them to be relieved of their duties for compliant meal breaks. Indeed, Ms. Rodriguez and other aggrieved employees were often interrupted and forced to work during their respective meal breaks – forcing them to work without pay. Additionally, given that the employee break room was located at the furthest end of the back of the dry-cleaning warehouse and the only time clock was at the front of the large warehouse, Ms. Rodriguez and other aggrieved employees regularly had their meal breaks cut short while they walked to and from the breakroom and waited in line to clock in and out. As a result, Ms. Rodriguez and other aggrieved employees missed meal periods and/or had their meal periods cut short but were not compensated for this time.

Third, on information and belief, Five Star employs certain aggrieved employees who are hourly employees under the Labor Code but whom it pays a set salary per week substantially below the minimum wage and does not pay them overtime. These aggrieved employees are not compensated for overtime when they work over eight (8) hours per day or more than forty (40) hours per week.

Five Star knew or should have known that these company policies – which included not paying overtime and paying overtime hours at the employee's regular hourly rate - were unlawful. Additionally, the Company should have known that as a result of these company-wide practices and/or policies, Ms. Rodriguez and other aggrieved employees were performing assigned duties during their meal periods, and thereby performing work for which they were not paid. Five Star also knew, or should have known, that it did not compensate Ms. Rodriguez and other aggrieved employees for this off-the-clock work. Because Ms. Rodriguez and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work performed during unpaid meal periods qualified for overtime premium pay. Therefore, Ms. Rodriguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. Five Star's failure to pay Ms. Rodriguez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, Five Star did not pay Ms. Rodriguez and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Five Star paid other aggrieved employees' nondiscretionary bonuses and/or incentive pay.

However, in violation of the California Labor Code, Five Star failed to incorporate all remunerations, including nondiscretionary bonuses and/or incentive pay, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Rodriguez and other aggrieved employees worked overtime and received nondiscretionary bonuses and/or incentive pay, Five Star failed to pay all overtime wages by paying a lower overtime rate than required by law.

Specifically, Five Star paid Ms. Rodriguez and other aggrieved employees bonus pay, denoted on their paystubs as "Bonus." On information and belief, in the same pay periods in which nondiscretionary bonuses and/or incentive pay were earned, Ms. Rodriguez and other aggrieved employees also worked overtime hours for which they were paid overtime wages. However, Five Star failed to incorporate these other earned forms of pay into Ms. Rodriguez' and other aggrieved employees' regular rate of pay and, as a result, paid them at an incorrect and lower rate of pay for overtime hours worked. Specifically, Five Star paid them at 1.5 times their hourly rate of pay instead of at 1.5 times their regular rate of pay. Five Star's failure to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Rodriguez and other aggrieved employees.

Ms. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699, subdivisions (a), (f), and (g).

Violation of California Labor Code Sections 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum fixed is unlawful. Compensable work time is defined by the applicable Wage Order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

As stated above, due to Five Star's company-wide understaffing practices and resultant lack of meal break coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. This practice was further compounded by the fact that there was a single time clock at the front of the warehouse and employees had to wait in line to clock in at the beginning of their shifts – time which was not compensated by Five Star. Additionally, employees' meal breaks were regularly cut short while they waited in line to clock back in from their meal periods and for the time it took them to walk from the back-end breakroom to the only time clock located at the front end of the large warehouse – time which was not compensated.

In addition, on information and belief, Five Star employs certain aggrieved employees who are hourly employees under the Labor Code but whom it pays a set salary per week substantially below the minimum wage. These aggrieved employees are not compensated for all work hours in violation of the Labor Code.

Five Star did not pay minimum wages for meal periods and other off-the-clock hours that Ms. Rodriguez and other aggrieved employees worked through that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Five Star did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, Five Star regularly failed to pay at least minimum wages to Ms. Rodriguez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Rodriguez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1197.1 and/or 2699, subdivisions (a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a). and 1198 - Failure to Provide Meal Periods

California Labor Code sections 226.7, 512, subdivision (a), and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each workday that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start before the end of the fifth hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.). Labor Code sections 226.7 and 512, subdivision (a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, Five Star has, and continues to have, a company-wide policy and/or practice of understaffing locations which resulted in a lack of meal break coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of Five Star's practices and/or policies and the layout of its breakrooms and limited time clocks, other aggrieved employees had to: 1) work through part or all of their meal periods; 2) had their meal breaks cut short waiting in line to clock back in to work; 3) had their meal periods interrupted; and/or 4) waited extended periods of time before taking meal periods. Further, Five Star did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

Five Star knew or should have known that as a result of its policies, including understaffing, breakroom layout, limited time clocks and failure to provide second meal periods, that other aggrieved employees were not actually relieved of all duties in order to take timely, uninterrupted meal periods. Five Star further knew or should have known that they did not pay other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted.

Five Star also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Rodriguez and other aggrieved employees have not received premium pay for missed meal periods.

Accordingly, Five Star failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198. Other aggrieved employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699, subdivision(a), (f), and (g).

Violation of California Labor Code Sections 226.7 and 1198 - Failure to Provide Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.)

As with meal periods, Five Star's company-wide policy and practice of understaffing and resulting lack of break coverage prevented Ms. Rodriguez and other aggrieved employees from being relieved of all duty to take compliant rest periods. This practice was further compounded by the fact that Five Star did not have a compliant rest break policy during the relevant time period. Specifically, Five Star's Employee Handbook provided that if employees worked during their rest breaks, they would not be paid additional compensation in strict violation of the Labor Code. Ms. Rodriguez and other aggrieved employees were regularly deprived of compliant rest breaks and were not provided with additional compensation when forced to work during their rest breaks.

As a result of Five Star's practices and policies, Ms. Rodriguez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10 minute rest periods to which they were entitled. For example, throughout her employment, Ms. Rodriguez was frequently not permitted to take full and

complete ten (10) minute rest periods, and instead would miss her rest periods or have her rest periods interrupted to meet the warehouse's demands.

Five Star also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not provided. Because of this practice and/or policy, Ms. Rodriguez and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, Five Star failed to provide all rest periods in violation of California Labor Code sections 226.7, 512, and 1198. Ms. Rodriguez and other aggrieved employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699, subdivisions (a), (f), and (g).

Violation of California Labor Code Sections 226, subd. (a), 1174, subd. (d), and 1198 - Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226, subdivision (a), requires employers to make, keep and provide true, accurate, and complete employment records. Five Star has not provided Ms. Rodriguez and other aggrieved employees with properly itemized wage statements. Labor Code section 226, subdivision (e), provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226, subdivision (a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226, subdivision (a), shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226, subdivision (a).

Five Star has knowingly and intentionally provided Ms. Rodriguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. Specifically, Five Star violated sections 226, subdivision (a)(1), 226, subdivision (a)(2), 226, subdivision (a)(5), and 226, subdivision (a)(9). Five Star deducted time worked from other aggrieved employees' wage statements and employment records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), and did not record time Ms. Rodriguez and other aggrieved employees spent working off the clock, the result of which was an unlawful deduction of wages earned and meal period premiums that should have been paid. Thus, Five Star did not furnish wage statements to Ms. Rodriguez and other aggrieved employees containing accurate totals of the hours worked (Lab. Code, § 226 subd. (a)(2)), number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)), net wages earned (Lab. Code, § 226, subd. (a)(5)) and gross wages earned (Lab. Code, § 226, subd. (a)(1)).

Because Five Star did not calculate Ms. Rodriguez' and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, Five Star did not list the correct amount of gross wages in compliance with section 226, subdivision (a)(1). For the same reason, Five Star also failed to list the correct amount of net wages in violation of section 226, subdivision (a)(5). Further, Five Star failed to list the correct amount of net wages earned by Ms. Rodriguez and

other aggrieved employees in violation of section 226, subdivision (a)(5). Five Star also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226, subdivision (a)(9).

The wage statement deficiencies also include, among other things: failing to list all deductions; failing to list the correct overtime rate; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174, subdivision (c), provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors." Subdivision (d) further requires that employers "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174, subdivisions (c) and (d). During the relevant time period, and in violation of Labor Code section 1174, subdivisions (c) and (d), Five Star willfully failed to maintain accurate payroll records for Ms. Rodriguez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Five Star failed, on a company-wide basis, to keep accurate records of work period start and stop times for Ms. Rodriguez and other aggrieved employees, in violation of section 1198.

Because Five Star failed to provide the accurate number of total hours worked on wage statements, Ms. Rodriguez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Rodriguez and other aggrieved employees had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Rodriguez and other aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226, subdivision (e), 226.3, 1174.5, and/or 2699, subdivisions (a), (f), and (g).

Violation of California Labor Code Section 204 - Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, Five Star failed to pay Ms. Rodriguez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Rodriguez and aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699, subdivisions (a) (f), and (g).

Violation of California Labor Code 201, 202, and 203 - Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, Five Star has a company-wide practice or policy of not paying departing employees their final wages on their final day of employment or within seventy-two (72) hours of resigning without prior notice, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Thus, Five Star failed to timely pay aggrieved employees owed wages within the requisite time limit in violation of Labor Code section 201.

Additionally, Five Star willfully failed to pay aggrieved employees who are no longer employed by Five Star all their earned wages, including, but not limited to, overtime wages, minimum wages and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Five Star's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Rodriguez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a) (f) and (g).

Violation of California Labor Code § 2802 - Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan 's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144. The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, Five Star failed to provide Ms. Rodriguez and other aggrieved employees with adequate supplies they needed for their job duties, instead forcing Ms. Rodriguez and other aggrieved employees to pay out-of-pocket for these supplies. For example, Ms. Rodriguez, was forced to purchase burn gel and other medical supplies necessary for on the job burns which are typical in the dry-cleaning industry. Five Star did not provide these necessary supplies to warehouse employees.

Five Star could have provided Ms. Rodriguez and other aggrieved employees with the actual tools for use on the job, including safety and medical supplies, or reimbursed employees for their actual expenses. Instead, Five Star passed these operating costs off onto Ms. Rodriguez and other aggrieved employees. Five Star had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. At all relevant times, Ms. Rodriguez did not earn at least two (2) times the minimum wage.

Five Star's policy and/or practice of passing its operating costs on to Ms. Rodriguez and other aggrieved employees by requiring that they pay for their own medical supplies for their job duties is in violation of California Labor Code section 2802. Ms. Rodriguez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) and (g).

Violation of California Labor Code § 2810.5(a) — Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claimed as part of the minimum wage, including

meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, Five Star failed to provide Ms. Rodriguez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5, subdivision (a)(1)(A)-(C). Five Star's failure to provide Ms. Rodriguez and other aggrieved employees with written notice of basic information regarding their employment with Five Star is in violation of Labor Code section 2810.5. Ms. Rodriguez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (a) (f), and(g).

Violation of California Labor Code §§ 6401 and 6403 - Failure to Provide Personal Protective Equipment

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

Five Star, on a company-wide basis, failed to provide Ms. Rodriguez and other aggrieved employees with personal protective equipment, such as safety gloves and burn resistant gear, to keep them safe in the workplace. Five Star failed to provide such reasonably necessary equipment to Ms. Rodriguez and other aggrieved employees to keep them safe.

Five Star failure to provide Ms. Rodriguez and other aggrieved employees with basic personal protective equipment for the workplace violates Labor Code sections 6401 and 6403. Ms. Rodriguez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code, § 558, subd. (a)

California Labor Code section 558, subdivision (a), provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) 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." Labor Code section 558, subdivision (c), provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Five Star, at all relevant

times, was an employer or person acting on behalf of an employer(s) who violated Ms. Rodriguez' and other aggrieved employees' rights by violating various sections of the California Labor Code.

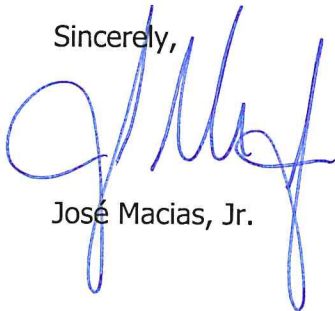
Accordingly, Ms. Rodriguez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699, subdivision (a), 2699.3, subdivision (a), and 2699.3, subdivision (c), 2699.5, and 558, Ms. Rodriguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Five Star for violations of California Labor Code sections 201, 202, 203, 204, 221, 224, 226, subdivision (a), 226.7, 510, 512, subdivision (a), 1174, subdivision (d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Ms. Rodriguez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the address below:

Macias Rodriguez LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

Sincerely,

A handwritten signature in blue ink, appearing to read "José Macias, Jr.", with a stylized, cursive script.

José Macias, Jr.