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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 15 2020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ZACHARY LOPEZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

JBGC, INC., a California Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No. **CIV DS 2013277**

**REPRESENTATIVE ENFORCEMENT
ACTION COMPLAINT [Labor Code
Private Attorneys General Act of 2004
("PAGA"), Lab. Code §§ 2698, et seq.]**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Timely Pay Wages;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

1 Plaintiff Zachary Lopez (“Plaintiff”), on behalf of all Aggrieved Employees and the State
2 of California as the real party in interest, alleges the following causes of action against
3 Defendants, and each of them.¹

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against his former employers, Defendants JBGC, Inc.
6 and/or DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
7 former non-exempt employees employed by Defendants in California within the last one year
8 and 65-days prior to the filing of this action (hereinafter, the “Aggrieved Employees”) and who
9 were subjected to violations of the California Labor Code stemming from Defendants’ failure to
10 pay minimum, regular, and overtime wages, failure to provide compliant meal periods and rest
11 breaks, failure to reimburse business expenses, failure to timely pay wages each period, failure to
12 timely pay final wages, and failure to provide accurate itemized wage statements.

13 2. Plaintiff was employed by Defendants from approximately November 2019
14 through April 2020.

15 3. Plaintiff alleges on information and belief that the Aggrieved Employees were
16 subjected to the same policies, practices, and corresponding wage and hour violations to which
17 Plaintiff was subjected during his employment.

18 4. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
19 proper minimum, regular, and overtime wages due to Defendants’ failure to accurately record
20 and compensate for all hours worked. As one specific example, Defendants routinely required
21 Plaintiff and the Aggrieved Employees to be “on-call” to receive phone calls from potential
22 customers and to perform other tasks after work hours (e.g., from 5:00 p.m. to 8:30 a.m. the next
23 morning). However, despite that the Aggrieved Employees were “engaged to wait” and on-call,
24 Defendants did not provide any wages for this compensable time. Defendants also failed to pay
25 for the actual time spent by the Aggrieved Employees for tasks performed after hours. In other
26 words, when an “on-call” Aggrieved Employee fielded phone calls between the hours of 5:00
27

28 ¹ Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the State of California
“is always the real party in interest in the suit.” *Iskanian v. CLS Transp. of Los Angeles, LLC* (2014) 59 Cal.4th 348,
360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185 (all PAGA claims “are brought on the state’s behalf”).

1 p.m. and 8:30 a.m., the Aggrieved Employee did not receive any compensation for actual time
2 spent performing work for Defendants

3 5. Additionally, Plaintiff and the Aggrieved Employees were frequently required to
4 perform routine and recurring tasks for Defendants at the beginning of the shift (before being
5 allowed to clock in) and at the end of the shift (after clocking out). These exact issues were
6 found unlawful in the California Supreme Court's decision of *Troester v. Starbucks Corporation*
7 (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to
8 routinely work for minutes off the clock without compensation").

9 6. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved
10 Employees on an hourly basis plus additional compensation in the form of commission and other
11 nondiscretionary compensation. However, on the occasions when Plaintiff and the Aggrieved
12 Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received
13 commissions or other nondiscretionary compensation during the workweek, Defendants failed to
14 properly include these amounts in the calculations for the regular rate of pay. Therefore,
15 Defendants failed to pay proper overtime compensation for the hours worked in excess of 8
16 and/or 12 per day and/or 40 per week.

17 7. Furthermore, at all relevant times, Plaintiff and the Aggrieved Employees were
18 denied 30-minute off-duty meal periods, as mandated by California law, during their
19 employment with Defendants. As a result of Defendants' policies and practices, Plaintiff and the
20 Aggrieved Employees were subjected to meal period violations when they were: (1) unable to
21 take a meal period due to workload, (2) forced to take an on-duty meal period while under the
22 control of Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not
23 provided a mandated second meal period on shifts in excess of 10 hours.

24 8. Also, at all relevant times, Plaintiff and the Aggrieved Employees were not
25 provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction
26 thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff
27 and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest
28 breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when

1 Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed
2 to authorize and/or permit a third mandated rest break. Additionally, Plaintiff and the Aggrieved
3 Employees were unable to leave the premises for rest breaks, in violation of California law.

4 9. Plaintiff and the Aggrieved Employees were also required to incur necessary
5 business-related expenses and costs without proper reimbursement, including, but not limited to,
6 expenses related to the use of their personal vehicle for business purposes (including mileage and
7 other maintenance expenses) and acquiring and maintaining a smart phone and related monthly
8 data plan to communicate with Defendants via phone and text message.

9 10. Plaintiff also alleges that he and the Aggrieved Employees were not paid all
10 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
11 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
12 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved
13 Employees at the time their employment ended with Defendants, including, but not limited to
14 minimum wages, regular wages, overtime wages, wage premiums, among others.

15 11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
16 statements that fully complied with the requirements of Labor Code § 226(a).

17 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
18 employer of Plaintiff and the Aggrieved Employees or were persons acting on behalf of said
19 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
20 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
21 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
22 subject to penalties for each underpaid employee as set forth in Labor Code § 558.

23 13. Plaintiff brings this lawsuit on behalf of all Aggrieved Employees and the State of
24 California, as the real party in interest, to recover all applicable and available PAGA remedies
25 for the violations of the California Labor Code alleged herein, as well as attorneys' fees, costs,
26 and/or other damages as permitted by PAGA. Plaintiff reserves the right to name additional
27 representatives throughout the State of California, and hereby allege, as follows:
28

1 **II. JURISDICTION**

2 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
3 Aggrieved Employees pursuant to the Labor Code and the IWC Wage Orders.

4 **III. VENUE**

5 15. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
6 Procedure §§ 393, 395(a), and 395.5. Defendants transact business in San Bernardino County
7 and the unlawful acts alleged herein have a direct effect on Plaintiff and the Aggrieved
8 Employees in San Bernardino County. Furthermore, Defendants employed or employ Plaintiff
9 and Aggrieved Employees in San Bernardino County.

10 **IV. PARTIES**

11 **Plaintiff**

12 16. Plaintiff and PAGA Representative Zachary Lopez was employed by Defendants
13 as a non-exempt employee from approximately November 2019 through April 2020 and
14 performed work for Defendants in San Bernardino County.

15 **Defendants**

16 17. Plaintiff is informed and believes and thereon alleges that Defendant JBGC, Inc.
17 is a California corporation authorized to and doing business in San Bernardino County,
18 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
19 during the applicable statutory periods.

20 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
21 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
22 inclusive, but on information and belief alleges that those Defendants are legally responsible for
23 the payment of penalties and damages to Plaintiff and all Aggrieved Employees by virtue of
24 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
25 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
26 Defendants when ascertained.

27 19. Plaintiff is informed and believes and thereon alleges that he worked under the
28 joint direction and control of Defendants and that Defendants, and each of them, acted in all

1 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
2 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
3 attributable to the other Defendants. On information and belief, a unity of interest and ownership
4 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
5 and other similarly situated employees.

6 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
7 Defendants, and each of them, are an integrated enterprise and should be treated as a single
8 employer because these entities share an interrelation of operations, with common human
9 resources and personnel policies and shared common offices and facilities. Additionally,
10 Defendants also have a shared website, common management, a centralized control of labor
11 operations, and common ownership or financial control.

12 21. Plaintiff is informed and believes and thereon alleges that, in conducting
13 themselves in the manner described herein, Defendants, and each of them, were acting in active
14 concert with one another such that the acts of each were and are fully attributable to the others in
15 all material respects. Plaintiff is further informed and believes that at all relevant times
16 Defendants and each of them are now, and at all material times herein mentioned were, the
17 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
18 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
19 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
20 their remaining co-Defendants.

21 22. Plaintiff is further informed and believes that at all relevant times, Defendants
22 have been inadequately capitalized to conduct business, have failed to follow appropriate
23 corporate formalities, and have simply been a shell and instrumentality through which
24 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
25 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
26 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
27 separate existence of these corporate entities would permit abuse of the corporate privilege,
28 thereby sanctioning fraud and promoting injustice.

23. Additionally, Defendants DOES 11 through 20 are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the wage violations among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws or ‘pays or causes to be paid to any employee’ less than minimum wage, then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”) (internal citations omitted); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

V. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION

24. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees against whom one or more of the alleged violations was committed.

25. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

26. Pursuant to Labor Code § 2699.3(a), on or around April 8, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since Plaintiff provided the amended written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied her administrative prerequisites to suit under the PAGA.

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FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

27. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

28. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

29. At all relevant times, Plaintiff and the Aggrieved Employees were not provided proper minimum wages due to Defendants' failure to accurately record and compensate for all hours worked.

30. As one specific example, Defendants routinely required Plaintiff and the Aggrieved Employees to be "on-call" to receive phone calls from potential customers and to perform other tasks after work hours (*e.g.*, from 5:00 p.m. to 8:30 a.m. the next morning). However, despite that the Aggrieved Employees were "engaged to wait" and on-call, Defendants did not provide any wages for this compensable time. Defendants also failed to pay for the actual time spent by the Aggrieved Employees for tasks performed after hours. In other words, when an "on-call" Aggrieved Employee fielded phone calls between the hours of 5:00 p.m. and 8:30 a.m., the Aggrieved Employee did not receive any compensation for actual time spent performing work for Defendants

31. Additionally, Plaintiff and the Aggrieved Employees were frequently required to perform routine and recurring tasks for Defendants at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after clocking out). These exact issues were found unlawful in the California Supreme Court's decision of *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation").

1 32. As a result of Defendants' policies or practices described above, Plaintiff and the
2 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew
3 or should have known they were performing.

4 33. Consequently, Defendants violated California Labor Code laws and minimum
5 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
6 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

7 34. Plaintiff is informed and believes and thereon alleges that Defendants
8 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
9 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

10 35. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
11 Aggrieved Employees were entitled to be paid wages throughout the statutory period for each
12 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
13 accordance thereto.

14 36. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA

17 **SECOND CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

19 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

20 37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 38. Plaintiff and the Aggrieved Employees were employees of Defendants who did
23 not receive proper protections and benefits of the laws governing payment of overtime wages.

24 39. Labor Code § 204 requires that the employer timely pay all overtime wages to its
25 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
26 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
27 any one workweek shall be compensated at the rate of no less than one and one-half times the
28

1 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
2 in one workday shall be compensated at twice the regular rate of pay for an employee.

3 40. At all relevant times, Plaintiff and the Aggrieved Employees were required by
4 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
5 the reasons discussed herein, Plaintiff and the Aggrieved Employees did not receive proper
6 overtime compensation.

7 41. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
8 proper overtime wages due to Defendants' failure to accurately record and compensate for all
9 hours worked. As one specific example, Defendants routinely required Plaintiff and the
10 Aggrieved Employees to be "on-call" to receive phone calls from potential customers and to
11 perform other tasks after work hours (*e.g.*, from 5:00 p.m. to 8:30 a.m. the next morning).
12 However, despite that the Aggrieved Employees were "engaged to wait" and on-call, Defendants
13 did not provide any wages for this compensable time. Defendants also failed to pay for the
14 actual time spent by the Aggrieved Employees for tasks performed after hours. In other words,
15 when an "on-call" Aggrieved Employee fielded phone calls between the hours of 5:00 p.m. and
16 8:30 a.m., the Aggrieved Employee did not receive any compensation for actual time spent
17 performing work for Defendants

18 42. Additionally, Plaintiff and the Aggrieved Employees were frequently required to
19 perform routine and recurring tasks for Defendants at the beginning of the shift (before being
20 allowed to clock in) and at the end of the shift (after clocking out). These exact issues were
21 found unlawful in the California Supreme Court's decision of *Troester v. Starbucks Corporation*
22 (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to
23 routinely work for minutes off the clock without compensation").

24 43. Also, at all relevant times, Defendants paid Plaintiff and the Aggrieved
25 Employees on an hourly basis plus additional compensation in the form of commission and other
26 nondiscretionary compensation. However, on the occasions when Plaintiff and the Aggrieved
27 Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received
28 commissions or other nondiscretionary compensation during the workweek, Defendants failed to

properly include these amounts in the calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

44. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

45. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

46. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

THIRD CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

47. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

48. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

49. Labor Code § 226.7 requires employers, including Defendants, to provide non-exempt employees with meal periods as mandated by the Industrial Welfare Commission.

50. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

3 51. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
4 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
5 pay for each meal period that is missed.

6 52. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
7 the 30-minute off-duty meal periods that they were entitled to under California law

8 53. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved
9 Employees were subjected to meal period violations when they were: (1) unable to take a meal
10 period due to workload, (2) forced to take an on-duty meal period while under the control of
11 Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a
12 mandated second meal period on shifts in excess of 10 hours.

13 54. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
14 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
15 and the Aggrieved Employees were not provided with all mandatory meal periods and
16 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
17 compensation at the regular rate of pay in lieu thereof.

18 55. On information and belief, Plaintiff and the Aggrieved Employees did not
19 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
20 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
21 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
22 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
23 Employees to take meal periods in accordance with California law.

24 56. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
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28

FOURTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

(Labor Code § 226.7 and 512; IWC Wage Order § 12)

57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

58. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

59. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

60. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

61. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

62. At all relevant times, Plaintiff and the Aggrieved Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break. Additionally, Plaintiff and the Aggrieved Employees were unable to leave the premises for rest breaks, in violation of California law.

63. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof at the regular rate of pay.

64. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

65. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

66. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

67. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

68. At all relevant times herein mentioned, Plaintiff and the Aggrieved Employees were required to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, substantial expenses related to the use of their personal vehicle for business purposes (including mileage and other maintenance expenses) and acquiring and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone and text message.

69. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct

1 consequence of Plaintiff's employment with Defendants and/or under the direction of
2 Defendants.

3 70. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **SIXTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

8 (Labor Code § 204)

9 71. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

11 72. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
12 of Defendants who did not receive proper protections and benefits of the laws regarding the
13 timing of payment of wages each period.

14 73. Labor Code § 204(a) states that all wages earned by a person are due and payable
15 twice during each calendar month, and further states that wages earned during the first through
16 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
17 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
18 the following month.

19 74. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
20 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
21 the wages are paid not more than seven calendar days following the close of the payroll period."

22 75. At all relevant times herein, Defendants did not provide Plaintiff and the
23 Aggrieved Employees with all wages due and owing each pay period, including, but not limited
24 to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
25 time specified by Labor Code § 204.

26 76. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203 and 256)

77. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

78. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

79. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

80. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

81. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

82. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

83. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums.

84. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

85. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 256

1 and 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted
2 under PAGA.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 (Labor Code § 226)

6 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 87. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 88. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 89. Defendants violates Labor Code § 226(a) every pay period with respect to
18 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to
19 Plaintiff and the Aggrieved Employees failed to accurately state gross wages earned, total hours
20 worked, all deductions, net wages earned, and all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours at each hourly rate by the employee.

22 90. Therefore, at all relevant times, Defendants violate Labor Code §§ 226(a) every
23 pay period with respect to Plaintiff and each and every one of the Aggrieved Employees because
24 Defendants' wage statements failed to accurately state all information required by § 226(a).

25 91. Unlike class action claims, a PAGA plaintiff need not meet the "injury" and
26 "knowing and intentional" violation requirements of Labor Code § 226(e). See *Lopez v. Friant*
27 & Associates, LLC (2017) 15 Cal.App.5th 773, 788 ("a plaintiff seeking civil penalties under
28 PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and

intentional” requirements of section 226(e)(1)”); See also *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 (“the scienter requirement [of § 226(e)] has no application in a PAGA claim for violation of [§ 226(a)]”).

92. As a result of the Defendants’ violations of Labor Code § 226(a)(9), Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA, including the \$250 penalty per violation specified by Labor Code § 226.3. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief against Defendants, jointly and severally, as follows:

1. For the assessment of all remedies and/or penalties available under the PAGA;
2. For reasonable attorneys’ fees and costs of suit to the extent permitted by law;
3. For such other and further relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff hereby demands a jury trial as to the First through Ninth Causes of Action pled herein.

Dated: June 15, 2020

FERNANDEZ & LAUBY LLP

BY:



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