

Electronically FILED by Superior Court of California, County of Los Angeles on 06/12/2020 03:24 PM Sherri R. Carter, Executive Officer/Clerk of Court, by M. Barel, Deputy Clerk

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
 Katherine J. Odenbreit (SBN: 184619)
kodenbreit@mahoney-law.net
 Atoy H. Wilson (SBN: 305259)
awilson@mahoney-law.net
MAHONEY LAW GROUP, APC
 249 E. Ocean Blvd., Ste. 814
 Long Beach, CA 90802
 Telephone: (562) 590-5550
 Facsimile: (562) 590-8400

Attorneys for Plaintiff MARIA ELENA HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARIA ELENA HERNANDEZ, on
 behalf of herself, other aggrieved
 employees, and the State of California,

Plaintiff,

v.

IDEAL FOODS, INC.; and DOES 1
 through 50, inclusive,

Defendants.

Case No.: **20STCV22342**

**PRIVATE ATTORNEYS GENERAL ACT
 COMPLAINT**

1. Violation of PAGA for Willful Misclassification (Lab. Code §§ 226.8, 2750.3);
2. Violation of PAGA for Failure to Pay All Wages Including Minimum, Regular, and Overtime Wages (Lab. Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198);
3. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
4. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code §§ 226.7);
5. Violation of PAGA for Failure to Timely Pay Wages Upon Separation of Employment (Lab. Code §§ 201, 202, 203);
6. Violation of PAGA for Failure to Maintain Accurate Payroll Records (Lab. Code §§ 226, subd. (A), (E), 226.3, 1174, 1174.5); and
7. Violation of PAGA for Failure to Reimburse Business Expenses, and Unlawful Deductions and Patronization (Lab. Code §§ 221, 450, 2802).

1 Plaintiff MARIA ELENA HERNANDEZ (“Plaintiff”), individually and on behalf of other
2 aggrieved employees, hereby complains and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
5 Act of 2004 (“PAGA”), Labor Code sections 2698 *et seq.*, against Defendants IDEAL FOODS,
6 INC. and DOES 1 through 50 (collectively “Defendants”), on behalf of herself individually and
7 all other current and former aggrieved employees who were employed by Defendants and
8 misclassified as independent contractors in the State of California during the PAGA period. The
9 PAGA period is defined as one year prior to Plaintiff’s notice of labor code violations to the Labor
10 and Workforce Development Agency (“LWDA”) and certified mailing of said notice to
11 Defendants until resolution.

12 2. Defendants own and operate catering trucks that are dispatched to various
13 locations throughout California. Defendants employed and/or continue to employ Plaintiff and
14 other aggrieved employees throughout California as independent contractors.

15 3. Defendants have engaged in a systematic pattern of wage and hour violations
16 under the Labor Code arising from Defendants’ willful misclassification of non-exempt
17 employees, including, but not limited to, failure to pay all wages (including minimum, regular,
18 and overtime compensation); failure to provide meal periods or compensation in lieu thereof;
19 failure to authorize or permit rest breaks or provide compensation in lieu thereof; failure to
20 provide accurate itemized wage statements; failure to pay all wages due upon separation of
21 employment; failure to reimburse business expenses; unlawful deductions and requiring
22 employees to patronize Defendants’ businesses. These violations concern current and past non-
23 exempt employees of Defendants who were misclassified as independent contractors.

24 4. At all relevant times herein, Defendants have consistently maintained and enforced
25 against Plaintiff and the aggrieved employees the unlawful practices and policies set forth herein.

26 **JURISDICTION AND VENUE**

27 5. Venue is proper in Los Angeles County, because Defendants maintain its locations
28 and transacts business in this county, the obligations and liability primarily arise in this county,

1 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

2 6. The California Superior Court has jurisdiction over this matter. The individual
3 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal
4 court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount
5 required for diversity removal. Further, there is no federal question at issue as the issues herein
6 are based solely on California statutes and law, including, but not limited to, the California Labor
7 Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and
8 California Rules of Court.

9 **THE PARTIES**

10 **Plaintiff**

11 7. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los
12 Angeles and was employed by Defendants within the past year. During the PAGA period,
13 Defendants misclassified Plaintiff as an independent contractor to work in its food trucks by
14 preparing, cooking, and selling food, among other things.

15 **Defendants**

16 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant
17 IDEAL FOODS, INC. ("IDEAL FOODS") is a California corporation that owns and operates
18 food/catering trucks in Los Angeles county. Defendant IDEAL FOODS's principal place of
19 business is located at 7549 East Alondra Boulevard, Paramount, California 90723. On
20 information and belief, and based thereon, Plaintiff alleges that IDEAL FOODS is conducting
21 business in good standing in California, and at all times herein mentioned has regularly conducted
22 business throughout the State of California.

23 9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
24 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
25 inclusive, but on information and belief allege that said Defendants are legally responsible for the
26 occurrences alleged herein, and that the damages of Plaintiff and the aggrieved employees were
27 proximately caused by such Defendants. Plaintiff will amend this complaint to allege the true
28 names and capacities of the DOE Defendants when ascertained.

1 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
3 joint venture of the remaining Defendants and was acting within the course and scope of the
4 relationship. Plaintiff is further informed and believes, based thereon alleges, that each of the
5 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
6 Defendants.

7 11. Plaintiff is further informed and believes, and based thereon alleges, that
8 Defendants herein acted as a joint employer and/or single or integrated enterprise at all relevant
9 times. Defendants acted in all respects pertinent to this action as the agent of the other Defendants,
10 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
11 each Defendant are legally attributable to the other Defendants.

12 **ADMINISTRATIVE PREREQUISITES**

13 12. By this complaint, Plaintiff brings this case as a representative action seeking
14 penalties for herself, the aggrieved employees, and the State of California in a representative
15 capacity, as provided by the PAGA, Labor Code sections 2698 *et seq.* Plaintiff is an aggrieved
16 employee who was employed by Defendants and subject to at least one of the Labor Code
17 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
18 her notice to the LWDA and Defendants: violation of Labor Code sections 201-203, 204, 221,
19 226, 226.3, 226.8, 450, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
20 2802.

21 13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
22 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
23 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
24 not to investigate, or after 65 days have passed without notice from the LWDA.

25 14. Prior to filing this complaint, on April 8, 2020, Plaintiff gave written notice of the
26 specific provisions alleged to have been violated, including the facts and theories to support the
27 alleged violations, as required by Labor Code section 2699.3. The written notice was given via
28 certified mail to Defendants, and the LWDA by electronically filing the notice via the Department

1 of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-
2 782262-20. A true and correct copy of Plaintiff's notice to the LWDA and Defendant(s), dated
3 April 8, 2020, is attached hereto as Exhibit A.

4 15. The LWDA has not provided Plaintiff with any notice that it intends to investigate
5 the violations as alleged in Plaintiff's April 8, 2020 notice, and more than 65 calendar days have
6 elapsed since the postmark date on the notice.

7 **GENERAL ALLEGATIONS**

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

14 17. For all provisions of the Labor Code except those for which a civil penalty is
15 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
16 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
17 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
18 for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

19 18. Defendants' conduct during the PAGA period with respect to Plaintiff and the
20 aggrieved employees systematically violates numerous Labor Code sections as detailed herein.
21 Plaintiff is informed and believes, and based thereon alleges, that Defendants' policies and
22 practices described herein are common across each of Defendants' locations within the State of
23 California.

24 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 herein mentioned, Defendants were advised by skilled lawyers, employees and other
26 professionals who were knowledgeable about California's wage and hour laws, employment and
27 personnel practices, and the requirements of California law.

28 ///

1 20. Defendants willfully misclassified Plaintiff and the aggrieved employees as
2 “independent contractors” in the State of California even though, at all relevant times during the
3 PAGA period, Plaintiff and aggrieved employees (A) were not free from the control and direction
4 of Defendants in connection with the performance of the work, both under the contract for the
5 performance of the work and in fact, (B) did not perform work that is outside the usual course of
6 Defendants’ business, and (C) were not customarily engaged in an independently established
7 trade, occupation, or business of the same nature as the work performed. Consequently,
8 Defendants failed to pay all wages, provide meal and rest breaks or compensation in lieu thereof,
9 reimburse business expenses, provide accurate itemized wage statements, and timely pay to all
10 aggrieved employees during and upon separation of employment. Defendants also made unlawful
11 deductions and required Plaintiff and aggrieved employees to patronize its businesses.

12 21. At all relevant times, Plaintiff and the aggrieved employees performed identical
13 duties for Defendants driving to worksites, cleaning, and preparing, cooking, and selling food to
14 Defendants’ customers throughout Southern California. Under Labor Code section 2750.3 and
15 other applicable standards of law, Plaintiff and the aggrieved employees are or were during their
16 employment with Defendants, employees and not independent contractors, and were entitled to
17 timely payment of wages, premiums, meal and rest periods, accurate wage statements, and
18 reimbursements, among other things.

19 22. Plaintiff and the aggrieved employees were subject to the direction and control of
20 Defendants. In fact, Defendants directly and indirectly exercised control over the staffing of
21 trucks, wages paid to employees, hours, and working conditions of Plaintiff and the aggrieved
22 employees because they were required to drive Defendants’ food trucks bearing Defendants’
23 logos and designs; were provided locations, routes, and work schedules and disciplined if they
24 failed to adhere to the schedule; were required to be available and work certain hours; were
25 provided instructions, menus, prices, and ingredients; and were required to meet profit goals or
26 face discipline (e.g., being reassigned to unprofitable work locations), among other things. All
27 manner and means to prepare, cook, and sell were directed by Defendants and monetized without
28 any consideration for a common scheme to avoid taxes, payment of employer’s share of taxes,

1 and to otherwise shortchange the revenues due to California and/or the federal government, and
2 place that burden on the misclassified “independent contractors.”

3 23. In addition, Plaintiff and the aggrieved employees did not perform work that is
4 outside the usual course of Defendant’s business. Specifically, the entire business of Defendants
5 is to cater and sell food in a timely, expedient, and similar fashion to customers. Plaintiff and
6 other aggrieved employees consistently engaged in the same tasks and duties as directly mandated
7 by Defendants. Through the performance of their job duties, Plaintiff and the aggrieved
8 employees performed an integral and entirely essential aspect of Defendants’ business. In fact,
9 Plaintiff and the aggrieved employees were tasked to perform the one and only service that
10 Defendants provided – sell food to customers from food trucks in the most expeditious manner
11 possible, at their own expense.

12 24. At all relevant times, the customers are and/or were Defendants’ customers, not
13 those of Plaintiff and the aggrieved employees. Defendants also retained the right to terminate
14 Plaintiff’s and the aggrieved employees’ working relationship with Defendants at their discretion.
15 Further, Plaintiff and the aggrieved employees did not require special skills to perform their job
16 duties and were not customarily engaged in an independently established trade, occupation, or
17 business of the same nature as the work performed for Defendants.

18 25. At all relevant times, Defendants failed to pay Plaintiff and aggrieved employees
19 the applicable minimum, regular, and overtime wages. Specifically, Defendants failed to pay any
20 wages to Plaintiff and the aggrieved employees, irrespective of hours worked, and instead only
21 provided credits. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
22 aggrieved employees in the applicable limitations period were paid less than the minimum wage
23 and were not paid overtime wages for hours worked that exceeded eight (8) hours in a day and/or
24 40 hours in a workweek despite regularly working in excess of eight (8) hours per shift. This
25 pattern and practice of conduct violated Sections 510, 1182.12, 1194, 1194.2, 1197, and 1197.1
26 of the California Labor Code.

27 26. At no time during the PAGA period did Plaintiff or any of the aggrieved employees
28 qualify or meet the requirements to be exempt from payment for all hours worked and all overtime

1 hours worked as generally required for all non-exempt employees. Thus, Plaintiff and the
2 aggrieved employees were entitled to all protections of the Labor Code offered to hourly non-
3 exempt employees, as well as corresponding regulations and applicable IWC Wage Orders.

4 27. During the PAGA period, Plaintiff and the aggrieved employees were entitled to
5 a timely unpaid, duty-free 30-minute meal period for approximately every five hours worked and
6 for a corresponding paid, duty-free 10-minute rest period for approximately every four hours (or
7 every major fraction thereof) worked, or to be paid a “premium wage” in the amount of one hour
8 of pay at the employees’ regular rate of pay for each missed or non-compliant meal or rest period
9 per day. Because Defendants unlawfully treated Plaintiff and the aggrieved employees as
10 “independent contractors” rather than hourly-paid employees, Plaintiff and each of the aggrieved
11 employees during the PAGA period were systematically not provided with meal periods, rest
12 periods, or the one-hour “premium pay” owed in lieu of providing such meal and or rest periods.
13 This conduct violated Labor Code sections 226.7 and 512, subdivision (a), and applicable IWC
14 Wage Orders relating to the provision of meal and rest periods.

15 28. At no time during the PAGA period did Plaintiff or any of the aggrieved employees
16 qualify or meet the requirements to be exempt from all lawful, compliant meal and rest periods.
17 Thus, Plaintiff and the aggrieved employees were entitled to all protections of the Labor Code
18 offered to hourly non-exempt employees, as well as corresponding regulations and applicable
19 IWC Wage Orders, including payment of premium wages for each meal and rest period for each
20 qualifying work shift, in an amount according to proof.

21 29. Plaintiff and the aggrieved employees were also required to incur substantial
22 expenses in direct consequence of the discharge of their duties for Defendants without
23 reimbursement. During the PAGA period, Defendants failed to reimburse Plaintiff and other
24 aggrieved employees for all business expenses incurred for Defendants’ benefit, including truck
25 lease payments for a truck they did not own or have any independent control or use of, food costs,
26 automobile insurance, wages of Defendants’ hourly employees, and “savings” to be set aside for
27 payment to Defendants upon separation of employment or failure to pay these business-related
28 expenses in a timely manner.

1 30. Defendants also unlawfully required Plaintiff and other aggrieved employees to
2 patronize their employer by forcing them to purchase all food products from the Defendants-
3 owned commissary in violation of Labor Code section 450 and/or deducting the cost of food,
4 lease payments, and other expenses from Plaintiff's and the aggrieved employees' compensation
5 in violation of Labor Code section 221.

6 31. As a consequence of the wage violations detailed above, Defendants failed to pay
7 all wages and reimbursements due and owing to Plaintiff and the aggrieved employees each pay
8 period pursuant to Labor Code section 204 and upon separation of employment within the time
9 required by Labor Code sections 201, 202, 203, and are liable for statutory penalties pursuant to
10 Labor Code section 203 for the applicable limitations period.

11 32. Plaintiff and the aggrieved employees also did not receive accurate itemized wage
12 statements as required by Labor Code section 226. Rather, Defendants required Plaintiff and the
13 aggrieved employees to be paid with credits without any withholdings, recovery for costs and
14 expenses, and without any indication that Defendants were, as a matter of fact and law, the direct
15 employers of the Plaintiff and the aggrieved employees. The wage statements that Defendants
16 provided to Plaintiff and the aggrieved employees failed to accurately state all items required by
17 Labor Code section 226, subdivision (a), including, but not limited to: gross wages earned, net
18 wages earned, total hours worked, all applicable hourly rates in effect during the pay period and
19 the corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates
20 of the pay period, the employee's name and the last four digits of his or her Social Security number
21 or employee identification number, and the name and address of the legal entity that is the
22 employer.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Defendants were required to maintain accurate records of the hours
25 worked by Plaintiff and aggrieved employees. In violation of the California Labor Code,
26 Defendants failed to maintain accurate records of hours worked by and wages paid to Plaintiff
27 and aggrieved employees, among other things.

28 ///

34. Plaintiff alleges that Defendants' violations of the wage and hour components of the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over their competitors who are required by law to employ the drivers as employees, and pay necessary taxes. Plaintiff is informed and believes that the entire enterprise of the Defendants was to violate the law, to underpay wages and benefits, and to cheat and/or deprive the State of California and the federal government of payroll and other taxes levied for the common good.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR WILLFUL MISCLASSIFICATION

(Lab. Code §§ 226.8, 2750.3)

(Against all Defendants)

35. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

36. Labor Code section 226.8 provides that it is unlawful for any employer to willfully misclassify an individual as an independent contractor. The civil penalty for willfully misclassifying an employee as an independent contractor shall be “not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” (Lab. Code § 226.8.)

37. Labor Code section 2750.3 codified and expanded the California Supreme Court’s decision in *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018), *reh’g denied* (June 20, 2018), which held that the “ABC” test (with some exemptions for certain employees and industries) applies when determining whether a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor. The elements of the ABC test are as follows:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's

business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Lab. Code § 2750.3. The ABC test applies to all wage and hour Labor Code violations. *Id.*

38. Plaintiff and the aggrieved employees do not meet any of the exemptions outlined in Labor Code section 2750.3, and as such the ABC test applies.

39. Plaintiff is informed and believes, and based thereon alleges that Defendants willfully misclassified her and other aggrieved employees as independent contractors rather than as non-exempt employees in violation of Labor Code section 226.8 in order to avoid compliance with the various sections of the Labor Code outlined in this correspondence. Pursuant to Labor Code section 2750.3, Plaintiff and other aggrieved employees should have been classified as non-exempt employees since (A) they were not free from the control and direction of Defendants in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) they did not perform work that is outside the usual course of Defendants' business, and (C) they were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed as alleged in the preceding paragraphs of this complaint.

40. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

41. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved employees and the State of California for violations of Labor Code section 226.8 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

42. Plaintiff, individually and on behalf of the aggrieved employees and the State of California also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g).

///

///

///

///

SECOND CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
PAY ALL WAGES INCLUDING MINIMUM, REGULAR, AND OVERTIME WAGES**

(Lab. Code §§ 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198)

(Against all Defendants)

43. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

44. Labor Code section 204 provides that all wages earned during employment are due and payable twice during each calendar month on dates designated in advance by the employer.

45. Labor Code 1182.12 provides the applicable minimum wage rate in California.

46. Labor Code section 510, subdivision (a), provides that any work in excess of eight (8) hours in any workday and any work in excess of forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay for an employee.

47. Labor Code sections 1194 and 1194.2 provide the remedies available for an action to recover minimum and overtime wages, 1197 mandates that payment of less than the applicable minimum wage is unlawful, and 1198 provides that an employer's failure to follow the standard conditions of labor fixed by the commissions is unlawful.

48. Labor Code section 558, subdivision (a) further 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 (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid."

49. Labor Code section 1197.1 also provides "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to

1 be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
2 or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any
3 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid
4 employee for each pay period for which the employee is underpaid . . . (2) For each subsequent
5 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid
6 employee for each pay period for which the employee is underpaid regardless of whether the
7 initial violation is intentionally committed.

8 50. At all relevant times, Defendants were employers of Plaintiff and the aggrieved
9 employees, and subject to the Labor Code, IWC Wage Orders, and other applicable statutes, rules,
10 and regulations.

11 51. At all relevant times herein, Plaintiff and aggrieved employees were and are
12 misclassified as independent contractors.

13 52. At all relevant times, Plaintiff and the aggrieved employees regularly worked in
14 excess of eight (8) hours per day and forty (40) hours per week.

15 53. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked,
16 including the applicable minimum, regular, and overtime compensation, and failed to record
17 actual hours worked by, *inter alia*, failing to pay wages to Plaintiff and aggrieved employees and
18 misclassifying them as independent contractors.

19 54. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees
20 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
21 will be ascertained according to proof at trial.

22 55. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
23 employees and the State of California for violations of Labor Code sections 204, 510, 1194, 1197,
24 1198 and pursuant to Labor Code section 1197.1 during the PAGA period, in a sum as provided
25 by the Labor Code and/or other statutes.

26 56. Plaintiff, individually and on behalf of the aggrieved employees and the State of
27 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
28 (g).

THIRD CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR
FAILURE TO PROVIDE MEAL PERIODS**

(Lab. Code §§ 226.7 and 512)

(Against all Defendants)

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO PROVIDE MEAL PERIODS

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7 and 512)

(Against all Defendants)

57. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

58. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

59. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

60. At all times relevant hereto, Plaintiff and aggrieved employees have regularly worked shifts of more than five (5) hours and/or 10 hours in a workday. Plaintiff alleges Defendants failed to provide legally compliant meal periods, in addition to impeding and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods. Specifically, Defendants lacked a compliant meal period policy and never told Plaintiff and other aggrieved employees that they could take a meal period. As such, Plaintiff and other aggrieved employees missed their meal periods or had them interrupted or shortened due to orders from customers, among other reasons. Despite failing to provide compliant meal periods, Defendants failed to pay one additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay for each workday that a meal period violation occurred.

61. By and through their actions, Defendants have intentionally and improperly denied compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees

1 in violation of Labor Code sections 226.7 and 512 and/or other statutes.

2 62. Defendants' Labor Code violations have caused Plaintiff and the aggrieved
3 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
4 but will be ascertained according to proof at trial.

5 63. Plaintiff, individually and on behalf of the aggrieved employees and the state of
6 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512
7 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

8 64. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
9 subdivision (g).

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
12 **FAILURE TO PROVIDE REST PERIODS**

13 **(Lab. Code § 226.7)**

14 **(Against all Defendants)**

15 65. Plaintiff realleges and incorporates by reference the allegations in the preceding
16 paragraphs.

17 66. Labor Code section 226.7 and the applicable IWC Wage Orders require employers
18 to authorize and permit all non-exempt employees to take rest periods at the rate of ten (10)
19 minutes rest time per four (4) work hours or major fraction thereof.

20 67. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
21 provide non-exempt employees with rest periods in accordance with this section, the employer
22 shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for
23 each workday that the rest period is not provided.

24 68. At all times relevant hereto, Plaintiff and aggrieved employees have worked shifts
25 of more than three-and-a-half (3.5) hours in a workday. Defendants failed to authorize or permit
26 ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked because
27 Plaintiff and other aggrieved employees were not authorized or permitted to take their rest periods
28 at the appropriate time intervals. Similar to meal periods, Defendants lacked a compliant rest

1 period policy and never told Plaintiff and other aggrieved employees that they could take a rest
2 period. Consequently, Plaintiff and aggrieved employees consistently had their rest breaks
3 missed, interrupted or shortened due to Defendants' uniform policies, practices, understaffing,
4 and workload. Defendants also failed to pay one additional hour of pay at Plaintiff and aggrieved
5 employees' regular rate of pay for each workday that a rest period violation occurred.

6 69. By and through their actions, Defendants intentionally and improperly denied
7 compliant rest periods to Plaintiff and the aggrieved employees in violation of Labor Code section
8 226.7 and/or other statutes.

9 70. Defendants' Labor Code violations have caused Plaintiff and the aggrieved
10 employees to suffer, and continue to suffer, damages, in amounts which are presently unknown,
11 but will be ascertained according to proof at trial.

12 71. Plaintiff, individually and on behalf of the aggrieved employees and the State of
13 California request recovery of civil penalties for violations of Labor Code section 226.7 during
14 the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

15 72. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
16 subdivision (g).

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
19 **TIMELY PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT**

20 **(Lab. Code §§ 201, 202, 203)**

21 **(Against all Defendants)**

22 73. Plaintiff realleges and incorporates by reference the allegations in the preceding
23 paragraphs.

24 74. Labor Code section 201 provides that an employer is required to pay an employee
25 whose employment is terminated by the employer all wages earned and unpaid immediately upon
26 termination.

27 75. Labor Code section 202 requires an employer pay to an employee who quits his or
28 her employment, all wages earned and unpaid no later than 72 hours thereafter.

1 76. Labor Code section 203 provides that an employer who fails to pay all wages
2 earned and due an employee who is discharged or who quits within the timeframe set forth in
3 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
4 the same rate of pay until paid, but not more than 30 days. In other words, the employer owes the
5 employee his or her daily rate of pay at their regular rate of pay for each day the full amount of
6 unpaid wages is not paid, for a penalty of up to 30 days' wages.

7 77. In violation of the Labor Code and IWC Wage Orders, Defendants failed to timely
8 pay all wages due to Plaintiff and the aggrieved employees upon separation of employment.
9 Specifically, Defendants failed to pay Plaintiff and the aggrieved employees all minimum,
10 regular, and overtime wages owed immediately upon termination or within 72 hours of
11 resignation as a result of their misclassification, failure to reimburse business expenses, unlawful
12 deductions, and employee-employer patronization requirements, among other things.

13 78. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees
14 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
15 will be ascertained according to proof at trial.

16 79. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
17 employees and the State of California for violations of Labor Code sections 201, 202, and 203
18 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

19 80. Plaintiff, individually and on behalf of the aggrieved employees and the State of
20 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
21 (g).

22 **SIXTH CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**

24 **MAINTAIN ACCURATE PAYROLL RECORDS**

25 **(Lab. Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5)**

26 **(Against all Defendants)**

27 81. Plaintiff realleges and incorporates by reference the allegations in the preceding
28 paragraphs.

1 82. Labor Code section 226, subdivision (a), requires employers to furnish each
2 employee with a statement that accurately reflects, *inter alia*, gross wages earned, total hours
3 worked, net wages earned, name and address of the legal entity that is the employer, and all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate. Labor Code section 226, subdivision (e), provides that if an employer
6 knowingly and intentionally fails to provide a statement itemizing the foregoing information, and
7 the employee suffers an injury as a result of the employer's failure to comply with subdivision
8 (a), then the employee is entitled to recover the greater of all actual damages or fifty dollars
9 (\$50.00) for each subsequent violation, up to four thousand dollars (\$4,000.00).

10 83. Labor Code 226.3 provides that any employer who violates subdivision (a) of
11 Labor Code section 226 shall be subject to a civil penalty in the amount of two hundred fifty
12 dollars (\$250.00) per employee per initial violation and one thousand dollars (\$1,000.00) per
13 employee for each subsequent violation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the records required in subdivision (a) of Labor Code
15 section 226. The civil penalties provided for in this section are in addition to any other penalty
16 provided by law.

17 84. An employee is deemed to suffer injury if the employer fails to provide an accurate
18 wage statement containing all of the required information set forth in Labor Code section 226,
19 subdivision (a). (Lab. Code § 226, subd. (e)(2).)

20 85. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
21 location in California or at the plant or establishment at which the employees are employed,
22 payroll records showing the hours worked daily and the wages paid to each employee.

23 86. Labor Code section 1174.5 imposes a civil penalty of \$500.00 for an employer's
24 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
25 penalty of \$100.00 per initial violation and \$200.00 per subsequent violation per pay period, per
26 aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation
27 of section 1174, subdivision (d).

28 ///

1 87. The IWC Wage Orders require that every employer shall keep accurate
2 information with respect to each employee, including, but not limited to, time records showing
3 the total daily hours worked by each employee, the total hours worked in each payroll period, and
4 applicable rates of pay.

5 88. Plaintiff is informed and believes that Defendants willfully and intentionally failed
6 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
7 employees. Specifically, Plaintiff believes that Defendants' records fail to include, *inter alia*:
8 actual hours worked, total hours worked, number of hours worked at each hourly rate, gross wages
9 earned, net wages earned, all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates of
11 the pay period, the employee's name and the last four digits of his or her Social Security number
12 (or employee identification number), and the name and address of the legal entity that is the
13 employer.

14 89. In addition, the omission of time worked make it difficult for employees to
15 determine whether they were paid all wages due without complicated calculations and/or
16 reconstruction of records required to be maintained by the employer.

17 90. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
19 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
20 employees.

21 91. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees
22 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
23 will be ascertained according to proof at trial.

24 92. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
25 employees and the State of California for violations of Labor Code sections 226, 1174, and
26 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
27 by the Labor Code and/or other statutes.

28 ///

1 93. Plaintiff, individually and on behalf of the aggrieved employees and the State of
2 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
3 (g).

4 **SEVENTH CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
6 **REIMBURSE BUSINESS EXPENSES, AND UNLAWFUL DEDUCTIONS AND**
7 **PATRONIZATION**

8 **(Labor Code § 221, 450, and 2802)**

9 **(Against all Defendants)**

10 94. Plaintiff realleges and incorporates by reference the allegations in the preceding
11 paragraphs.

12 95. Labor Code section 221 provides that "[i]t shall be unlawful for any employer to
13 collect or receive from an employee any part of wages theretofore paid by said employer to said
14 employee."

15 96. Labor Code section 450 provides that "[n]o employer, or agent or officer thereof,
16 or other person, may compel or coerce any employee, or applicant for employment, to patronize
17 his or her employer, or any other person, in the purchase of anything of value."

18 97. Labor Code section 2802 provides that an employer shall indemnify his or her
19 employee for all necessary expenditures or losses incurred by the employee in direct consequence
20 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

21 98. During the PAGA period, Defendants unlawfully required Plaintiff and other
22 aggrieved employees to patronize their commissary to buy all food and products to be sold on the
23 food trucks from their compensation (daily sales) in violation of Labor Code sections 221 and
24 450.

25 99. Defendants also failed to reimburse Plaintiff and other aggrieved employees
26 necessary business expenses in violation of Labor Code section 2802. During the PAGA period,
27 Defendants failed to reimburse Plaintiff and other aggrieved employees for all business expenses
28 incurred for Defendants' benefit, including truck lease payments for a truck they did not own or

1 have any independent control or use of, food costs, automobile insurance, wages of Defendants'
2 hourly employees, cleaning of the food trucks, fuel and other unidentified charges paid to
3 Defendants.

4 100. By virtue of Defendants' unlawful actions, Plaintiff and the aggrieved employees
5 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
6 will be ascertained according to proof at trial.

7 101. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
8 employees and the State of California for violations of Labor Code sections 221, 450, and 2802
9 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

10 102. Plaintiff, individually and on behalf of the aggrieved employees and the State of
11 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
12 (g).

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 15 1. For civil penalties pursuant to the PAGA in an amount according to proof;
16 2. For reasonable attorney's fees and costs, pursuant to the PAGA; and
17 3. For such other and further relief as this Court may deem just and proper.
18

19 Dated: June 12, 2020

MAHONEY LAW GROUP, APC

20
21 By: /s/ Kevin Mahoney, Esq.
22 Kevin Mahoney, Esq.
23 Katherine J. Odenbreit, Esq.
24 Atoy H. Wilson, Esq.
Attorneys for Plaintiff MARIA ELENA
HERNANDEZ
25
26
27
28

EXHIBIT A



Atoy H. Wilson
(562) 590-5550 phone
(562) 590-8400 facsimile
awilson@mahoney-law.net

April 8, 2020

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/207>

VIA CERTIFIED MAIL # 7019 0700 0001 7488 6479

Return Receipt Requested

Ideal Foods, Inc.

7549 E. Alondra Blvd.

Paramount, CA 90723

Re: *Maria Elena Hernandez v. Ideal Foods, Inc.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTIONS 2698 *ET SEQ.***

To: California Labor and Workforce Development Agency and Ideal Foods, Inc.

From: Maria Elena Hernandez, on behalf of herself and aggrieved employees who were subject to Ideal Foods, Inc.'s unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Maria Elena Hernandez ("Ms. Hernandez") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seek civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1) and 2699.3, subdivision (c)(1) and may lead to an action against Ideal Foods, Inc. ("Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or

entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Employer employed Ms. Hernandez within the past year. Ms. Hernandez alleges that Employer violated various sections of the Labor Code, including sections 201-203, 204, 221, 226, 226.3, 226.8, 450, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802 by failing to provide Ms. Hernandez and all other aggrieved employees all wages for all hours worked, failing to provide mandated meal and rest periods or compensation in lieu thereof, requiring employees to patronize the employer, and other related Labor Code violations. Ms. Hernandez alleges that Employer willfully misclassified her and other aggrieved employees as independent contractors rather than as non-exempt employees in violation of Labor Code section 226.8 in order to avoid compliance with the various sections of the Labor Code outlined in this correspondence. Pursuant to Labor Code section 2750.3, Ms. Hernandez and other aggrieved employees should have been classified as non-exempt employees since (A) they were not free from the control and direction of Employer in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) they did not perform work that is outside the usual course of Employer's business, and (C) they were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Employer owns and operates catering trucks that are dispatched to various locations in the Los Angeles area at the direction of Employer. Employer misclassified Ms. Hernandez and other aggrieved employees as "Independent Contractors." Ms. Hernandez and aggrieved employees were engaged in providing food preparation and cooking services and sales, an integral and entirely essential aspect of Employer's regular business that did not require special skills, and were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for Employer. As "Independent Contractors," Employer required Ms. Hernandez and other aggrieved employees to pay Employer a daily lease fee for the catering truck vehicle, pay the employees who worked on the truck, pay insurance for the catering truck, and pay for the food sold on the truck. Ms. Hernandez and other aggrieved employees were required to service specific locations at specific times of the day at the direction of Employer. Failure to adhere to the schedule resulted in warnings and threats to switch routes to less profitable ones or termination. Ms. Hernandez and other aggrieved employees were provided "menus" listing the food items to be sold. The customers were Employer's customers and not those of Ms. Hernandez and the aggrieved employees. Employer set profit goals for Ms. Hernandez and other aggrieved employees. If they failed to meet these goals, warnings were issued by Employer which could lead to the loss of desirable locations. Employer failed to pay any money to Ms. Hernandez and other aggrieved employees. Instead, Employer placed a credit every morning at the commissary and would deduct the amount of the daily truck lease, food purchase, insurance, and other charges all for the benefit of the Employer. Employer retained the right to terminate Ms. Hernandez and the aggrieved employees' working relationship at its discretion.

During the Liability Period, Employer failed to pay Ms. Hernandez and other aggrieved employees minimum, regular, and overtime wages for all hours worked at the legally mandated rates. Specifically, Employer failed to pay any wages to Ms. Hernandez and aggrieved employees, regardless of how many hours they worked, and instead only provided credits. As such, Employer failed to pay Ms. Hernandez and other aggrieved employees minimum, regular, and overtime

wages for all hours worked, in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

During the Liability Period, Employer failed to provide 30-minute meal periods within the appropriate time intervals to Ms. Hernandez and other aggrieved employees even though they worked in excess of five (5) and/or 10 hours per workday. Specifically, Employer lacked a compliant meal period policy and never told Ms. Hernandez and other aggrieved employees that they could take a meal period. As such, Ms. Hernandez and other aggrieved employees missed their meal periods or had them interrupted or shortened due to orders from customers, among other reasons. Employer failed to compensate Ms. Hernandez and other aggrieved employees with an additional hour of pay at their regular rate of pay to Ms. Hernandez and other aggrieved employees for every day in which they suffered a meal period violation. Accordingly, Employer failed to provide Ms. Hernandez and other aggrieved employees with meal periods or compensation in lieu thereof in violation of Labor Code sections 226.7 and 512, and the applicable Industrial Welfare Commission ("IWC") Wage Orders.

During the Liability Period, Employer failed to authorize or permit ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked because Ms. Hernandez and other aggrieved employees were not authorized or permitted to take their rest periods at the appropriate time intervals. Similar to meal periods, Employer lacked a compliant rest period policy and never told Ms. Hernandez and other aggrieved employees that they could take a rest period. Employer also failed to compensate Ms. Hernandez and other aggrieved employees with an additional hour of pay at the regular rate of pay to Ms. Hernandez and other aggrieved employees for every day in which they suffered a rest period violation. As such, Employer violated Labor Code section 226.7 and the applicable IWC Wage Orders.

As a result of, and in addition to, the aforementioned Labor Code violations, Employer failed to provide accurate itemized wage statements that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), and the name and address of the legal entity that is the employer. As a result, Employer violated Labor Code sections 226 and 226.3.

Similarly, Employer failed to maintain accurate and complete records showing the hours worked daily by and the wages paid to Ms. Hernandez and the aggrieved employees as a result of the same underpayment of wages and misclassification referenced above. Consequently, Employer violated Labor Code sections 1174 and 1174.5.

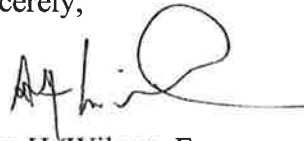
As a result of, and in addition to, the above referenced Labor Code violations, Employer failed to timely pay all wages owed throughout Ms. Hernandez and the aggrieved employees' employment and following the end of their employment. Accordingly, Employer violated Labor Code sections 201-204.

Ms. Hernandez will further allege Employer unlawfully required her and other aggrieved employees to patronize their employer by being forced to pay daily lease payments and the cost of food sold on the trucks to the employer in violation of Labor Code sections 221 and 450. Employer

required Plaintiff and aggrieved employees to purchase all food products from the Employer-owned commissary in violation of Labor Code section 450. Ms. Hernandez further alleges Employer unlawfully failed to reimburse Ms. Hernandez and other aggrieved employees necessary business expenses in violation of Labor Code section 2802. During the Liability Period, Employer failed to reimburse Ms. Hernandez and other employees for all business expenses incurred for Employer's benefit, including truck lease payments for a truck they did not own or have any independent control or use of, food costs, automobile insurance, wages of Employer's hourly employees, and "savings" to be set aside for payment to Employer upon separation of employment or failure to pay these business-related expenses in a timely manner.

Based on these violations, Ms. Hernandez will seek attorneys' fees, costs, interest, and penalties under the Labor Code on behalf of herself and all other aggrieved employees who were employed by Employer during the liability period. Please advise if the LWDA has any objection to my client including PAGA claims in her complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Atoy H. Wilson", with a large, stylized loop at the end.

Atoy H. Wilson, Esq.

MAHONEY LAW GROUP, APC