

1 **LEBE LAW, APLC**
Jonathan M. Lebe (SBN 284605)
2 jon@lebelaw.com
Zachary Gershman (SBN 328004)
3 zachary@lebelaw.com
777 S. Alameda Street, Second Floor
4 Los Angeles, CA 90021
Telephone: (213) 358-7046
5

6 **COHELAN KHOURY & SINGER**
Michael D. Singer (SBN 115301)
7 msinger@ckslaw.com
Marta Manus (SBN 260132)
8 mmanus@ckslaw.com
605 C Street, Suite 200
9 San Diego, CA 92101
10 Telephone: (619) 595-3001
11 Facsimile: (619) 595-3000

12 Attorneys for Plaintiff Don M. Vasquez, on behalf of
13 himself and as a representative for the State of California on behalf of all other aggrieved
employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF TULARE**

16 Don M. Vasquez, on behalf of himself and as a
17 representative for the State of California on
behalf of all other aggrieved employees,

18 Plaintiff,

19 vs.
20

21 Saputo Cheese USA Inc.; and Does 1 through
22 25, inclusive,

23 Defendants.
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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

08/06/2020

STEPHANIE CAMERON, CLERK
Nay Saelee, Deputy

Case Management Conference
12/09/2020 08:30 AM - Department 02

Assigned to Judicial Officer
Nathan Ide
For All Purposes

Case No. **VCU283853**

REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 [Labor Code § 2698, et
seq.] ("PAGA")

(1) PAGA Civil Penalties for Failure
to Pay All Minimum, Regular, and
Overtime Wages (Lab. Code § 2698, *et*
seq.);

(2) PAGA Civil Penalties for Failure
to Pay Reporting Time Pay (Lab. Code §
2698, *et seq.*);

(3) PAGA Civil Penalties for Failure
to Provide Timely and Compliant Meal
Periods (Lab. Code § 2698, *et seq.*);

(4) PAGA Civil Penalties for Failure to Provide Timely and Compliant Rest Periods (Lab. Code § 2698, *et seq.*);

(5) PAGA Civil Penalties for the Unlawful Deduction of Wages (Lab. Code § 2698, *et seq.*);

(6) PAGA Civil Penalties for Failure to Provide Accurate and Itemized Wage Statements (Lab. Code § 2698, *et seq.*);

(7) PAGA Civil Penalties for Failure to Timely Pay all Wages Due During Employment (Lab. Code § 2698, *et seq.*)

(8) PAGA Civil Penalties for Failure to Timely Pay All Wages Due to Terminated/Separated Employees (Lab. Code § 2698, *et seq.*);

(9) PAGA Civil Penalties for Failure to Pay All Vacation Wages (Lab. Code § 2698, *et seq.*);

(10) PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code § 2698, *et seq.*); and

(11) PAGA Civil Penalties for Failure to Reimburse All Reasonable and Necessary Business Expenses (Lab. Code § 2698, *et seq.*).

DEMAND FOR JURY TRIAL

1 Plaintiff Don M. Vasquez (“Plaintiff”), on behalf of himself and as a representative for the
2 State of California, the California Labor and Workforce Development Agency (“LWDA”), and on
3 behalf of all other aggrieved employees, hereby alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
7 Act of 2004 (“PAGA”), Labor Code sections 26894, et seq., against Saputo Cheese USA Inc., an
8 Illinois Corporation, and Does 1 through 25, inclusive (collectively, “Defendants”) to recover civil
9 penalties for all California-based “aggrieved employees” during the “PAGA Period” (defined as
10 May 12, 2019 up to and including the date of commencement of trial) arising out of Defendants’
11 labor code violations including failure to: pay all minimum, regular, and overtime wages; pay
12 reporting time wages; provide timely and compliant meal and rest periods; for the unlawful
13 deduction of wages provide accurate itemized wages statements; timely pay all wages due during
14 and upon separation of employment; pay all vacation wages; maintain accurate records; and
15 reimburse reasonable and necessary business expenses.

16 2. On May 12, 2020, Plaintiff gave notice of these claims to the California Labor and
17 Workforce Development Agency (“LWDA”) and to the agent for service of process for each
18 Defendant. A true and correct copy of Plaintiff’s notice showing compliance with Labor Code section
19 2699.3 is attached hereto as **Exhibit 1**. As there has been no LWDA intervention within 65 days of
20 that notice, Plaintiff asserts claims for civil penalties as a representative for and on behalf of the State
21 of California, as provided by the PAGA to the extent permitted by law, as an aggrieved non-exempt
22 employee. Plaintiff is an aggrieved employee and has standing to bring a representative action on
23 behalf of the State of California and the LWDA as a private attorney general.

24 3. Plaintiff asserts claims for civil penalties as a representative of the State of
25 California, as authorized by the Private Attorneys General Act of 2004 (“PAGA”), and to the
26 extent permitted by law, on behalf of aggrieved employees who held the positions identified
27 herein and suffered one or more of the violations alleged. Labor Code §§ 2698, et seq.,
28 2699.3(a)(2)(C).

1 II.

2 **JURISDICTION, VENUE, AND PARTIES**

3 4. Venue as to each Defendant is proper in this judicial district. Code of Civil
4 Procedure section 395. Defendants conduct business and commit Labor Code violations in
5 Riverside County, and each Defendant or DOE is within California for service of process. The
6 unlawful acts alleged have a direct effect on aggrieved employees within California and within
7 Riverside County.

8 5. The relief sought by Plaintiff on behalf of himself and the aggrieved employees
9 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
10 according to proof at trial. The Court has personal jurisdiction over each of the parties because
11 they are either citizens of this State, doing business in this State or otherwise have minimum
12 contacts with this State.

13 6. Based on information and belief, Plaintiff alleges that this entire action arises solely
14 under the laws of the State of California and applicable regulations of the health, safety and wages
15 of the employees residing in the State of California. Plaintiff alleges, on information and belief,
16 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
17 jurisdiction.

18 7. Venue is proper in this Court because, upon information and belief, Plaintiff
19 worked for Defendants in this county, Defendants transact business or have offices in this county,
20 and the acts and omissions alleged herein took place in this county.

21 **Plaintiff**

22 8. Plaintiff Don M. Vasquez is a citizen of California who worked for Defendants as
23 a non-exempt employee in Defendants' Production department, most recently as a Line
24 Coordinator, from approximately February 24, 2006 until June 21, 2019. Plaintiff was and is the
25 victim of the policies, practices, and customs of Defendants complained of in this action in ways
26 that have deprived him of his rights guaranteed by the California Labor Code.

27 **Defendants**

28 9. Saputo Cheese, Inc. is a corporation organized under the laws of the state of

1 Delaware. Saputo Cheese, Inc. is headquartered in Lincolnshire, Illinois.

2 10. Plaintiff is unaware of the true names or capacities of the defendants sued herein
3 under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend this
4 Complaint and serve such fictitiously named defendants once their names and capacities become
5 known.

6 11. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
8 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
9 attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer
10 and/or joint employer of Plaintiff and other aggrieved employees.

11 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
12 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
13 1 through 25, acting as the agent or alter ego for the other, with legal authority to act on the other's
14 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
15 policy of Defendants.

16 13. At all relevant times, Defendants, and each of them, acted within the scope of such
17 agency or employment, or ratified each and every act or omission complained of herein. At all
18 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
19 and all the other Defendants in proximately causing the damages herein alleged.

20 14. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
21 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
22 occurrences and transactions alleged herein.

23 **III.**

24 **GENERAL ALLEGATIONS**

25 15. California's Labor Code and IWC Wage Order 8-2001 requires employers, among
26 other things, to pay wages, including minimum, regular, overtime, and vacation wages, for all
27 hours worked, pay reporting time pay, provide compliant meal and rest periods, to furnish each
28 employee with accurate itemized wage statements, and to reimburse employees for all expenses

1 necessarily incurred in discharge of employment.

2 16. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
3 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
4 knowledgeable about California wage and hour law, employment and personnel practices and the
5 requirements of California.

6 17. Plaintiff is informed and believes, and thereon alleges that Defendants have
7 maintained a consistent policy of failing to pay Plaintiff and other aggrieved employees for all
8 hours worked, including minimum, regular and overtime wages, by requiring Plaintiff and other
9 aggrieved employees to work off-the-clock during meal periods and after their shifts. Defendants
10 employed Plaintiff and other aggrieved employees for more than 8 hours per day and more than
11 40 hours per workweek, or in excess of twelve (12) hours in a day and/or in excess of eight (8)
12 hours on the seventh day of work in a work week, failed to pay Plaintiff and other aggrieved
13 employees overtime and double time compensation for the overtime and double time hours
14 Plaintiff and other aggrieved employees worked, and unlawfully deducted the wages of Plaintiff
15 and other aggrieved employees for, for example, health insurance for which they did not enroll.
16 As a result, Defendants failed to pay Plaintiff and other aggrieved employees all their earned wages.

17 18. Plaintiff is informed and believes, and thereon alleges that Defendants failed to pay
18 Plaintiff and other aggrieved employees reporting time pay when such Plaintiff and other
19 aggrieved employees would report to work on the day of their scheduled shift and Defendants
20 failed to put such Plaintiff and other aggrieved employees to work or furnished less than half of
21 their usual day's work, and did not pay Plaintiff and other aggrieved employees reporting time pay
22 in violation of Section 5 of IWC Wage Order 8-2001.

23 19. Plaintiff is informed and believes, and thereon alleges that Defendants failed to
24 provide Plaintiff and other aggrieved employees timely, uninterrupted, off-duty meal periods of
25 no less than thirty minutes before their fifth hour of work, and failed to compensate Plaintiff and
26 other aggrieved employees for these missed meal periods. Defendants required Plaintiff and other
27 aggrieved employees to be "on duty" during meal periods, demanding Plaintiff and other aggrieved
28 employees to keep a radio on their person or otherwise be ready to immediately return to work. As

1 a result, when Plaintiff and other aggrieved employees took meal periods, they were regularly
2 interrupted, less than thirty minutes, or on duty.

3 20. Plaintiff is informed and believes, and thereon alleges that Defendants employed
4 Plaintiff and other aggrieved employees for work periods of four hours or major fraction thereof
5 without rest periods of ten minutes' net rest time and failed to compensate Plaintiff and other
6 aggrieved employees for these missed rest periods. Defendants required Plaintiff and other
7 aggrieved employees to be "on duty" during rest periods, demanding Plaintiff and other aggrieved
8 employees to keep a radio on their person or otherwise be ready to immediately return to work. As
9 a result, when Plaintiff and other aggrieved employees took rest breaks, they were regularly
10 interrupted, less than ten minutes, or on duty.

11 21. Plaintiff is informed and believes, and thereon alleges that Defendants had a
12 consistent policy of failing to reimburse Plaintiff and other aggrieved employees for all necessary
13 and reasonable business expenses incurred, in violation of California state wage and hour laws.
14 Defendant failed to reimburse Plaintiff and other aggrieved employees for their work-related use
15 of their personal automobile incurred in the discharge of their duties for Defendants.

16 22. Plaintiff is informed and believes, and thereon alleges that Defendants have
17 intentionally and willfully failed to provide Plaintiff and other aggrieved employees with complete
18 and accurate wage statements. The deficiencies include, among other things, the failure to list the
19 gross wages earned, net wages earned, deductions, and all hours worked.

20 23. Plaintiff is informed and believes, and thereon alleges that as a result of the conduct
21 described above, Defendants have failed to maintain accurate records showing the accurate number
22 of hours worked and accurate wages owed.

23 24. Plaintiff is informed and believes, and thereon alleges that Defendants a consistent
24 policy of failing to Plaintiff and other aggrieved employees all wages due during and upon
25 termination of employment, including vacation wages, in violation of California state wage and
26 hour laws.

27 25. For purposes of this action, Plaintiff, as a representative of the State of California,
28 will seek to invoke Labor Code section 1195.5 which states: "The Division of Labor Standards

1 Enforcement shall determine, upon request, whether the wages of employees, which exceed the
2 minimum wages fixed by the commission, have been correctly computed and paid. For this
3 purpose, the division may examine the books, reports, contracts, payrolls and other documents of
4 the employer relative to the employment of employees. The division shall enforce the payment of
5 any sums found, upon examination, to be due and unpaid to the employees.”

6 26. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
7 any provision of this code that provides for a civil penalty to be assessed and collected by the
8 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
9 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
10 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
11 current or former employees pursuant to the procedures specified in Section 2699.3.”

12 27. Labor Code section 2699(f)(2) states: “For all provisions of this code except those
13 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
14 of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs
15 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
16 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
17 employee per pay period for each subsequent violation.”

18 28. Pursuant to California Labor Code section 558(a), “Any employer or other person
19 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
20 any provision regulating hours and days of work in any order of the Industrial Welfare Commission
21 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
22 each underpaid employee for each pay period for which the employee was underpaid in addition
23 to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one
24 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
25 was underpaid in addition to an amount sufficient to recover underpaid wages.” Plaintiff seeks
26 only to recover the civil penalty provided for in section 558(a) for the violations alleged herein
27 and **does not** seek to recover underpaid wages.

28 29. Pursuant to California Labor Code section 558.1, Defendants are employers of

1 Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or caused to be
2 violated, any provision regulating minimum wages or hours and days of work in the applicable order
3 of the Industrial Welfare Commission, as well as California Labor Code sections 201, 202, 203, 226,
4 510, 512, 558, 1194, 1197.1, and 1198, and as such, are liable as an employer of Plaintiff and other
5 aggrieved employees employed in the State of California.

6 30. Plaintiff, as a representative of the general public and State of California, seeks to
7 recover all civil penalties under the PAGA, Labor Code sections 2699 and 2699(f)(2), for
8 violations of sections 201-204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1174.5, 1194, 1194.2,
9 1197, 1198, and 2802 shown to have occurred, in an amount according to proof, as to those
10 penalties that are otherwise only available in public agency enforcement actions. The funds
11 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
12 distributed to the LWDA on and 25% distributed to the aggrieved employees, subject to Court
13 approval.

14 IV.

15 CAUSES OF ACTION

16 FIRST CAUSE OF ACTION

17 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY** 18 **ALL MINIMUM, REGULAR, AND OVERTIME WAGES** **[Labor Code § 2698, et seq.]**

19 31. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
20 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
21 dated May 12, 2020.

22 32. Labor Code section 1194 states: "Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
25 of the full amount of this minimum wage or overtime compensation, including interest thereon,
26 reasonable attorney's fees, and costs of suit."

27 33. Labor Code section 1197 states: "The minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than

1 minimum wage so fixed is unlawful.”

2 34. Labor Code section 510 codifies the right to overtime compensation at one and one-
3 half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
4 forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day
5 of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of
6 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a
7 workweek.

8 35. Labor Code section 1198 states: “The maximum hours of work and the standard
9 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
10 conditions of labor for employees. The employment of any employee for longer hours than those
11 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

12 36. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the
13 applicable Wage Order, an employer may not pay employees less than the applicable minimum
14 wage for all hours worked, and provides that an employer may not pay non-exempt employees less
15 than the applicable overtime rate for all overtime hours worked.

16 37. Section 3 of IWC Wage Order 8-2001 provides that Defendants are and were
17 required to pay overtime compensation to Plaintiff and other aggrieved employees at the rate of
18 one and one-half times (1½) their regular rate of pay when working and for all hours worked in
19 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
20 eight (8) hours of work on the seventh day of work in a workweek.

21 38. Section 4 of IWC Wage Order 9-2001 provides that “Every employer shall pay to
22 each employee, on the established payday for the period involved, not less than the applicable
23 minimum wage for all hours worked in the payroll period, whether the remuneration is measured
24 by time, piece, commission, or otherwise.”

25 39. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
26 any provision of this code that provides for a civil penalty to be assessed and collected by the
27 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
28 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered

1 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
2 current or former employees pursuant to the procedures specified in Section 2699.3.”

3 40. “For all provisions of this code except those for which a civil penalty is specifically
4 provided, there is established a civil penalty for a violation of these provisions, as follows... (2)
5 If, at the time of the alleged violation, the person employs one or more employees, the civil penalty
6 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
7 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
8 violation.” Labor Code section 2699(f)(2).

9 41. Labor Code section 2699.5 provides, in pertinent part that “provisions of
10 subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: [Labor
11 Code §§] ...1194, 1194.1” and allow for recovery of civil penalties pursuant to the PAGA.

12 42. On information and belief, Plaintiff alleges that during all or a substantial part of
13 the PAGA Period, Defendants failed to pay minimum, regular, and overtime wages for all hours
14 worked in excess of 8 hours per day and/or 40 hours per week and all hours subject to Defendants’
15 control. Specifically, Defendants have maintained a consistent policy of failing to provide Plaintiff
16 and other aggrieved employees their minimum, regular, and overtime wage compensation by
17 requiring Plaintiff and other aggrieved employees to work off-the-clock during meal periods and
18 after their shifts. To the extent these unpaid hours worked were overtime hours, Defendants failed
19 to pay overtime premium wages. Additionally, Defendants unlawfully deducted the wages of
20 Plaintiff and other aggrieved employees for, for example, health insurance for which they did not
21 enroll, and failed to pay Plaintiff and other aggrieved employees reporting time pay when Plaintiff
22 and other aggrieved employees were only furnished less than half their usual day’s work.
23 Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intends to seek civil
24 penalties pursuant to the PAGA for the alleged violations.

25 43. As a result of Defendants’ failure to pay overtime wages for hours worked in excess
26 of eight hours in one workday and any work in excess of 40 hours in any one workweek and the
27 first eight hours worked on the seventh day of work in any one workweek, Defendants, and each
28 of them, are liable for civil penalties within the applicable limitations period of Labor Code section

1 2699(f)(2) for violations of Labor Code sections 510, 1194 and 1194.2 in the amount of \$100 for
2 each aggrieved employee per pay period for the initial violation and \$200 for each subsequent
3 violation, for Defendants' failure to pay Plaintiff and other aggrieved employees overtime wages.

4 44. Pursuant to California Labor Code section 558(a), "Any employer or other person
5 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
6 any provision regulating hours and days of work in any order of the Industrial Welfare Commission
7 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
8 each underpaid employee for each pay period for which the employee was underpaid in addition
9 to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one
10 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
11 was underpaid in addition to an amount sufficient to recover underpaid wages." Plaintiff seeks
12 only to recover the civil penalty provided for in section 558(a) for the violations alleged herein
13 and does not seek to recover any underpaid wages.

14 45. Defendants' conduct also violates Wage Order 8-2001 by failing to pay minimum
15 and overtime wages to employees.

16 46. Plaintiff, as a representative of the general public, will and does seek to recover any
17 and all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code
18 shown to exist or to have occurred, in an amount according to proof, as to those penalties that are
19 otherwise only available in public agency enforcement actions. Funds will be distributed in
20 accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the
21 LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an
22 amount to be shown according to proof at trial.

23 **SECOND CAUSE OF ACTION**

24 **PAGA CIVIL PENALTIES FOR**
25 **FAILURE TO PAY REPORTING TIME PAY**
26 **[Labor Code § 2698, et seq.]**

27 47. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
28 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA

1 dated May 12, 2020.

2 48. Section 5 of IWC Wage Order 8-2001 requires that on each workday that an
3 employee reports for work as scheduled but is not put to work or is furnished less than half of the
4 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
5 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at
6 the employee's regular rate of pay, which shall not be less than the minimum wage. Section 5 of
7 the applicable Wage Order denominates this as "Reporting Time Pay."

8 49. On information and belief, during the PAGA Period Plaintiff and other aggrieved
9 employees were required to report to work but were not put to work, or were furnished with less
10 than half of their usual day's work and would be sent home early. For those times that Plaintiff
11 other aggrieved employees were required to report to work but were not put to work or were
12 furnished with less than half of their usual scheduled day's work, and were not paid Reporting
13 Time Pay, such conduct violates Section 5 of IWC Wage Order 8-2001. Consequently, Plaintiff,
14 on behalf of himself and other aggrieved employees, intends to seek civil penalties pursuant to the
15 PAGA for these alleged violations.

16 50. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
17 Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the
18 initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code
19 § 2699(f)(2).

20 51. Plaintiff, as a representative of the general public, will and does seek to recover any
21 and all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code
22 shown to exist or to have occurred, in an amount according to proof, as to those penalties that are
23 otherwise only available in public agency enforcement actions. Funds will be distributed in
24 accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the
25 LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an
26 amount to be shown according to proof at trial.

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1 **THIRD CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE**
3 **TIMELY AND COMPLIANT MEAL PERIODS**

4 **[Labor Code § 2698, *et seq.*]**

5 52. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
6 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
7 dated May 12, 2020.

8 53. Labor Code section 512(a) states in pertinent part: “(a) An employer shall not
9 employ an employee for a work period of more than five hours per day without providing the
10 employee with a meal period of not less than 30 minutes, except that if the total work period per
11 day of the employee is no more than six hours, the meal period may be waived by mutual consent
12 of both the employer and employee. An employer shall not employ an employee for a work period
13 of more than 10 hours per day without providing the employee with a second meal period of not
14 less than 30 minutes . . .”

15 54. Labor Code section 226.7(b) provides that: “An employer shall not require an
16 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
17 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
18 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
19 Health.”

20 55. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee
21 a meal or rest or recovery period in accordance with a state law . . . the employer shall pay the
22 employee one additional hour of pay at the employee’s regular rate of compensation for each
23 workday that the meal or rest or recovery period is not provided.”

24 56. On information and belief, during the PAGA Period, Plaintiff and other aggrieved
25 employees were not provided with legally compliant, off-duty meal periods. Defendants failed to
26 provide Plaintiff and other aggrieved employees timely, uninterrupted, off-duty meal periods of
27 no less than thirty minutes before their fifth hour of work, and failed to compensate Plaintiff and
28 other aggrieved employees for these missed meal periods. Defendants required Plaintiff and other
aggrieved employees to be “on duty” during meal periods, demanding Plaintiff and other aggrieved

1 employees to keep a radio on their person or otherwise be ready to immediately return to work. As
2 a result, when Plaintiff and other aggrieved employees took meal periods, they were regularly
3 interrupted, less than thirty minutes, or on duty. Consequently, Plaintiff, on behalf of himself and
4 other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for these alleged
5 violations.

6 57. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30)
7 minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of work,
8 and failing to pay employees one hour of pay at their regular rate of pay for each workday a meal
9 period was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3),
10 and Wage Order 8-2001.

11 58. By failing to provide a second off-duty and uninterrupted meal period of at least
12 thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of
13 pay at their regular rate of pay for each eligible workday a second meal period was not provided,
14 Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Wage Order 8-2001.

15 59. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
16 Labor Code for which there is no corresponding civil penalty, including Labor Code section 226.7.
17 The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each
18 underpaid employee. Labor Code § 2699(f)(2).

19 60. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
20 section 2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation, according to
21 proof, as to those penalties otherwise only available in public agency enforcement actions. Funds
22 will be distributed in accordance with the PAGA, with 75% of the civil penalties recovered being
23 reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable
24 penalty is all in an amount to be shown according to proof at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR FAILURE**
3 **TO PROVIDE TIMELY AND COMPLIANT REST PERIODS**
4 **[Labor Code § 2698, et seq.]**

5 61. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
6 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
7 dated May 12, 2020.

8 62. The “Rest Period” Section of IWC Wage Order 8-2001 states: “Every employer
9 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
10 in the middle of each work period. The authorized rest period shall be based on the total hours
11 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
12 thereof.” If an employer fails to provide an employee a rest period in accordance with the
13 applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the
14 employee’s regular rate of compensation of each workday that the rest period is not provided.

15 63. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee
16 a meal or rest or recovery period in accordance with a state law . . . the employer shall pay the
17 employee one additional hour of pay at the employee’s regular rate of compensation for each
18 workday that the meal or rest or recovery period is not provided.”

19 64. Upon information and belief, during the PAGA Period, Plaintiff and other
20 aggrieved employees were not provided with legally compliant, duty-free rest periods. Defendants
21 required Plaintiff and other aggrieved employees to be “on duty” during rest periods, demanding
22 Plaintiff and other aggrieved employees to keep a radio on their person or otherwise be ready to
23 immediately return to work. As a result, when Plaintiff and other aggrieved employees took rest
24 breaks, they were regularly interrupted, less than ten minutes, or on duty. Consequently, Plaintiff,
25 on behalf of himself and other aggrieved employees, intends to seek civil penalties pursuant to the
26 PAGA for these alleged violations.

27 65. By failing to authorize and permit Plaintiff to receive a duty-free rest period of at
28 least 10 minutes for every four (4) hours or major fraction thereof worked per day, and by failing
to provide premium wages at the regular rate of pay when these periods were not permitted or

1 authorized, Defendants willfully violated Labor Code sections 226.7, 558 and Wage Order 8-2001

2 66. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
3 Labor Code for which there is no corresponding civil penalty, including Labor Code section 226.7.
4 The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each
5 underpaid employee. Labor Code § 2699(f)(2).

6 67. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
7 section 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to proof, as to
8 those penalties otherwise only available in public agency enforcement actions. Funds will be
9 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being
10 reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable
11 penalty is all in an amount to be shown according to proof at trial.

12 **FIFTH CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR**
14 **THE UNLAWFUL DEDUCTION OF WAGES**
15 **[Labor Code § 2698, *et seq.*]**

16 68. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
17 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
18 dated May 12, 2020.

19 69. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any
20 employer to collect or receive from an employee any part of wages theretofore paid by said
21 employer to said employee.”

22 70. Upon information and belief, during the PAGA Period, Defendants made unlawful
23 deductions from Plaintiff and other aggrieved employees’ wages by deducting from those wages
24 amounts, for example, for the cost of health insurance for which Plaintiff and other aggrieved
25 employees did not enroll. Consequently, Plaintiff, on behalf of himself and other aggrieved
26 employees, intends to seek civil penalties pursuant to the PAGA for these alleged violations.

27 71. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
28 Labor Code for which there is no corresponding civil penalty, including Labor Code section 221.
The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each

1 underpaid employee. Labor Code § 2699(f)(2). In addition, Labor Code section 225.5 provides an
2 independent and separate penalty for “violation of Section 212, 216, 221, 222, or 223” of the Labor
3 Code of \$100 for any initial violation for each failure to an employee, and \$200 for any subsequent
4 violation for each failure to pay an employee.

5 72. Plaintiff, as a representative of the general public, will and does seek to recover any
6 and all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code
7 section 221 shown to exist or to have occurred, in an amount according to proof, as to those
8 penalties that are otherwise only available in public agency enforcement actions. Funds will be
9 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being
10 reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable
11 penalty is all in an amount to be shown according to proof at trial.

12 **SIXTH CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR FAILURE**
14 **TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS**
15 **[Labor Code § 2698, *et seq.*]**

16 73. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
17 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
18 dated May 12, 2020.

19 74. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the
20 time of each payment of wages, furnish each of his or her employees... an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
22 (4) all deductions, provided that all deductions made on written orders of the employee may be
23 aggregated and shown as one item, (5) net wages earned... ..and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee...”

26 75. Due to Defendants’ failure to pay for all hours worked and all meal and rest periods
27 premiums as required by the Labor Code, and the unlawful deduction of wages, the wages and
28 hours worked listed on each wage statement provided to Plaintiff and other aggrieved employees
were misstated and violated Sections 226(a)(1), (2), (4), (5), and (9). Defendants’ actions were

1 intentional and willful.

2 76. Plaintiff has satisfied all prerequisites to serve as a representative of the general
3 public to enforce California's labor laws, and the penalty provisions identified in Labor Code
4 section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all
5 penalties otherwise capable of being collected by the Division of Labor Standards Enforcement
6 ("DLSE"). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged
7 violation of Labor Code section 226.

8 77. Labor Code section 226.3 provides for civil penalties for violations of Section 226.
9 The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

10 78. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
11 section 2699(f)(2) penalties for each Labor Code section 226 violation, according to proof, as to
12 those penalties otherwise only available in public agency enforcement actions. Funds recovered
13 will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the
14 LWDA on behalf of the State of California.

15 **SEVENTH CAUSE OF ACTION**

16 **PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY**
17 **ALL WAGES DUE DURING EMPLOYMENT**
18 **[Labor Code § 2698, *et seq.*]**

19 79. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
20 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
dated May 12, 2020.

21 80. Labor Code section 204(a) requires employers to pay wages earned by employees
22 within strict time requirements. Defendants had a policy, practice, and procedure of willfully
23 failing to pay the earned wages of Defendants' employees twice during each calendar month, on
24 days designated in advance by the employer as the regular paydays.

25 81. Upon information and belief, during the PAGA Period, Defendant failed to pay
26 Plaintiff and other aggrieved employees all minimum, regular, and overtime wages and all meal
27 and rest period premium wages during their employment, as required by Labor Code sections 204.

28 82. Labor Code sections 2698, *et seq.* impose upon Defendants, and each of them, a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
2 violation and two hundred (\$200.00) for each aggrieved employee per pay period for each
3 subsequent violation of Labor Code sections 204, and 1198.

4 83. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
5 Labor Code for which there is no corresponding civil penalty, including Labor Code section 203.
6 The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each
7 underpaid employee. Labor Code § 2699(f)(2).

8 84. Plaintiff, as a representative of the general public, seeks to recover all penalties
9 under Labor Code section 2699(f)(2) for each and every violation of Labor Code section 204(a),
10 in an amount according to proof, as to those penalties that are otherwise only available in public
11 agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA,
12 with 75% of penalties recovered provided to the LWDA on behalf of the State of California

13 **EIGHTH CAUSE OF ACTION**

14 **PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL**
15 **WAGES DUE UPON TERMINATION/SEPARATION OF EMPLOYMENT**
16 **[Labor Code § 2698, et seq.]**

17 85. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
18 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
dated May 12, 2020.

19 86. Labor Code sections 201-203 require employers to pay wages earned by employees
20 within strict time requirements. Defendants had a policy, practice, and procedure of willfully
21 failing to pay the earned wages of Defendants' former employees. If an employer willfully fails to
22 timely and fully pay all final wages the employer must, as a penalty, continue to pay an employee's
23 wages for 30 days, or until the back wages are paid in full.

24 87. Defendants failed to pay Plaintiff and other aggrieved employees who ended their
25 employment with the Defendant all wages, including minimum, overtime, and meal and rest period
26 premium wages, as required by Labor Code sections 201-203.

27 88. Labor Code section 256 states: "The Labor Commissioner shall impose a civil
28 penalty in an amount not exceeding 30 day's pay as waiting time under the terms of Section 203."

1 89. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
2 Labor Code for which there is no corresponding civil penalty, including Labor Code section 203.
3 The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each
4 underpaid employee. Labor Code § 2699(f)(2).

5 90. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
6 section 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to proof, as
7 to those penalties otherwise only available in public agency enforcement actions. Funds recovered
8 will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the
9 LWDA on behalf of the State of California

10 **NINTH CAUSE OF ACTION**

11 **PAGA CIVIL PENALTIES FOR**
12 **FAILURE TO PAY VACATION WAGES**
 [Labor Code § 2698, *et seq.*]

13 91. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
14 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
15 dated May 12, 2020.

16 92. Labor Code section 227.3 states: “Unless otherwise provided by a collective-
17 bargaining agreement, whenever a contract of employment or employer policy provides for paid
18 vacations, and an employee is terminated without having taken off his vested vacation time, all
19 vested vacation shall be paid to him as wages at his final rate in accordance with such contract of
20 employment or employer policy respecting eligibility or time served; provided, however, that an
21 employment contract or employer policy shall not provide for forfeiture of vested vacation time
22 upon termination.”

23 93. Upon information and belief, during the PAGA Period, Plaintiff and other
24 aggrieved employees were not paid all vested vacation wages upon termination of employment.
25 During Plaintiff’s employment, Plaintiff was entitled to paid time off/vacation time which was not
26 paid out in full upon separation of employment. As a result of Defendants failure to accurately
27 record all hours worked, including hours worked during meal periods, the vested vacation provided
28 to Plaintiff and other aggrieved employees was not accurate nor based on the accurate number of

1 hours worked.

2 94. Defendants' conduct violates Labor Code Section 227.3

3 95. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
4 Labor Code for which there is no corresponding civil penalty, including Labor Code section
5 227.3. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
6 for each underpaid employee. Labor Code § 2699(f)(2).

7 96. Plaintiff, as a representative of the general public, seeks to recover all Labor Code
8 section 2699(f)(2) penalties for each Labor Code section 227.3 violation, according to proof, as
9 to those penalties otherwise only available in public agency enforcement actions. Funds
10 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
11 provided to the LWDA on behalf of the State of California.

12 **TENTH CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR**
14 **FAILURE TO MAINTAIN ACCURATE RECORDS**
15 **[Labor Code § 2698, *et seq.*]**

16 97. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
17 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
dated May 12, 2020.

18 98. Labor Code section 1174(d) states: "Every person employing labor in this state
19 shall: Keep, at a central location in the state or at the plants or establishments at which employees
20 are employed, payroll records showing the hours worked daily by and the wages paid to employees
21 employed at the respective plants or establishments. These records shall be kept in accordance
22 with rules established for this purpose by the commission, but, in any case shall be kept on file for
23 not less than three years."

24 99. Labor Code section 1174.5 states "Any person employing labor who willfully fails
25 to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be
26 subject to a civil penalty of five hundred dollars."

27 100. IWC Wage Order 8-2001, section 7 obligates an employer to keep accurate
28 information of wages earned and paid including applicable overtime, rest period and gratuity

1 wages. IWC Wage Order 8-2001, section 7(A)(3) states in pertinent part: “Every employer shall
2 keep accurate information with respect to each employee including the following: . . . (3) Time
3 records showing when the employee begins and ends each work period. Meal periods, split shift
4 intervals and total daily hours worked shall also be recorded.”

5 101. During all or a substantial portion of the PAGA Period, Defendants failed to
6 maintain accurate records showing the accurate number of hours worked.

7 102. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff,
8 and other aggrieved employees, for civil penalties as required by Labor Code section 1174(d) or,
9 in the alternative, section 2699(f)(2).

10 103. As a proximate result of the aforementioned violations, Plaintiff has been damaged
11 in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
12 this Court.

13 104. Plaintiff, as a representative of the general public, will and does seek to recover any
14 and all civil penalties for each and every violation, in an amount according to proof, as to those
15 penalties that are otherwise only available in public agency enforcement actions. Civil penalties
16 recovered will be distributed in accordance with the PAGA, with 75% of civil penalties recovered
17 provided to the LWDA on behalf of the State of California.

18 **ELEVENTH CAUSE OF ACTION**

19 **PAGA CIVIL PENALTIES FOR FAILURE TO** 20 **REIMBURSE ALL REASONABLE AND NECESSARY BUSINESS EXPENSES** 21 **[Labor Code § 2698, *et seq.*]**

22 105. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
23 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
dated May 12, 2020.

24 106. California Labor Code section 2802(a) provides: “An employer shall indemnify his
25 or her employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
27 employer, even though unlawful, unless the employee, at the time of obeying the directions,
28 believed them to be unlawful.”

107. California Labor Code section 2802(b) provides: “All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

108. California Labor Code section 2802(c) provides: “For purposes of this section, the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.’”

109. Upon information and belief, during the PAGA Period, Defendant failed to reimburse Plaintiff and other aggrieved employees for their work-related use of their personal automobile incurred in the discharge of their duties for Defendants. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for these alleged violations.

110. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 2802. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

111. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds will be distributed in accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

V.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and his counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

1 B. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid
2 minimum, regular, and overtime wages pursuant to Labor Code section 1194, according to proof;

3 C. For recovery of civil penalties permitted by Labor Code Section 2699, for unpaid
4 reporting time pay pursuant to IWC Wage Order 8-2001, according to proof;

5 D. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid
6 meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

7 E. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid
8 rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

9 F. For recovery of civil penalties permitted by Labor Code section 2699 for unlawful
10 wage deductions pursuant to Labor Code section 221, according to proof;

11 G. For recovery of civil penalties permitted by Labor Code section 2699, for inaccurate
12 itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

13 H. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for failing
14 to timely pay all wage due pursuant to Labor Code section 204(a).

15 I. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
16 failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

17 J. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
18 failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

19 K. For recovery of all civil penalties as permitted by Labor Code section 2699, for
20 unpaid vacation wages owed pursuant to Labor Code section 227.3, according to proof

21 L. For Pre-Judgment and Post-Judgment interest;

22 M. For the Plaintiff to be recognized by the Court as serving as a Representative of the
23 LWDA, that he has suffered sufficient harm to be deemed and “aggrieved employees” and to
24 proceed in this PAGA Action, and to be awarded some form of enhanced compensation for
25 bringing this action should he prevail and provide benefit to the State of California or other
26 “aggrieved employees,” subject to the Court’s discretion;

27 ///

28 ///

1 N. Attorneys' fees and costs of suit, including expert fees and fees pursuant to
2 California Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including
3 Code of Civil Procedure section 1021.5; and,

4 O. Such other relief as this Court deems necessary, just, equitable, and proper.

5 **VI.**

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands a trial by jury on all claims so triable.

8 DATED: August 6, 2020

LEBE LAW, APLC

9
10
11 By: 
12 Jonathan M. Lebe
13 Attorney for Plaintiff Don M. Vasquez,
14 individually and on behalf of all others similarly
15 situated

16 DATED: August 6, 2020

COHELAN KHOURY & SINGER

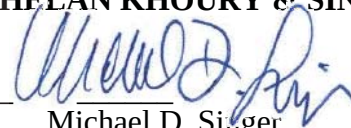
17 By: 
18 Michael D. Singer
19 Attorney for Plaintiff Don M. Vasquez,
20 individually and on behalf of all others similarly
21 situated
22
23
24
25
26
27
28

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

May 12, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Saputo Cheese USA Inc.
One Overlook Point, Ste. 300
Lincolnshire, IL 60069

Saputo Cheese USA Inc.
c/o C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Don M. Vasquez on behalf of himself and all other non-exempt employees of Saputo Cheese USA Inc. in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Saputo Cheese USA Inc.:

This letter shall serve as Don M. Vasquez's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Saputo Cheese USA Inc. (referred to herein as "the Employer"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

The Employer operates cheese processing facilities throughout California. Claimant worked for the Employer as a non-exempt employee from approximately February 24, 2006 through June 21, 2019 in the Employer's Production department, most recently as a Line

Coordinator. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other aggrieved employees of the Employer. Claimant alleges that the Employer:

1. Failed to pay Claimant and other aggrieved employees all wages due including minimum, regular, and overtime wages;
2. Failed to pay Claimant and other aggrieved employees Reporting Time Pay;
3. Failed to pay Claimant and other aggrieved employees all vacation wages due;
4. Failed to pay Claimant and other aggrieved employees all paid sick leave;
5. Failed to provide legally compliant off-duty meal periods or pay compensation in lieu thereof;
6. Failed to provide legally compliant duty-free, rest periods or pay compensation in lieu thereof;
7. Failed to provide accurate and itemized wage statements;
8. Failed to pay all wages due upon separation of employment;
9. Failed to reimburse all reasonable and necessary business expenses; and
10. Made unlawful deductions from Claimant's and other aggrieved employees' wages, including for health insurance that Claimant did not enroll for.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other non-exempt aggrieved employees based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth below.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours

in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

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

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific

offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. Claimant and, on information and belief, other aggrieved employees regularly worked after clocking out at the end workday without receiving any compensation for these hours worked off-the-clock. The Employer pressured non-exempt employees such as Claimant to avoid working double time and was aware of the fact that aggrieved employees had to work off-the-clock if the relief employee was not on time or the Employer needed additional work completed. Additionally, Claimant and, on information and belief, other aggrieved employees performed work during meal periods due to the demands of the job. The hours worked by Claimant and other aggrieved employees during meal periods were unpaid by the Employer.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “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. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer’s employment practices incentivized employees to forego taking meal and rest breaks because employees such as Claimant were pressured to continue working to address issues on the production line and were frequently interrupted during meal and rest breaks and required to return to work. As a result, Claimant remained on duty and under the control of his employer during meal and rest breaks. (See, *Augustus v. ABM Security Services, Inc*, 2 Cal. 5th 257, 269.) Furthermore, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY REPORTING TIME PAY

(Violation of Labor Code §§ 218, 558, 1194, 1198, 1199, 2698 and the “Reporting Time Pay”
Section of the applicable IWC Wage)

Section 5(A) of the applicable IWC Wage Order states: “Each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Labor Code section 218 states: “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently

and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

The Employer violated California law and the applicable IWC wage order by failing to pay all wages due, including reporting time pay. On information and belief, non-exempt employees, including Claimant, were frequently required to report to work but were not provided with work and were sent home due to lack of need. On these occasions, the Employer sent employees home without paying for reporting time pay, as required under California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools

and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees were required to drive to different Saputo Cheese USA Inc. plants to assist with work at the various plants, without receiving reimbursement for mileage and/or other travel expenses incurred. As such, the Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 221, 223, 224, and 225.5)

California Labor Code section 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

California Labor Code section 223 states that “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

California Labor Code section 224 states: “The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee’s wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction

from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.”

California Labor Code section 225.5 provides:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth in detail above, the Employer violated Labor Code sections 221 and 223, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it deducted wages due and earned by Claimant and other aggrieved employees, which also resulted in the failure to pay all minimum, regular, and overtime wages for all hours worked. Additionally, the Employer unlawfully deducted wages for health insurance that Claimant never enrolled in without reimbursement of these wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

The Employer failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved employees. Claimant and other aggrieved employees accrued vacation wages on the total hours worked. Due to Employer’s failure to pay all wages, as detailed above, for all hours worked, the vacation wages paid to Claimant and other aggrieved employees were underpaid and incorrect.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

- (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.
- (2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.
- (3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.
- (4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. Claimant and other aggrieved employees accrued paid sick leave based on the total hours worked. Due to Employer's failure to pay all wages, as detailed above, for all hours worked, the sick leave provided and paid to Claimant and other aggrieved employees was underpaid and incorrect.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employer’s failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime wages, the Employer violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employer fail to inform of the accurate number of hours worked and accurate total wages due and earned. As such, the itemized wage statements are inaccurate and fail to comply with the requirements of Labor Code section 226.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees

employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states: “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employer failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all

hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, regular, minimum, overtime, vacation, and reporting time wages, and paid sick leave within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work and Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney's fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA representative action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

California LWDA
Saputo Cheese USA Inc.
Re: Don M. Vasquez
May 12, 2020
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CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

cc:
Via Email only
Jonathan M. Lebe, Esq.
Zachary Gershman, Esq.
LEBE LAW, APC
777 South Alameda Street, Second Floor
Los Angeles, CA 90021
jon@lebelaw.com
Zachary@lebelaw.com