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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES 20STCV25388

MARCO CABAN,

Plaintiff,

v.

MORE AGENCY, INC.; KUSHY PUNCH,
INC.; VERTICAL BLISS INC;
CONGLOMERATE MARKETING LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No.:

**PRIVATE ATTORNEYS GENERAL
ACT COMPLAINT**

1. Violation of PAGA for Failure to Pay All Wages Including Minimum, Regular, and Overtime Wages (Lab. Code, §§ 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198);
2. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code, §§ 226.7, 512);
3. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code, §§ 226.7);
4. Violation of PAGA for Failure to Timely Pay Wages Upon Separation of Employment (Lab. Code, §§ 201, 202, 203);
5. Violation of PAGA for Failure to Maintain Accurate Payroll Records (Lab. Code, §§ 226, subd. (A), (E), 226.3, 1174, 1174.5); and
6. Violation of PAGA for Failure to Reimburse Business Expenses (Lab. Code, § 2802).

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

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
5 Act of 2004 (“PAGA”) against Defendants MORE AGENCY, INC.; KUSHY PUNCH, INC.;
6 VERTICAL BLISS INC; CONGLOMERATE MARKETING LLC; and DOES 1 through 50
7 (collectively “Defendants”), on behalf of himself individually and all other current and former
8 aggrieved employees employed by Defendants throughout California during the PAGA period.
9 The PAGA period is defined as one year prior to Plaintiff’s notice of labor code violations to the
10 Labor and Workforce Development Agency (“LWDA”) and certified mailing of said notice to
11 Defendants until resolution.

12 2. Defendants own and operate corporations that provide consulting services for
13 cannabis companies, and manufacture, distribute, and market cannabis infused candy and other
14 items to retailers and consumers throughout California. Defendants employed and/or continue to
15 employ Plaintiff and other aggrieved employees throughout California.

16 3. Defendants have engaged in a systematic pattern of wage and hour violations under
17 the Labor Code, including, but not limited to, failure to pay all wages (including minimum, regular,
18 and overtime compensation); failure to provide meal periods or compensation in lieu thereof;
19 failure to authorize or permit rest breaks or provide compensation in lieu thereof; failure to provide
20 accurate itemized wage statements; failure to pay all wages due upon separation of employment;
21 and failure to reimburse business expenses. These violations concern current and past non-exempt
22 employees of Defendants.

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

25 **JURISDICTION AND VENUE**

26 5. Venue is proper in Los Angeles County, because Defendants maintain its locations
27 and transacts business in this county, the obligations and liability primarily arise in this county,
28 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

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

THE PARTIES

Plaintiff

7. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los Angeles. In or around July 2018, Defendants hired Plaintiff as a non-exempt hourly Machine Operator and terminated him on October 22, 2019. Throughout the PAGA period, Plaintiff's duties included, *inter alia*, powering, depowering, operating, and maintaining machines, inspecting (e.g., temperature) and weighing gummy products, quality control, sorting products, and creating labels (e.g., by including date, number, substance, and quantity) and labeling candies.

Defendants

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant MORE AGENCY, INC. (“MAI”) is a California corporation that is a consulting company. MAI shares the same business address as CONGLOMERATE MARKETING LLC and owns the copyright and/or trademark rights to KUSHY PUNCH, INC. MAI is listed throughout KUSHY PUNCH, INC.’S website and issued wage statements to Plaintiff and aggrieved employees during a portion of the PAGA period. On information and belief, and based thereon, Plaintiff alleges that MAI is conducting business in good standing in California, and at all times herein mentioned has regularly conducted business throughout the State of California.

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant KUSHY PUNCH, INC. (“KPI”) is a California corporation, and based thereon alleges, that Defendant KUSHY PUNCH, INC. (“KPI”) is a California corporation that manufactures and sells cannabis infused candy and other items to retailers and consumers throughout California. At all

1 relevant times, KPI directly employed Plaintiff and aggrieved employees to work at its facilities
2 located in Los Angeles County. On information and belief, and based thereon, Plaintiff alleges
3 that KPI is conducting business in good standing in California, and at all times herein mentioned
4 has regularly conducted business throughout the State of California.

5 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 VERTICAL BLISS, INC. ("VBI") is a California corporation that manufactures and sells
7 cannabis products to retailers and consumers throughout California. At all relevant times, VBI
8 employed Plaintiff to work at its facilities located in Los Angeles County and issued wage
9 statements to Plaintiff and aggrieved employees during a portion of the PAGA period. On
10 information and belief, and based thereon, Plaintiff alleges that VBI is conducting business in
11 good standing in California, and at all times herein mentioned has regularly conducted business
12 throughout the State of California.

13 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant
14 CONGLOMERATE MARKETING LLC ("CML") is a California corporation that provides
15 internet marketing services throughout California for the other Defendants. CML shares the same
16 office address as MAI and Defendants represented to Plaintiff that he was an employee of CML.
17 Plaintiff is informed and believes, and based thereon alleges, that CML is and was a joint
18 employer of Plaintiff and the aggrieved employees during the PAGA period. On information and
19 belief, and based thereon, Plaintiff alleges that CML is conducting business in good standing in
20 California, and at all times herein mentioned has regularly conducted business throughout the
21 State of California.

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

28 13. Plaintiff is informed and believes, and based thereon alleges, that each

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

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

11 **ADMINISTRATIVE PREREQUISITES**

12 15. By this complaint, Plaintiff brings this case as a representative action seeking
13 penalties for himself, the aggrieved employees, and the State of California in a representative
14 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
15 employee who was employed by Defendants and subject to at least one of the Labor Code
16 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
17 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
18 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and
19 2802.

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

24 17. Prior to filing this complaint, on April 22, 2020, Plaintiff gave written notice of the
25 specific provisions alleged to have been violated, including the facts and theories to support the
26 alleged violations, as required by Labor Code section 2699.3. The written notice was given via
27 certified mail to Defendants, and the LWDA by electronically filing the notice via the Department
28 of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-

1 784172-20. A true and correct copy of Plaintiff's notice to the LWDA and Defendant(s), dated
2 April 22, is attached hereto as Exhibit A.

3 18. The LWDA has not provided Plaintiff with any notice that it intends to investigate
4 the violations as alleged in Plaintiff's April 22, 2020 notice, and more than sixty-five (65) calendar
5 days have elapsed since the postmark date on the notice.

6 **GENERAL ALLEGATIONS**

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

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

18 21. Defendants' conduct during the PAGA period with respect to Plaintiff and the
19 aggrieved employees violates numerous Labor Code sections as detailed herein.

20 22. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and
21 hour violations under the California Labor Code and IWC Wage Orders.

22 23. At all relevant times herein, Defendants employed Plaintiff and other aggrieved
23 employees as non-exempt employees.

24 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
25 or should have known that Plaintiff and aggrieved employees were entitled to receive wages for
26 all hours worked, including the applicable minimum, regular, and overtime wages, and that they
27 were not receiving all wages earned for work that was required to be performed. In violation of
28 the Labor Code and IWC Wage Orders, Defendants required Plaintiff and aggrieved employees to

1 clock out and continue working during their meal periods off-the-clock and failed to compensate
2 them for all overtime hours worked.

3 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
4 or should have known that Plaintiff and aggrieved employees were entitled to receive all required
5 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
6 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
7 violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy
8 of not providing proper meal periods. Defendants instructed Plaintiff and aggrieved employees to
9 clock out for meal periods and continue working off-the-clock clock which resulted in missed
10 meal periods. Plaintiff and aggrieved employees also missed meal periods as a result of
11 Defendant's understaffing and heavy workload. In addition, Defendants failed to provide second
12 meal periods when Plaintiff and aggrieved employees worked in excess of ten (10) hours. As a
13 result of Defendants' unlawful policy and practice, Plaintiff and aggrieved employees did not
14 receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved
15 employees' regular rate of pay when they did not receive a timely, uninterrupted thirty (30) minute
16 off-duty meal period.

17 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
18 or should have known that Plaintiff and aggrieved employees were entitled to receive all paid ten
19 (10) minute, uninterrupted and off-duty rest periods or payment of one (1) additional hour of pay
20 at Plaintiff's and aggrieved employees' regular rate of pay when a rest period was missed,
21 interrupted, or shortened. In violation of the Labor Code and IWC Wage Orders, Defendants had
22 a pattern, practice, and policy of not providing paid rest periods. Specifically, Plaintiff and
23 aggrieved employees were unable to take rest breaks due to their heavy workload and were
24 pressured to forego rest breaks and complete their work assignments. As a result of Defendants'
25 policy and practice, it systematically denied Plaintiff and aggrieved employees from taking proper
26 rest breaks. Plaintiff and aggrieved employees did not receive all paid rest periods or payment of
27 one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when a
28 paid rest period was on-duty, missed, shortened or interrupted.

1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that Plaintiff and certain aggrieved employees were entitled to timely
3 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
4 and certain aggrieved employees did not receive payment of all wages due, within permissible
5 time periods, upon separation of employment.

6 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
7 or should have known that Plaintiff and aggrieved employees were entitled to receive itemized
8 wage statements that accurately showed their actual hours worked, total hours worked, number of
9 hours worked at each hourly rate, and gross and net wages earned in accordance with California
10 law. In violation of the Labor Code, Plaintiff and aggrieved employees were not provided with
11 accurate itemized wage statements that accurately reported their gross and net wages earned, total
12 hours worked, and each applicable rate of pay in effect during the pay period with the
13 corresponding number of hours worked, among other things.

14 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Defendants were required to maintain accurate records of the hours
16 worked by Plaintiff and aggrieved employees. In violation of the California Labor Code,
17 Defendants failed to maintain accurate records of hours worked by Plaintiff and aggrieved
18 employees by requiring them to work off-the-clock without compensation, among other things.

19 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
20 or should have known that Plaintiff and aggrieved employees were entitled to receive business
21 reimbursements for necessary expenditures incurred in connection with the performance and
22 execution of their job duties. Defendants required Plaintiff and aggrieved employees to drive their
23 personal vehicles between Defendants' worksites during their shifts without reimbursement for
24 mileage, maintenance, insurance, and wear and tear on their vehicles. In violation of the Labor
25 Code, Defendants failed to reimburse Plaintiff and aggrieved employees for these business-related
26 expenditures.

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1 **FIRST CAUSE OF ACTION**

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

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

5 **(Against all Defendants)**

6 31. Plaintiff realleges and incorporates by reference the allegations in the preceding
7 paragraphs.

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

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

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

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

20 36. Labor Code section 558, subdivision (a) further provides "[a]ny employer or other
21 person acting on behalf of an employer who violates, or causes to be violated, a section of this
22 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
24 (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid
25 . . . (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee
26 for each pay period for which the employee was underpaid."

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

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

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

11 39. At all relevant times herein, Plaintiff and aggrieved employees were and are paid
12 as non-exempt employees.

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

15 41. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked,
16 including the applicable minimum, regular, and overtime compensation, and failed to record actual
17 hours worked by, inter alia, requiring Plaintiff and aggrieved employees to work off-the-clock
18 during meal periods and failing to provide compensation for all overtime hours worked.

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

22 43. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
23 employees and the State of California for violations of Labor Code sections 204, 510, 1194, 1197,
24 1198 and pursuant to Labor Code sections 558 and 1197.1 during the PAGA period, in a sum as
25 provided by the Labor Code and/or other statutes.

26 44. Plaintiff, individually and on behalf of the aggrieved employees and the State of
27 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
28 (g) and Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

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

(Lab. Code, §§ 226.7 and 512)

(Against all Defendants)

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

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

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

48. At all times relevant hereto, Plaintiff and aggrieved employees have regularly worked shifts of more than five (5) hours and/or 10 hours in a workday. Plaintiff alleges Defendants failed to provide legally compliant meal periods, in addition to impeding and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods. Specifically, Plaintiff and aggrieved employees had their meal periods late, shortened, interrupted, and/or missed altogether as a consequence of Defendants' pattern, practice, and policy of requiring employees to work through their meal periods off-the-clock. Plaintiff and aggrieved employees also missed meal periods due to Defendants understaffing and heavy workload. In addition, Defendants failed to provide second meal periods to Plaintiff and aggrieved employees. Despite failing to provide compliant meal periods, Defendants failed to pay one additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay for each workday that a meal period violation occurred.

1 49. By and through their actions, Defendants have intentionally and improperly denied
2 compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees
3 in violation of Labor Code sections 226.7 and 512 and/or other statutes.

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

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

10 52. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
11 subdivision (g) and Code of Civil Procedure section 1021.5.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**

14 **FAILURE TO PROVIDE REST PERIODS**

15 **(Lab. Code, § 226.7)**

16 **(Against all Defendants)**

17 53. Plaintiff realleges and incorporates by reference the allegations in the preceding
18 paragraphs.

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

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

26 56. At all times relevant hereto, Plaintiff and aggrieved employees have worked shifts
27 of more than three-and-a-half (3.5) hours in a workday. Plaintiff and aggrieved employees
28 consistently had their rest breaks missed, interrupted or shortened due to Defendants' uniform

1 policies and practices. For example, Defendants pressured Plaintiff and aggrieved employees to
2 forego rest breaks and continue working. In addition, due to Defendant's understaffing and heavy
3 workload, Plaintiff and aggrieved employees were unable to regularly take rest breaks. Defendants
4 also failed to pay one additional hour of pay at Plaintiff and aggrieved employees' regular rate of
5 pay for each workday that a rest period violation occurred.

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

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

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

15 60. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
16 subdivision (g) and Code of Civil Procedure section 1021.5.

17 **FOURTH CAUSE OF ACTION**

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

20 **(Lab. Code, §§ 201, 202, 203)**

21 **(Against all Defendants)**

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

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

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

preceding paragraphs.

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

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

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

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

74. 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 in addition to the civil penalty of one hundred dollars (\$100.00) per initial violation and two hundred dollars (\$200.00) per subsequent violation per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of section 1174, subdivision (d).

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

5 76. Plaintiff is informed and believes that Defendants willfully and intentionally failed
6 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
7 employees. Specifically, Plaintiff believes that Defendants' records fail to include, inter alia: (1)
8 actual hours worked; (2) total hours worked; (3) number of hours worked at each hourly rate; (4)
9 gross wages earned; and (5) net wages earned.

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

13 78. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
15 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
16 employees. Specifically, Defendants' records do not accurately reflect Plaintiff's and the aggrieved
17 employees' hours worked when they worked off-the-clock during their meal breaks without
18 compensation, among other things.

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

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

26 81. Plaintiff, individually and on behalf of the aggrieved employees and the State of
27 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
28 (g) and Code of Civil Procedure section 1021.5.

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1. For civil penalties pursuant to the PAGA in an amount according to proof;
2. For reasonable attorney's fees and costs, pursuant to the PAGA and California Code of Civil Procedure section 1021.5; and
3. For such other and further relief as this Court may deem just and proper.

MAHONEY LAW GROUP, APC


Katherine J. Odenbreit
Michael A. Swift
Attorneys for Plaintiff MARCO CABAN

Exhibit A



Michael A. Swift, Esq.
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562.590.8400 facsimile
mswift@mahoney-law.net

April 22, 2020

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

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

VIA CERTIFIED MAIL #7019 0700 0001 7488 7032

Return Receipt Requested

Kushy Punch, Inc.

5062 Lankershim Blvd., Ste. 240

North Hollywood, CA 91601

VIA CERTIFIED MAIL # 7019 0700 0001 7488 7025

Return Receipt Requested

Vertical Bliss Inc

20500 Nordhoff St.

Chatsworth, CA 91311

VIA CERTIFIED MAIL # 7019 0700 0001 7488 7018

Return Receipt Requested

More Agency, Inc.

6645 Allott Ave.

Valley Glen, CA 91401

VIA CERTIFIED MAIL # 7019 0700 0001 7488 7001

Return Receipt Requested

Conglomerate Marketing LLC

6645 Allott Ave.

Valley Glen, CA 91401

Re: *Marco Caban v. More Agency, Inc.; Kushy Punch, Inc.; Vertical Bliss Inc; Conglomerate Marketing LLC*

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

To: California Labor and Workforce Development Agency, More Agency, Inc., Kushy Punch,

Inc., Vertical Bliss Inc, and Conglomerate Marketing LLC

From: Marco Caban on behalf of himself and aggrieved employees who were subject to More Agency, Inc.'s, Kushy Punch, Inc.'s, Vertical Bliss Inc's, and Conglomerate Marketing LLC's unlawful wage and hour policies as set forth below.

Factual Statement

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

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1) and 2699.3, subdivision (c)(1) and may lead to an action against More Agency, Inc., Kushy Punch, Inc., Vertical Bliss Inc, and Conglomerate Marketing LLC ("Employers") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Employers are corporations that manufacture and sell tetrahydrocannabinol ("THC") infused candy to retailers and consumers throughout California. Mr. Caban worked for Employers as a non-exempt employee within the past year. Mr. Caban's job duties included but were not limited to powering, depowering, operating, and maintaining machines, inspecting (e.g., temperature) and weighing gummy products, quality control, sorting products, and creating labels (e.g., by including date, number, substance, and quantity) and labeling candies. Mr. Caban alleges that Employers violated various sections of the Labor Code, including sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, by failing to provide Mr. Caban and all other aggrieved employees with wages for all hours worked, including, but not limited to, minimum, regular, and overtime wages, failing to provide meal and rest periods or compensation in lieu thereof, failing to provide accurate wage statements, failing to maintain accurate records of hours worked, failing to pay all compensation due during and upon separation of employment, and failing to reimburse business expenses. Mr. Caban and the aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employers as non-exempt employees during the PAGA Period defined as one year prior to the submission of this letter to the Labor and Workforce Development Agency ("LWDA") and certified mailing to Employers until resolution of these claims.

Employers failed to pay Mr. Caban and other aggrieved employees for all hours worked at the legally mandated wage rates, including minimum, regular, and overtime compensation. Specifically, Employers simply failed to compensate Mr. Caban and other aggrieved employees

for all time worked, including overtime hours. In addition, Employers required Mr. Caban and other aggrieved employees to clock out and continue working (off-the-clock) during their meal periods without providing compensation. Employers' conduct is in violation of Labor Code sections 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage Orders.

Employers also regularly failed to provide Mr. Caban and other aggrieved employees with compliant meal and rest periods. Mr. Caban and other aggrieved employees missed their meal periods, took them late, had them shortened or interrupted to perform work related tasks as a result of Employers' workload and instructions. Specifically, Employers instructed Mr. Caban and other aggrieved employees to clock out and continue working through their meal periods (off-the-clock) resulting in missed meal periods. In addition, Employers failed to provide Mr. Caban and other aggrieved employees with a second meal period when they worked in excess of 10 hours. Employers similarly failed to permit Mr. Caban and other aggrieved employees to take 10-minute, uninterrupted rest breaks, due to Employers policy and practice of encouraging Mr. Caban and other aggrieved employees to forego their rest breaks and continue working in order to complete their tasks. Even though Mr. Caban and other aggrieved employees were prevented from taking compliant meal and rest periods, Employers failed to provide them with premium pay for every non-compliant meal or rest period. Employers' conduct is in violation of Labor Code sections 226.7 and 512 and is also actionable under PAGA.

Further, as a result of Employers' failure to pay all wages owed as described herein, Employers violated Labor Code sections 201, 202, 203, 204, 206, and 210 due to their uniform policy, practice, and procedure of failing to timely pay all of the above-mentioned wages earned during and after Mr. Caban and the aggrieved employees' employment with Employers.

As a result of Employers' failure to pay all wages owed as described herein, Employers further failed to maintain accurate payroll records and failed to provide Mr. Caban and other aggrieved employees with complete and accurate wage statements showing the actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period, among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5 and is actionable under PAGA.

Employers also failed to reimburse Mr. Caban and other aggrieved employees for necessary business expenses incurred in the course of performing their job duties. Specifically, Employers required Mr. Caban and other aggrieved employees to use their personal vehicles to drive to and from Employers' different locations during their shifts without reimbursement for mileage or wear and tear, and maintenance of their personal vehicles. Employers' failure to reimburse Mr. Caban and other aggrieved employees for these business-related expenditures is in violation of Labor Code sections 2800 and 2802 and actionable under PAGA.

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LABOR AND WORKFORCE DEVELOPMENT AGENCY

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Mr. Caban will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employers. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. A. Swift', with a stylized flourish at the end.

Michael A. Swift, Esq.

MAHONEY LAW GROUP, APC