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11 on behalf of himself and others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**

14 GIOVANNI MANZARES, an individual on
15 behalf of himself and all others similarly
16 situated,

16 Plaintiff,

17 vs.

18 U GYM, LLC, a Nevada corporation; UFC
19 GYM, a business entity of unknown form;
20 and DOES 1 through 50, inclusive,

20 Defendants.

Case No. **34-2020-00284868**

REPRESENTATIVE ACTION

Assigned for All Purposes To:

Hon.

Dept:

**COMPLAINT FOR REPRESENTATIVE
ACTION FOR PENALTIES UNDER
PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code §§ 226.7 and 512;
4. Rest-Break Liability Under Labor Code § 226.7 and the Wage Orders;
5. Violation of Labor Code §§ 226(a) and 1174;
6. Violation of Labor Code §§ 203 and 204; and
7. Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802

DEMAND FOR JURY TRIAL

1 Plaintiff GIOVANNI MANZARES, (hereinafter “Plaintiff”) on behalf of himself and all
2 other similarly aggrieved employees complains of Defendants, and each of them, as follows:

3 **INTRODUCTION**

4 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
5 2004, Labor Code § 2698 *et seq.* (“PAGA”) on behalf of Plaintiff and similarly situated aggrieved
6 non-exempt employees (“Aggrieved Employees”) who currently work for or formerly worked for
7 Defendants U GYM, LLC, UFC GYM, and DOES 1 through 50 (all defendants being collectively
8 referred to herein as “Defendants”) during the liability period. From at least one (1) year prior to
9 the date Plaintiff began the process of exhausting the administrative requirements pursuant to
10 Labor Code § 2698 *et seq.* on **June 19, 2020**, and continuing through resolution (the “liability
11 period”), Defendants have violated various provisions of the California Labor Code and relevant
12 orders of the Industrial Welfare Commission (“IWC”), and seeks redress for these violations in the
13 form of civil penalties and other amounts as authorized under the PAGA.

14 2. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
15 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
16 endured similar violations at the hands of Defendants as the other Aggrieved Employees who
17 served in similar and related positions.

18 **THE PARTIES**

19 **A. The Plaintiff**

20 3. Plaintiff GIOVANNI MANZARES has resided in California, and during the time
21 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee
22 within the State of California.

23 **B. The Defendant**

24 4. Defendant U GYM, LLC, is a Nevada limited liability company and has been the
25 employer listed on the wage statements and employment records issued to Plaintiff during the
26 relevant time period that Plaintiff was employed with Defendants. Upon information and belief, U
27 GYM, LLC, jointly employs Aggrieved Employees with Defendant UFC GYM.

28 5. Defendant UFC Gym is a business entity of unknown form and has been the

1 employer listed on the wage statements and employment records issued to Plaintiff during the
2 relevant time period that Plaintiff was employed with Defendants. Upon information and belief,
3 UFC GYM jointly employs Aggrieved Employees with Defendant U GYM, LLC.

4 6. The true names and capacities, whether individual, corporate, associate, or
5 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
6 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
7 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
8 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
9 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
10 this Complaint to reflect the true names and capacities of the Defendants designated herein as
11 Does 1 through 50 when their identities become known.

12 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
13 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
14 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
15 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
16 all respects as the employers or joint employers of Aggrieved Employees. Defendants exercised
17 control over the wages, hours or working conditions of Aggrieved Employees, created and
18 implemented the policies and practices that governed the employment of Aggrieved Employees, or
19 suffered or permitted Aggrieved Employees to work, or engaged, thereby creating a common law
20 employment relationship, with the Aggrieved Employees. Therefore, Defendants employed or
21 jointly employed the Aggrieved Employees.

22 **JURISDICTION AND VENUE**

23 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure § 410.10 and Labor Code § 2698, *et seq.* (“the PAGA”). This Action is brought as a
25 Representative Action on behalf of similarly Aggrieved Employees of Defendants pursuant to the
26 PAGA. Venue as to Defendants is proper in this judicial district pursuant to 28 U.S.C. §§ 84(c)(1),
27 1391(c), and 1446. Upon information and belief, the obligations and liabilities giving rise to this
28 lawsuit occurred in part in Sacramento County. Defendants maintain and operate facilities in

1 Sacramento County, and employs Aggrieved in Sacramento County, while doing business
2 throughout California.

3 **FACTUAL BACKGROUND**

4 9. Aggrieved Employees consistently worked at Defendants behest without being paid
5 all wages due. Aggrieved Employees were either not paid by Defendants for all hours worked or
6 were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
7 Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring
8 off the clock work, unlawfully rounding to their detriment, failing to provide meal and rest breaks,
9 failing to furnish accurate wage statements, failing to timely pay wages including final wages, and
10 failing to reimburse for necessary business expenses, all in violation of various provisions of the
11 California Labor Code and applicable Wage Orders.

12 10. During the course of Aggrieved Employees' employment with Defendants, they
13 were not paid all wages they were owed, including for all work performed resulting in off the
14 clock work. Specifically, Plaintiff and Aggrieved Employees were instructed by Defendants to
15 clock out of work but to continue working. For instance, Plaintiff would coach multiple classes
16 each day and Defendants required Plaintiff to clock out when he was not coaching a class.
17 However, while he was clocked out, he was performing other tasks such as assisting existing
18 customers with their workout routines, attending to new customers, and cleaning up the facility.

19 11. Defendants had a consistent policy and practice of unlawfully rounding hours
20 worked to the detriment of the Aggrieved Employees and also unlawfully rounding all time entries
21 including meal break entries. Rather than paying Aggrieved Employees for all hours and minutes
22 they actually worked, Defendants followed a uniform policy and practice of rounding all time
23 entries to the nearest quarter-hour (i.e. to the nearest 15-minute time increment), and generally did
24 so to the detriment of the Aggrieved Employees, and Plaintiff contend this policy is not neutral
25 and resulted, over time, to the detriment of the Aggrieved Employees by systematically under-
26 compensating them. Rather than reflecting the actual hours worked by Aggrieved Employees, the
27 time entries were rounded and reduced to reflect the scheduled work time rather than the actual
28 hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll

1 system from which wage statements and payroll checks were created.

2 12. By implementing policies, programs, practices, procedures and protocols which
3 resulted in off the clock work and also rounded the hours worked by Aggrieved Employees down
4 to their detriment and systematically failed to pay for all hours worked, Defendants' willful
5 actions resulted in the systematic underpayment of wages to Aggrieved Employees, including
6 underpayment of overtime pay to Aggrieved Employees over the relevant time period.

7 13. As a result of the above described unlawful rounding, requirements to work off the
8 clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees
9 were not properly paid all wages earned and all wages owed to them by Defendants, including
10 when working more than eight (8) hours in any given day and/or more than forty (40) hours in any
11 given week.

12 14. As a result of Defendants' unlawful policies and practices, Aggrieved Employees
13 incurred overtime hours worked for which they were not adequately and completely compensated,
14 in addition to the hours they were required to work off the clock. To the extent applicable,
15 Defendants also failed to pay Aggrieved Employees at an overtime rate of 1.5 times the regular
16 rate for the first eight hours of the seventh consecutive work day in a week and overtime payments
17 at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive
18 work day, as required under the Labor Code and applicable IWC Wage Orders.

19 15. Therefore, Defendants had a consistent policy or practice of failing to pay
20 Aggrieved Employees for all hours worked, and failing to pay minimum wages for all time
21 worked, as required by California law. Defendants thus failed to pay Aggrieved Employees at least
22 minimum wages for all the time they worked for Defendants in violation of the Labor Code and
23 applicable IWC Wage Orders as the actual times when Aggrieved Employees were under the
24 control and direction of Defendants was under reported in the hours reflected on the timekeeping
25 records. Furthermore, Defendants' willful actions resulted in the systematic underpayment of
26 wages to Aggrieved Employees, including underpayment of overtime pay to Aggrieved
27 Employees over a period of time.

28 16. Therefore, Defendants had a consistent policy or practice of failing to pay

1 Aggrieved Employees for all hours worked. Also, Defendants also had a consistent policy or
2 practice of failing to pay Aggrieved Employees their true and correct overtime compensation at
3 premium overtime rates for all hours worked in excess of eight (8) hours a day and/or forty (40)
4 hours a week, and double-time rates for all hours worked in excess of twelve (12) hours a day, in
5 violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

6 17. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
7 meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as
8 required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to
9 perform work as ordered by Defendants for more than five (5) hours during a shift, but were often
10 required to do so without receiving a lawful and timely meal break. In addition to untimely meal
11 periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants
12 placed their needs over Aggrieved Employees' lawful meal and rest breaks. Specifically,
13 Aggrieved Employees were required to assist their clients at all times. This resulted in Aggrieved
14 Employees often having to work through their scheduled meal and/or rest breaks, or otherwise
15 taking shortened ones, because the demands of the job would not avail them the opportunity to
16 take a lawfully uninterrupted and off duty meal and/or rest break. Additionally, Aggrieved
17 Employees were not allowed to leave the premises for their rest breaks.

18 18. On the occasions when Aggrieved Employees worked over 10 hours in a shift,
19 Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal
20 period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required
21 off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be
22 evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay
23 Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employees'
24 effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or
25 deficiently provided. Additionally, to the extent Defendants paid Aggrieved Employees premium
26 pay, it was not paid at their regular rate of pay.

27 19. Therefore, Defendants have regularly required Aggrieved Employees to work shifts
28 in excess of five (5) hours without providing them with uninterrupted meal periods of not less than

thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employees’ effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

20. Meal period violations thus occurred in one or more of the following manners:

- (a) Aggrieved Employees were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour’s wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Aggrieved Employees were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Aggrieved Employees were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Aggrieved Employees were restricted in their ability to take a full thirty-minute meal period.

21. Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour’s wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendants pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

22. Rest period violations therefore arose in one or more of the following manners:

- (a) Aggrieved Employees were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Aggrieved Employees were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Aggrieved Employees were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

23. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements failed to include the total hours worked by Aggrieved Employees. The wage statements did not provide a separate category calculating the total hours worked by Aggrieved Employees. Instead, the statements list the number of hours worked at the regular rate of pay and training pay. However, when added together, it does not sum up to the total hours worked by Aggrieved Employees which is misleading and confusing because Aggrieved Employees would need to refer to sources outside the paystub to accurately determine the total hours worked. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

24. Moreover, Defendants have thus also had a consistent policy of failing to pay all wages owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws. Specifically, Defendants failed to pay Plaintiff for all wages due and certain at the time of his termination in compliance with Labor Code §§ 201-203. Instead, Defendants waited a couple of months to give Plaintiff his final check. Upon information and belief, Defendants implemented the same policy and procedure

1 for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all
2 regular and overtime wages because Defendants failed to pay for all hours worked or required off
3 the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and
4 failed to pay premium wages owed for unprovided meal periods and rest periods. Moreover,
5 Aggrieved Employees were not paid for all hours worked because their gross wages were
6 undervalued on their wage statements despite the fact that their hours were recorded, as further
7 detailed in this Complaint. Defendants' failure to pay said wages within the required time was
8 willful within the meaning of Labor Code § 203.

9 25. Defendants also consistently failed to pay Aggrieved Employees all wages due on a
10 semi-monthly basis, including for the reasons addressed above, thus giving rise to ongoing
11 violations of Labor Code § 204. Additionally, Defendants failed to timely pay Aggrieved
12 Employees for their commissions. Instead, their commission for sales were paid on the subsequent
13 pay period.

14 26. Additionally, Defendants have regularly required Aggrieved Employees to incur
15 business expenses in the course of performing their required job duties for Defendants. Defendants
16 have regularly required Plaintiff to incur business expenses in the course of performing their
17 required job duties for Defendants, namely, the cost of cellular telephone services which
18 Aggrieved Employees were required to use in order to execute their duties under Defendants'
19 employ. Upon information and belief, Aggrieved Employees incurred similar costs. These
20 expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them
21 in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the
22 Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement
23 according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC
24 Wage Orders.

25 27. In light of the foregoing, Plaintiff and the Aggrieved Employees bring this action
26 pursuant to the PAGA for underlying violations of the Labor Code, *inter alia*, Labor Code §§ 201,
27 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
28 1199, 2802 and 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

PAGA NOTICE AND ALLEGATIONS

28. Plaintiff brings this PAGA representative action on behalf of himself and all other similarly situated pursuant to Labor Code § 2698 *et seq.* Plaintiff and the employees are aggrieved under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants. Upon information and belief, at all times during the liability period, Plaintiff and the Aggrieved Employees were employees subject to the protections of the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders.

29. In failing to pay Aggrieved Employees their earned wages for all hours worked and overtime, failing to provide lawful meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay employees wages timely or twice monthly and upon termination or resignation, all addressed herein, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage Orders. Each of these violations gives rise to penalties under the PAGA.

30. As such, Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5, including the following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

31. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff now asserts, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the underlying claims addressed herein and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime

1 premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198,
2 and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all
3 civil and statutory penalties and wages available and applicable in connection with the underlying
4 violations for non-payment of wages, including under Labor Code §§ 510, 558, 1194.2, 1197.1,
5 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code §
6 2699(g)(1);

7 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
8 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
9 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
10 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
11 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
12 paragraph 20 of the applicable IWC Wage Orders, and civil penalties in connection with violations
13 of Labor Code §§ 226.7, 512, 558(a)(1)-(2), 1199 and 2699(f)(2), and also for attorneys' fees and
14 costs pursuant to Labor Code § 2699(g)(1);

15 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
16 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and
17 failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code
18 §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage
19 Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§
20 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage
21 Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More
22 specifically, by providing inaccurate wage statements and failing to maintain records as required
23 under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties
24 under Labor Code § 226.3, which in addition to other penalties provided by law, subjects
25 Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per
26 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in
27 a subsequent citation, ...";

28 ///

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Necessary Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1198, and 2802, and Sections 9 and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

32. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

33. As also addressed above, Plaintiffs also seeks on behalf of the Aggrieved Employees the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial

1 Welfare Commission, the Labor Commissioner may issue a citation. The
2 procedures for issuing, contesting, and enforcing judgments for citations
3 or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

4 (c) The civil penalties provided for in this section are in addition to
5 any other civil or criminal penalty provided by law.

6 34. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
7 LWDA and Defendants postmarked on **June 19, 2020** addressing in detail the specific provisions
8 of the Labor Code Defendants have violated and addressing the facts and legal theories to support
9 the alleged violations. The LWDA did not provided notice of its intent to investigate the alleged
10 violations within 65 calendar days of the postmark date of the letter. As a result, as a matter of
11 law, Plaintiff is entitled to file this Complaint following full compliance and exhaustion of the
12 notice requirements under the PAGA and seeks civil penalty assessments against Defendants as a
13 Representative of the State of California as hereinafter alleged and in accordance with the law, in
14 addition to costs and reasonable attorneys' fees as provided by the PAGA statute. A true and
15 correct copy of the **June 19, 2020** Notice to the LWDA and the Defendants is attached hereto
16 **Exhibit A** and is expressly incorporated into this Complaint as if set forth in full. Plaintiff alleges
17 that the notice period provided by statute has expired and amendment to this PAGA only
18 Complaint is proper pursuant to Labor Code § 2699.3(a)(2)(C).

19 35. This action has been brought and may properly be maintained as a representative
20 action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties and
21 wages based, *inter alia*, on the following claims addressed in detail herein:

- 22 a. Defendants failed to pay Aggrieved Employees minimum wages and wages for all
23 hours worked;
- 24 b. Defendants failed to pay Aggrieved Employees overtime as required under Labor
25 Code § 510;
- 26 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
27 Orders, by failing to provide Aggrieved Employees with requisite meal periods or
28 premium pay in lieu thereof;

- 1 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,
2 by failing to authorize and permit Aggrieved Employees to take requisite rest
3 breaks or provide premium pay in lieu thereof;
- 4 e. Defendants violated Labor Code § 226(a) by providing Aggrieved Employees with
5 inaccurate wage statements;
- 6 f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and
7 compensation due and owing at the time of termination of employment;
- 8 g. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by
9 failing to maintain accurate records of Aggrieved Employees' earned wages and
10 work periods;
- 11 h. Defendants violated Labor Code § 1194 by failing to compensate all Aggrieved
12 Employees during the relevant time period for all hours worked, whether regular or
13 overtime;
- 14 i. Defendants failed to reimburse necessary business expenses incurred by Aggrieved
15 Employees in connection with performing their job duties under Labor Code §
16 2802; and
- 17 j. Defendants violated Labor Code § 204 by failing to pay Aggrieved Employees all
18 wages earned at least twice monthly.

19 **FIRST CAUSE OF ACTION**

20 **PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES**

21 **(Against All Defendants)**

22 36. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 37. Defendants failed to pay Aggrieved Employees minimum wages for all hours
25 worked. Aggrieved Employees would work hours and not receive wages, including as alleged
26 above in connection with off the clock work and rounding. Defendants, and each of them, have
27 also intentionally and improperly rounded, changed, adjusted and/or modified Aggrieved
28 Employee hours, or required Aggrieved Employees to do so, which resulted in off the clock work

1 and underpayment of all wages owed to Aggrieved Employees over a period of time, while
2 benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay
3 minimum wages to Aggrieved Employees, including by requiring systematic off the clock work.
4 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
5 applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy
6 and practice that denied accurate compensation to Aggrieved Employees as to minimum wage
7 pay.

8 38. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil
9 penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute
10 of limitations in which the Aggrieved Employee was not paid for all hours worked for each pay
11 period, plus reasonable attorneys' fees and costs.

12 39. The Private Attorneys General Act of 2004 ("PAGA") provides that:

13 ... an aggrieved employee may recover the civil penalty described in subdivision
14 (I) in a civil action pursuant to the procedures specified in Section 2699.3 filed on
15 behalf of himself or herself and other current or former employees against whom
16 one or more of the alleged violations was committed. Any employee who prevails
17 in any action shall be entitled to an award of reasonable attorney's fees and costs.
Nothing in this part shall operate to limit an employee's right to pursue or recover
other remedies available under state or federal law, either separately or
concurrently with an action taken under this part.

18 California Labor Code § 2699(g)(1).

19 40. Plaintiff is an "aggrieved employee" under the PAGA, as she was employed by
20 Defendants during the applicable statutory period and suffered one or more of the California
21 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
22 himself and the Aggrieved Employees, as defined above, the civil penalties provided by the
23 PAGA, plus reasonable attorneys' fees and costs, after having satisfied the PAGA notice
24 requirements as addressed above.

25 41. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
26 policies, practices and business acts of Defendants to the extent provided by law as a
27 Representative Action, including reasonable attorneys' fees and costs, and for civil penalties as
28 permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Plaintiff

1 thus seeks civil penalties against Defendants for failure to provide Aggrieved Employees proper
2 regular pay and minimum wages for regular hours worked and/or overtime premium pay for
3 overtime hours worked during the applicable statutory period, pursuant to Section 558 and to the
4 default PAGA penalties provisions of Labor Code § 2699(f)(2).

5 42. In California, employees must be paid at least the then applicable state minimum
6 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
7 and paragraphs 4(A)-4(C) of the applicable IWC Wage Orders. Section 2(G) of the applicable
8 IWC Wage Orders defines “Hours worked” as “the time during which an employee is subject to
9 the control of an employer, and includes all the time the employee is suffered or permitted to
10 work, whether or not required to do so.”

11 43. Additionally, pursuant to California Labor Code § 204, other applicable laws and
12 regulations, and public policy, an employer must timely pay its employees for all hours worked.
13 Defendants failed to do so.

14 44. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
15 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
16 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”
17 The applicable minimum wage rate fixed by the commission for work during the relevant period
18 is found in the Wage Orders.

19 45. The minimum wage provisions of California Labor Code are enforceable by private
20 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
21 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney’s fees and costs of suit.”

25 46. As described in California Labor Code §§ 1185, 1194.2 and 1198, any action for
26 wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.
27 Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission
28 Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum

1 wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the
2 minimum rate in the absence of a contractually agreed upon one.

3 47. In committing these violations of the California Labor Code, Defendants acted in
4 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
5 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
6 and regulations. As a result of these violations, Defendants also failed to timely pay all wages
7 earned in accordance with California Labor Code § 1194.

8 48. California Labor Code § 1194.2 also provides for the following remedies: “In any
9 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
10 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
11 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
12 Pursuant to California Labor Code § 1197.1, Plaintiff and Aggrieved Employees are entitled to
13 recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages,
14 and \$250.00 for each subsequent failure to pay each employee minimum wages.

15 49. Labor Code § 1198 also requires that: “The maximum hours of work and the
16 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
17 standard conditions of labor for employees. The employment of any employee for longer hours
18 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
19 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
20 IWC Wage Order provisions, and Labor Code § 2699.5 also lists Section 1198 as one of the
21 provisions for which a representative PAGA action may be commenced under Labor Code §
22 2699.3.

23 50. Additionally, Labor Code § 1199 provides that: “Every employer or other person
24 acting either individually or as an officer, agent, or employee of another person is guilty of a
25 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) . . . , who does
26 any of the following: (a) Requires or causes any employee to work for longer hours than those
27 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to
28 be paid to any employee a wage less than the minimum fixed by an order of the commission. . . .”

1 51. Section 20 of the applicable IWC Wage Order(s) addresses further penalties as
2 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
3 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
4 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
5 underpaid employee for each pay period during which the employee was underpaid in addition to
6 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
7 each underpaid employee for each pay period during which the employee was underpaid in
8 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
9 receive payment of all wages recovered.”

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

16 53. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
17 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
18 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
19 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
20 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,... 221,
21 ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the Code allow for
22 recovery of civil penalties pursuant to the PAGA in this action. Plaintiff has fully complied with
23 procedures specified in Labor Code § 2699.3.

24 54. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
25 because Defendants failed to properly compensate Aggrieved Employees applicable minimum
26 wages and contractually agreed upon wages for all hours they were required to work and remain
27 under Defendants’ control.

28 55. As such, Defendants are liable for PAGA penalties resulting from their failure to

1 provide Aggrieved Employees minimum wages and all wages owed for all hours worked.
2 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this representative action,
3 all civil and statutory penalties authorized for violations of California Labor Code §§ 510, 1194,
4 1197, 1197.1, 1198, 221 and 204 and Sections 2(K), 4, and 20 of the applicable IWC Wage
5 Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable under Labor
6 Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys' fees and costs
7 pursuant to Labor Code § 2699(g)(1).

8 **SECOND CAUSE OF ACTION**

9 **PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND OVERTIME**

10 **UNDER LABOR CODE § 510**

11 **(Against All Defendants)**

12 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 57. California Labor Code § 1194 provides that "any employee receiving less than the
15 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
16 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
17 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
18 may be maintained directly against the employer in an employee's name without first filing a
19 claim with the Division of Labor Standards and Enforcement.

20 58. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
21 Labor Code § 510 (and paragraphs 3(A) and 4(A)-4(B) of the relevant orders of the Industrial
22 Welfare Commission) by failing to pay Aggrieved Employees for all their hours worked,
23 including at: (a) time and one-half their regular hourly rates for hours worked in excess of eight
24 (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8)
25 hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of
26 pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in
27 excess of eight (8) hours on any seventh day of work in a workweek.

28 59. Similar to Labor Code § 510, Section 3(A) of the applicable IWC Wage Orders

1 instructs that: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are
2 applicable to employees 18 years of age or over... Such employees shall not be employed more
3 than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives
4 one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40
5 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond
6 eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided
7 the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times
8 the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and
9 including twelve (12) hours in any workday...”

10 60. Defendants had a consistent policy of not paying Aggrieved Employees wages for
11 all hours worked, including by requiring off the clock work and by unlawfully rounding down
12 actual hours worked as described above. Defendants, and each of them, have intentionally and
13 improperly rounded, changed, adjusted and/or modified Aggrieved Employees’ hours worked, or
14 required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid
15 paying Aggrieved Employees all earned and owed straight time and overtime wages and other
16 benefits, in violation of the California Labor Code, the California Code of Regulations and the
17 IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.
18 Therefore, Aggrieved Employees were not properly compensated, nor were they paid overtime
19 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
20 Based on information and belief, Defendants did not make available to Aggrieved Employees a
21 reasonable protocol for correcting time records when Aggrieved Employees worked overtime
22 hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the
23 Aggrieved Employee’s detriment.

24 61. Defendants’ failure to pay Aggrieved Employees the unpaid balance of regular
25 wages owed and overtime compensation for all hours worked, as required by California law,
26 violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
27 IWC Wage Orders, and is therefore unlawful.

28 62. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil

1 penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute
2 of limitations in which the Aggrieved Employee was not paid at the correct overtime rate for all
3 hours worked for each pay period, plus reasonable attorneys' fees and costs. Plaintiff is entitled
4 to bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA
5 notice requirements, as addressed above. Plaintiff further seeks civil penalties pursuant to Labor
6 Code 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to pay
7 all overtime wages in violation of the underlying Labor Code sections addressed herein.

8 63. Defendants' failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid
10 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
11 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
12 and overtime compensation earned by Aggrieved Employees. Each such failure to make a timely
13 payment of compensation to Employees constitutes a separate violation of California Labor Code
14 § 204.

15 64. As a result of these violations, Defendants also failed to timely pay all wages
16 earned in accordance with California Labor Code § 1194. California Labor Code § 1194.2 also
17 provides for the following remedies: "In any action under Section 1194 . . . to recover wages
18 because of the payment of a wage less than the minimum wages fixed by an order of the
19 commission, an employee shall be entitled to recover liquidated damages in an amount equal to
20 the wages unlawfully unpaid and interest thereon."

21 65. Labor Code § 1198 also requires that: "The maximum hours of work and the
22 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
23 standard conditions of labor for employees. The employment of any employee for longer hours
24 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
25 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
26 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
27 for which a representative PAGA action may be commenced under Labor Code § 2699.3. Section
28 20 of IWC Wage Orders addresses further penalties derived from Section 1198 violations.

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

7 67. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
8 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
9 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
10 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
11 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204, ...510,
12 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that allow for
13 recovery of civil penalties pursuant to the PAGA. As a direct and proximate result of Defendants’
14 unlawful acts, as alleged in detail herein, Aggrieved Employees have been deprived, and continue
15 to be deprived, of overtime wages owed for all hours they worked. Plaintiff has fully complied
16 with procedures specified in Labor Code § 2699.3.

17 68. As such, Defendants are liable for PAGA penalties resulting from their failure to
18 timely provide Aggrieved Employees overtime and premium wages for all hours worked.
19 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this representative action,
20 all civil and statutory penalties authorized for violations of California Labor Code §§ 510, 1194,
21 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable IWC Wage Order(s),
22 and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§
23 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys’ fees and costs
24 pursuant to Labor Code § 2699(g)(1).

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THIRD CAUSE OF ACTION
PENALTIES UNDER THE PAGA FOR MEAL-PERIOD LIABILITY
UNDER LABOR CODE §§ 226.7, 512
(Against All Defendants)

69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

70. Aggrieved Employees regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC Wage Orders, an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes. Section 11(A)-(E) of the applicable Wage Orders provides similar requirements to those of Labor Code § 512. Aggrieved Employees were often required to work through their meal period or remain otherwise under Defendants' control, or were provided with meal periods beyond the fifth hour of their shifts, or otherwise had their meal periods shortened or interrupted by work demands and requirements. Defendants required Aggrieved Employees to respond to work demands during meal periods. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty meal break.

71. Defendants failed to provide Aggrieved Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Orders, as detailed above. Furthermore, upon information and belief, on the occasions when Aggrieved Employees worked more than ten (10) hours in a given shift, they did so without receiving a second uninterrupted thirty (30) minute meal period as required by law.

72. Moreover, Defendants failed to compensate Aggrieved Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the applicable IWC Wage Orders, which provides that, if an employer fails to

1 provide an employee a meal period in accordance with this section, the employer shall pay the
2 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
3 that the meal period is not provided. Defendants failed to compensate Aggrieved Employees for
4 each meal period not provided or inadequately provided, as required under Labor Code § 226.7.
5 Also, to the extent Defendants paid Aggrieved Employees premium pay, it was not paid at their
6 regular rate of pay.

7 73. Plaintiff seeks civil penalties against Defendants for failure to provide Aggrieved
8 Employees lawful off-duty unpaid meal periods. Pursuant to Labor Code § 2699, Plaintiff seeks
9 all applicable PAGA civil penalties and remedies for each Aggrieved Employee for each pay
10 period in the applicable statute of limitations in which the Aggrieved Employee was not provided
11 with a meal period, plus reasonable attorneys' fees and costs. Plaintiff is entitled to bring this
12 claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA notice
13 requirements, as addressed above. Plaintiff further seeks civil penalties pursuant to Labor Code
14 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to provide all
15 required meal periods in violation of the underlying Labor Code sections addressed herein.

16 74. Premium pay for denied lawful meal and rest periods is considered a "wage" rather
17 than a penalty. *See Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114. Plaintiff
18 therefore seeks to recover civil penalties pursuant to the PAGA that arise from the policies,
19 practices, and business acts of Defendants to the extent provided by law as a Representative
20 Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of
21 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
22 Aggrieved Employees may recover penalties for denied meal periods under the PAGA, as the civil
23 penalty under California Labor Code 558 applies to any provision regulating hours and days of
24 work in any Order.

25 75. Labor Code § 2699(f)(2) states: "For all provisions of this code except those
26 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
27 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
28 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

1 employee per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.”

3 76. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
4 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
5 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
6 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
7 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,
8 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
9 penalties pursuant to the PAGA.

10 77. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
11 because Defendants failed to properly provide Aggrieved Employees with lawful uninterrupted
12 off-duty meal periods throughout the applicable statutory period. Defendants also systematically
13 denied Aggrieved Employees proper premium pay at the rate of one hour of pay at their regular
14 pay rates for each work shift they were denied an unpaid, off-duty 30-minute meal period.

15 78. As such, Defendants are liable for PAGA penalties resulting from their failure to
16 provide Aggrieved Employees lawful meal periods and the corresponding meal period premium
17 pay. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative
18 Action, all civil and statutory penalties authorized for violations of California Labor Code §§
19 226.7, 512, 558, and 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, and
20 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§
21 226.7, 512, 558, including sections 558(a)(1)-(2), and 2699(f)(2), and also for attorneys’ fees and
22 costs pursuant to Labor Code § 2699(g)(1).

23 **FOURTH CAUSE OF ACTION**

24 **PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY**

25 **UNDER LABOR CODE § 226.7, WAGE ORDERS**

26 **(Against All Defendants)**

27 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 80. Section 12(A)-(B) of the applicable IWC Wage Orders instruct that: “(A) Every
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period. The authorized rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
5 or major fraction thereof. However, a rest period need not be authorized for employees whose total
6 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be
7 counted as hours worked for which there shall be no deduction from wages. (B) If an employer
8 fails to provide an employee a rest period in accordance with the applicable provisions of this
9 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
10 compensation for each work day that the rest period is not provided.” Labor Code § 226.7 further
11 instructs that: “(b) An employer shall not require an employee to work during a meal or rest or
12 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or
13 order of the Industrial Welfare Commission,…”

14 81. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
15 provide that employers must authorize and permit all employees to take rest periods at the rate of
16 ten (10) minutes net rest time per four (4) work hours. Defendants, and each of them, have
17 intentionally and improperly denied rest periods to Aggrieved Employees in violation of Labor
18 Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

19 82. Aggrieved Employees consistently worked consecutive four (4) hour shifts and
20 were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
21 authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the
22 applicable IWC Wage Order, Aggrieved Employees were entitled to paid rest breaks of not less
23 than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide
24 Aggrieved Employees with timely rest breaks of not less than ten (10) minutes for each
25 consecutive four (4) hour shift. Defendants placed their needs over Aggrieved Employees lawful
26 rest breaks. This resulted in Aggrieved Employees consistently having to work through their
27 scheduled rest breaks because the demands of the job would not avail them the opportunity to take
28 a lawfully uninterrupted and off-duty rest break. Thus, Aggrieved Employees were consistently

1 denied of their rest breaks.

2 83. Defendants failed to compensate Aggrieved Employees for each rest period not
3 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 12 of the
4 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a
5 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
6 pay at the employee's regular rate of compensation for each workday that the meal period is not
7 provided. Defendants failed to compensate Employees for each meal period not provided or
8 inadequately provided, as required under Labor Code § 226.7.

9 84. Plaintiff seeks civil penalties against Defendants for failure to provide Aggrieved
10 Employees lawful off-duty rest periods. Pursuant to Labor Code § 2699, Plaintiff seeks all
11 applicable PAGA civil penalties and remedies for each Aggrieved Employee for each pay period
12 in the applicable statute of limitations in which the Aggrieved Employee was not provided with a
13 rest break, plus reasonable attorneys' fees and costs. Plaintiff is entitled to bring this claim
14 pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA notice requirements, as
15 addressed above. Plaintiff further seeks civil penalties pursuant to Labor Code 558(a)(1)-(2) and
16 Labor Code 2699(f)(2), as detailed above, for Defendants' failure to provide all required rest
17 periods in violation of the underlying Labor Code sections addressed herein.

18 85. Premium pay for denied lawful meal and rest periods is considered a "wage" rather
19 than a penalty. *See Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114. Plaintiff
20 therefore seeks to recover civil penalties pursuant to the PAGA that arise from the policies,
21 practices, and business acts of Defendants to the extent provided by law as a Representative
22 Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of
23 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
24 Aggrieved employees may recover penalties for denied meal periods under the PAGA, as the civil
25 penalty under California Labor Code 558 applies to any provision regulating hours and days of
26 work in any Order.

27 86. Labor Code § 2699(f)(2) states: "For all provisions of this code except those
28 for which a civil penalty is specifically provided, there is established a civil penalty for a violation

1 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
2 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation and two hundred dollars (\$200) for each
4 aggrieved employee per pay period for each subsequent violation.”

5 87. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
6 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
7 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
8 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
9 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,
10 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
11 penalties pursuant to the PAGA. Plaintiff has fully complied with procedures specified in Labor
12 Code § 2699.3.

13 88. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
14 because Defendants failed to properly provide Aggrieved Employees with lawful uninterrupted
15 off-duty rest breaks throughout the applicable statutory period. Defendants also systematically
16 denied Aggrieved Employees proper premium pay at the rate of one hour of pay at their regular
17 pay rates for each work shift they were denied an off-duty rest period.

18 89. As such, Defendants are liable for PAGA penalties resulting from their failure to
19 provide Aggrieved Employees lawful rest periods and the corresponding rest period premium pay.
20 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action,
21 all civil and statutory penalties authorized for violations of California Labor Code §§ 226.7, 512,
22 558, and 1198, and Section 12(A)-(B) of the applicable IWC Wage Orders, and Plaintiff seeks all
23 civil and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558,
24 including sections 558(a)(1)-(2), and 2699(f)(2), and also attorneys’ fees and costs pursuant to
25 Labor Code § 2699(g)(1).

26 **FIFTH CAUSE OF ACTION**

27 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
28 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**

1 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**

2 **(Against All Defendants)**

3 90. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
4 full herein.

5 91. Plaintiff seeks civil penalties against Defendants for failure to provide Aggrieved
6 Employees accurate itemized wage statements during the applicable statutory period

7 92. California Labor Code § 226(a) requires an employer to furnish each of his or her
8 employees with an accurate, itemized statement in writing showing the gross and net earnings,
9 total hours worked, and the corresponding number of hours worked at each hourly rate; these
10 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
11 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
12 statements may be given to the employee separately from the payment of wages; in either case the
13 employer must give the employee these statements twice a month or each time wages are paid.

14 93. Defendants failed to provide Aggrieved Employees with accurate itemized wage
15 statements in writing, as required by the Labor Code and paragraphs 7(A)-(B) of the applicable
16 IWC Wage Orders. Specifically, the wage statements failed to include the total hours worked by
17 Aggrieved Employees. The wage statements did not provide a separate category calculating the
18 total hours worked by Aggrieved Employees. Instead, the statements list the number of hours
19 worked at the regular rate of pay and training pay. However, when added together, it does not sum
20 up to the total hours worked by Aggrieved Employees which is misleading and confusing because
21 Aggrieved Employees would need to refer to sources outside the paystub to accurately determine
22 the total hours worked. Moreover, the wage statements given to Aggrieved Employees failed to
23 accurately account for unpaid wages and overtime because Defendants had unlawfully rounded
24 time entries to the detriment of the Aggrieved Employees and their actual hours worked were
25 under-reported and also due to off the clock work. Additionally, the wage statements given to
26 Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal
27 periods and rest breaks.

28 94. Paragraph 7(C) of the applicable IWC Wage Orders further requires that: "All

1 required records shall be in the English language and in ink or other indelible form, properly
2 dated, showing month, day, and year and shall be kept on file by the employer for at least three (3)
3 years at the place of employment or at a central location within the State of California. An
4 employee's records shall be available for inspection by the employee upon reasonable request."

5 95. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
6 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
7 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
8 employee for each violation in a subsequent citation, for which the employer fails to provide the
9 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
10 Section 226. The civil penalties provided for in this section are in addition to any other penalty
11 provided by law."

12 96. Throughout the liability period, Defendants intentionally failed to furnish to
13 Aggrieved Employees, upon each payment of wages, itemized statements accurately showing: (1)
14 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages
16 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an employee
18 identification number other than a social security number, (8) the name and address of the legal
19 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
20 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
21 Code § 226, amongst other statutory requirements, and paragraph 7 of the applicable IWC Wage
22 Orders. Defendants knowingly and intentionally failed to provide Aggrieved Employees with such
23 timely and accurate wage and hour statements.

24 97. Aggrieved Employees suffered injury as a result of Defendants' knowing and
25 intentional failure to provide them with the wage and hour statements as required by law are
26 entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide a wage
27 statement, failed to provide accurate and complete information as required by any one or more of
28 items Labor Code § 226 (a)(1) to (9), inclusive, and Aggrieved Employees cannot promptly and

1 easily determine from the wage statement alone one or more of the following: (i) The amount of
2 the gross wages or net wages paid to the employee during the pay period or any of the other
3 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
4 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross
5 wages to determine the net wages paid to the employee during the pay period, (iii) The name and
6 address of the employer and, (iv) The name of the employee and only the last four digits of his or
7 her social security number or an employee identification number other than a social security
8 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
9 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
10 without reference to other documents or information.

11 98. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
12 § 226(a), and paragraph 7 of the applicable IWC Wage Orders, Aggrieved Employees suffered
13 injuries, including among other things confusion over whether they received all wages owed them,
14 the difficulty and expense involved in reconstructing pay records, and forcing them to make
15 mathematical computations to analyze whether the wages paid in fact compensated them correctly
16 for all hours worked. Labor Code § 226(e)(1) further instructs that: ”An employee suffering injury
17 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
18 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
21 is entitled to an award of costs and reasonable attorney’s fees.” However, for PAGA claims arising
22 from violations of Section 226(a), Plaintiff need not establish injury or that Defendants acted
23 knowingly and intentionally in issuing inaccurate wage statements.

24 99. Plaintiff therefore seeks civil penalties under the PAGA against Defendants for
25 providing inaccurate wage statements and also for failure to maintain accurate employee records
26 during the applicable statutory period.

27 100. To this end, Labor Code § 1174 provides that: “Every person employing labor in
28 this state shall:....(c) Keep a record showing the names and addresses of all employees employed

1 and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
2 establishments at which employees are employed, payroll records showing the hours worked daily
3 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
4 rate paid to, employees employed at the respective plants or establishments. These records shall be
5 kept in accordance with rules established for this purpose by the commission, but in any case shall
6 be kept on file for not less than three years...”

7 101. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
8 policies, practices and business acts of Defendants to the extent provided by law as a
9 Representative Action, including reasonable attorneys’ fees and costs. As alleged in more detail
10 above, Defendants violated the above statutes by failing to maintain accurate payroll records
11 showing the hours worked daily by, and the wages paid to, Aggrieved Employees. Defendants’
12 payroll records pertaining to Aggrieved Employees, and in turn the wage statements issued to
13 them, fail to accurately reflect all regular and overtime hours worked, overtime hourly rates, actual
14 gross wages and net wages earned, meal periods, and premium wages owed for denied lawful
15 meal and rest periods.

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

22 103. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
23 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
24 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
25 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
26 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 226,...
27 subdivisions (c) and (d) of Section 1174,... 1198,...1199,...” among the provisions of the Code
28 that allow for recovery of civil penalties pursuant to the PAGA.

104. Labor Code § 1198 also requires that: “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 § 1198 therefore provides a basis in the Labor Code to recover for violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions for which a representative PAGA action may be commenced under Labor Code § 2699.3.

105. As such, Defendants are liable for PAGA penalties resulting from their failure to provide accurate itemized wage statements to Aggrieved Employees and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

SIXTH CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES

OWED IN VIOLATION OF LABOR CODE §§ 203, 204

(Against All Defendants)

106. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

107. Labor Code § 204 instructs that: “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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven

1 calendar days following the close of the payroll period.” As detailed above, Defendants
2 maintained a consistently applied policy and practice of not paying all wages earned between the
3 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
4 between the 16th and the last day of the month between the 1st and 10th day of the following month.
5 Defendants similarly failed to pay all wages earned by not more than seven calendar days
6 following the close of the payroll period.

7 108. All wages due and owing to Aggrieved Employees, including as required under
8 Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by
9 Labor Code § 1194 and other sections became due and payable to each employee in each pay
10 period that he or she was not provided with a meal period or rest period or paid straight or
11 overtime wages to which he or she was entitled.

12 109. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
13 are required “to pay each employee, on the established payday for the period involved, not less
14 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
15 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
16 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Aggrieved
17 Employees may therefore pursue damages and penalties for violations of Labor Code § 204 and
18 paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the
19 applicable IWC Wage Orders.

20 110. Numerous Aggrieved Employees, including Plaintiff, are no longer employed by
21 Defendants; they either quit Defendants’ employ or were fired therefrom during the relevant
22 liability period. Plaintiff seeks civil penalties against Defendants for their failure to timely pay
23 Aggrieved Employee all wages owed during the applicable statutory period. Defendants failed to
24 pay Aggrieved Employees all wages due and certain at the time of termination or within seventy-
25 two (72) hours of resignation. The wages withheld from Aggrieved Employees by Defendants
26 remained due and owing for more than thirty (30) days from the date of separation from
27 employment.

28 111. Under Labor Code § 202, where an employee voluntarily quits his or her

1 employment without advance notice, all commission wages that can be reasonably calculated at
2 the time must be paid to the employee within 72 hours of termination of the employment
3 relationship.

4 112. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
5 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
6 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
7 continue as a penalty from the due date thereof at the same rate until paid or until an action
8 therefor is commenced; but the wages shall not continue for more than 30 days....”

9 113. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
10 term and who is dismissed by his employer is entitled to compensation for services rendered up to
11 the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not employed
12 for a specified term and who quits the service of his employer is entitled to compensation for
13 services rendered up to the time of such quitting.”

14 114. Defendants failed to pay Aggrieved Employees without abatement, all wages as
15 defined by applicable California law. Specifically, Defendants failed to pay Plaintiff for all wages
16 due and certain at the time of his termination in compliance with Labor Code §§ 201-203. Instead,
17 Defendants waited a couple of months to give Plaintiff his final check. Upon information and
18 belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well.
19 Additionally, these Aggrieved Employees were not paid all regular and overtime wages because
20 Defendants failed to pay for all hours worked or required off the clock work and unlawfully
21 rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages
22 owed for unprovided meal periods and rest periods. Moreover, Aggrieved Employees were not
23 paid for all hours worked because their gross wages were undervalued on their wage statements
24 despite the fact that their hours were recorded, as further detailed in this Complaint. Defendants’
25 failure to pay said wages within the required time was willful within the meaning of Labor Code §
26 203.

27 115. All wages due and owing to Aggrieved Employees, including as required under
28 Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by

1 Labor Code § 1194 and other sections became due and payable to each employee in each pay
2 period that he or she was not provided with a meal period or rest period or paid straight or
3 overtime wages to which he or she was entitled.

4 116. Under Labor Code § 210, “(a) In addition to, and entirely independent and apart
5 from, any other penalty provided in this article, every person who fails to pay the wages of each
6 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
7 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
8 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
9 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
10 amount unlawfully withheld.”

11 117. Similarly, Section 20 of the applicable IWC Wage Order(s) addresses further
12 penalties as follows: “(A) In addition to any other civil penalties provided by law, any employer or
13 any other person acting on behalf of the employer who violates, or causes to be violated, the
14 provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for
15 each underpaid employee for each pay period during which the employee was underpaid in
16 addition to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations —
17 \$100.00 for each underpaid employee for each pay period during which the employee was
18 underpaid in addition to an amount which is sufficient to recover unpaid wages. (3) The affected
19 employee shall receive payment of all wages recovered.”

20 118. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
21 policies, practices and business acts of Defendants to the extent provided by law as a
22 Representative Action, including reasonable attorneys’ fees and costs, and as permitted by Labor
23 Code § 558, as a separate civil penalty provided by the PAGA statute.

24 119. Defendants violated the above statutes by failing to promptly pay Aggrieved
25 Employees all earned wages due each and every pay period, as well as immediately upon
26 termination and/or within 72 hours upon resignation.

27 120. During the applicable statutory period, Defendants violated, and continue to
28 violate, California Labor Code § 204 and Section 20 of IWC Wage Orders by failing to

1 compensate Aggrieved Employees overtime premium wages for overtime hours worked, premium
2 pay for denied off-duty meal and rest periods (wages), and other wages due to Aggrieved
3 Employees each pay period, as alleged in more detail herein.

4 121. Defendants also consistently failed to pay Aggrieved Employees all wages due on a
5 semi-monthly basis, including for the reasons addressed above, thus giving rise to ongoing
6 violations of Labor Code § 204. Additionally, Defendants failed to timely pay Aggrieved
7 Employees for their commissions. Instead, their commission for sales were paid on the subsequent
8 pay period.

9 122. Further, Defendants violated, and continue to violate, California Labor Code §§
10 201-204, 2926, and 2927 by failing to compensate Aggrieved Employees who are no longer
11 working for Defendants, for services rendered up to the time of dismissal or quitting.

12 123. Labor Code § 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
17 aggrieved employee per pay period for each subsequent violation.”

18 124. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
19 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
20 2699.5” to commence upon satisfaction of its written notice requirements. Plaintiff has fully
21 complied with procedures specified in Labor Code § 2699.3. Additionally, Labor Code § 2699.5
22 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section 2699.3 apply to any
23 alleged violation of the following provisions: “[Labor Code §§] 201,... 202, 203, ...204,...
24 558,...1198,...” among the provisions of the Code that allow for recovery of civil or statutory
25 penalties pursuant to the PAGA.

26 125. Defendants are liable for PAGA penalties resulting from their failure to timely pay
27 all wages owed to Aggrieved Employees at the time of their termination of separation from
28 employment, and failure to timely pay all wages owed twice monthly. Accordingly, Plaintiff is

entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927, and Plaintiff seeks all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

SEVENTH CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE NECESSARY

BUSINESS EXPENSES UNDER LABOR CODE § 2802

(Against All Defendants)

126. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

127. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Aggrieved Employees to pay for necessary work related expenses they incurred. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, namely, the cost of cellular telephone services which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders, paragraph 9.

128. Labor Code § 2802 provides that: "(a) An 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,...

(b) 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

1 necessary expenditure or loss. (c) For purposes of this section, the term “necessary expenditures or
2 losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by
3 the employee enforcing the rights granted by this section....”

4 129. Defendants’ knowing and willful failure to reimburse lawful necessary work related
5 expenses and losses to Aggrieved Employees resulted in damages and loses because, among other
6 things, Defendants did not inform employees of their right to be reimbursed for those work related
7 expenses. As Defendants failed to inform and misled Aggrieved Employees with regard to their
8 rights, Aggrieved Employees were led to believe that incurring those lawful and necessary
9 expenses was an expected and essential function of their employment with Defendants and that
10 failure to incur those expenses would have adverse consequences on their employment.

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

17 131. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
18 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
19 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
20 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
21 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 2802...”
22 among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

23 132. As such, Defendants are liable for PAGA penalties resulting from their failure to
24 reimburse necessary business expenses incurred by Aggrieved Employees. Accordingly, Plaintiff
25 is entitled to recover, and hereby seeks through this Representative Action, all civil and statutory
26 penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B)
27 of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available
28 and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys’ fees and costs

pursuant to Labor Code § 2699(g)(1).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. On the First Cause of Action: For recovery of all civil penalties for unpaid minimum and regular wages for all hours worked during the applicable statutory period as permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections 2(K), 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to proof and subject to approval by the Court;

2. On the Second Cause of Action: For recovery of all civil penalties for unpaid overtime and premium wages for all hours worked during the applicable statutory period as permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to proof and subject to approval by the Court;

3. On the Third Cause of Action: For recovery of all civil penalties for non-compliant meal periods during the applicable statutory period and failure to pay one-hour of premium wages to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, including all civil and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(2), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to proof and subject to approval by the Court.

4. On the Fourth Cause of Action: For recovery of all civil penalties for non-compliant rest periods during the applicable statutory period and failure to pay one-hour of

1 premium wages to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7,
2 512, 558, and 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, including all civil
3 and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including
4 sections 558(a)(1)-(2), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor
5 Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
6 Employees in an amount according to proof and subject to approval by the Court.

7 5. On the Fifth Cause of Action: For recovery of all civil penalties for inaccurate wage
8 statements Defendants provided to Plaintiff and the Aggrieved Employees and failure to maintain
9 employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections
10 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and statutory
11 penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and
12 2699(f)(2), and specifically electing civil penalties under Labor Code §226.3, which in addition to
13 other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred
14 fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars
15 (\$1,000) per employee for each violation in a subsequent citation, ...” to be distributed in the
16 manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the
17 recovery to the Aggrieved Employees in an amount according to proof and subject to approval by
18 the Court;

19 6. On the Sixth Cause of Action: For recovery of all civil penalties pursuant to Labor
20 Code § 2699(f)(2) where a statutory civil penalty is not provided, for failing to timely pay all
21 wages owed and to timely pay them to Aggrieved Employees upon termination or separation from
22 employment as permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927,
23 including all civil and statutory penalties available and applicable under Labor Code §§ 201, 202,
24 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage Order(s), to be
25 distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA
26 and 25% of the recovery to the Aggrieved Employees in an amount according to proof and subject
27 to approval by the Court;

28 7. On the Seventh Cause of Action: For recovery of all civil penalties for Defendants’

1 failure to reimburse all necessary business expenses incurred by Plaintiff and the Aggrieved
2 Employees as permitted by Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable
3 IWC Wage Orders, including all civil and statutory penalties available and applicable under Labor
4 Code §§ 2802 and 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i),
5 with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
6 amount according to proof and subject to approval by the Court.

7 8. For reasonable attorneys' fees and costs of suit to the extent permitted under the
8 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
9 according to proof and subject to Court approval.

10 9. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
11 California on readily calculable monies due to the extent provided by California law and
12 authorized under the PAGA, in an amount according to proof;

13 10. For the Court to otherwise determine the appropriate remedy to compensate
14 Plaintiff and each Aggrieved Employee as required to promote fairness and justice; and

15 11. For such other and further relief as this Court may deem necessary, proper and/or
16 just.

17
18 DATED: September 1, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

19
20 By: 
21 David Yeremian
22 Natalie Haritonian
23 Attorneys for Plaintiff GIOVANNI
24 MANZARES and all others similarly situated
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DATED: September 1, 2020

By: Natalie Har
David Yeremian
Natalie Haritonian
Attorneys for Plaintiff GIOVANNI
MANZARES and all others similarly situated

EXHIBIT A

**DAVID YEREMIAN
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818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

June 19, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

U Gym, LLC
1501 Quail Street, Suite 100
Newport Beach, CA 92660
Certified Mail Tracking Number: 7019 1640 0001 5877 1957

U Gym, LLC
CSC, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7019 164 001 5877 1964

UFC Gym
1501 Quail Street, Suite 100
Newport Beach, CA 92660
Certified Mail Tracking Number: 7019 1640 0001 5877 1971

**Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter
Giovanni Manzares, et al. v. UFC Gym, et al.**

Gentlepersons:

This office represents Plaintiff Giovanni Manzares (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, and 2802 *et seq.* provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, UFC Gym, U Gym LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, employee based out of Defendants’ facility in Corona, California. Aggrieved Employees include all non-exempt employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’

behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, and failing to reimburse for necessary business expenses, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Specifically, Plaintiff and Aggrieved Employees were instructed by Defendants to clock out of work but to continue working. For instance, Plaintiff would coach multiple classes each day and Defendants required Plaintiff to clock out when he was not coaching a class. However, while he was clocked out, he was performing other tasks such as assisting existing customers with their workout routines, attending to new customers, and cleaning up the facility.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods to Aggrieved Employees as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break. On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided. To the extent Defendants paid Aggrieved Employees premium pay, it was not paid at their regular rate of pay.

Moreover, Defendants failed to provide all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements failed to include the total hours worked by Aggrieved Employees. The wage statements did not provide a separate category calculating the total hours worked by Aggrieved Employees. Instead, the statements list the number of hours worked at the regular rate of pay and training pay. However, when added together, it does not sum up to the total hours worked by Aggrieved Employees which is misleading and confusing because Aggrieved Employees would need to refer to sources outside the paystub to accurately determine the total hours worked. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain at the time of his termination in compliance with Labor Code §§ 201-203. Instead, Defendants waited a couple of months to give Plaintiff his final check. Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked or required off the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Moreover, Aggrieved Employees were not paid for all hours worked because their gross wages were undervalued on their wage statements despite the fact that their hours were recorded, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis, including for the reasons addressed above, thus giving rise to ongoing violations of Labor Code § 204. Additionally, Defendants failed to timely pay Aggrieved Employees for their commissions. Instead, their commission for sales were paid on the subsequent pay period.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, namely, the cost of cellular telephone services which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay and were subject to unlawful rounding of hours. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

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Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees' lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of himself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages

paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees 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. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely, the cost of cellular telephone services, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Plaintiff and Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Conclusion

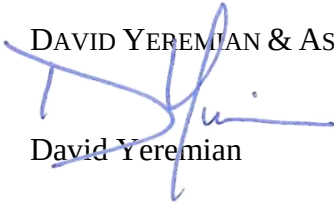
We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against UFC Gym and U Gym LLC. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail