

Kevin Mahoney, Esq. (SBN: 235367)
kmahoney@mahoney-law.net
Michael A. Swift (SBN: 296993)
mswift@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: 562-590-5550
Facsimile No.: 562-590-8400

Attorneys for Plaintiff CHRISTIAN LIN, as representative of the State of California and he
Labor and Workforce Development Agency, and on behalf of herself and other current and
former employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CHRISTIAN LIN, as an individual and on
behalf of all similarly aggrieved
employees,

Plaintiff,

v.

CLARKER INC.; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2020-01161554-CU-OE-CXC

**REPRESENTATIVE COMPLAINT FOR
DAMAGES** Assigned for All Purposes

CX-102 Judge Peter Wilson

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
6. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff CHRISTIAN LIN (“Plaintiff”) as representative of the State of California and the
2 Labor and Workforce Development Agency (“LWDA”), and on behalf of himself and other
3 current and former employees, complain and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly aggrieved
6 employees who were subjected to one or more of the violations alleged herein (“Aggrieved
7 Employees”) by Defendants CLARKER, INC.(“Defendants”). The term “RELEVANT TIME
8 PERIOD” or “TIME PERIOD” is defined as one (1) year prior to the filing of the complaint.
9 Plaintiff reserves the right to amend this complaint to reflect a different “Time Period” as further
10 discovery is conducted.

11 2. Plaintiff brings this lawsuit seeking civil penalties on behalf of the State of
12 California for Defendant’s violations of the Labor Code, including, but not limited to, sections
13 01, 202, 203, 221-225.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, and 2802. Plaintiff
14 also seeks to recover penalties, attorney’s fees, and costs pursuant to the Labor Code.

15 3. At all relevant times herein, Defendants have consistently maintained and
16 enforced the following unlawful policies and practices against Plaintiff:

- 17 (a) Willfully refusing to pay all hours worked, including both regular and overtime
18 wages;
19 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
20 lieu thereof;
21 (c) Willfully refusing to permit rest periods or providing compensation in lieu
22 thereof;
23 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
24 wages;
25 (e) Willfully refusing to pay all wages due upon separation of employment; and
26 (f) Willfully refusing to reimburse for necessary business expenditures.

27 **JURISDICTION AND VENUE**

28 4. This Court has subject matter jurisdiction over the causes of action alleged in this

1 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
2 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
3 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
4 collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00).

5 5. Defendant CLARKER INC is a California corporation doing business throughout
6 the State of California, specifically the county of Orange, providing delivery services. There is no
7 federal question at issue, as the issues herein are based solely on California statutes and law,
8 including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, Code of Civil
9 Procedure, Business and Professions Code, and California Rules of Court. By doing business in
10 the state of California, Defendant has purposefully availed itself of the state's jurisdiction.
11 Accordingly, as personal jurisdiction over Defendant would be constitutional, California's long-
12 arm statute provides that California courts may exercise personal jurisdiction over Defendant.
13 (Code Civ. Pro., § 410.10.)

14 6. Venue is proper in the county of Orange, pursuant to Code of Civil Procedure
15 section 395, because the Defendant maintains its office location and transacts business in this
16 county, the obligations and liability arise in this county, and/or work was performed by Plaintiff
17 and other aggrieved employees made the subject of this action in the County of Orange.

18 **THE PARTIES**

19 **Plaintiff**

20 7. Plaintiff CHRISTIAN LIN began working for Defendants in or around December
21 26, 2019 as a non-exempt hourly employee earning an hourly rate of fifteen dollars (\$15.00) per
22 hour

23 8. Plaintiff at relevant times herein, was an employee of Defendant and entitled to
24 compensation for all hours worked and penalties. Plaintiff was employed by Defendant within the
25 relevant time period as non-exempt hourly and/or commission positions. Throughout the relevant
26 time period, Plaintiff worked for Defendants within the County of Orange. Plaintiff is accordingly
27 entitled to compensation for all hours worked, overtime compensation, premium pay, and
28 penalties from Defendant.

1 **Defendants**

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
3 California corporation, and is and/or was the employer of Plaintiff and similarly aggrieved
4 employees during the Relevant Time Period. Defendant owns and operates a delivery service
5 company operating in Orange County.

6 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
7 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
8 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
9 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
10 capacities of the DOE Defendant when ascertained.

11 11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
12 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
13 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
14 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
15 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
16 joint employers and conspire with one another to increase profits by engaging in the conduct
17 described in this complaint.

18 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
20 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
21 below was acting, at least in part, within the course and scope of that authority as such agent,
22 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
23 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
24 are legally attributable to the other Defendants.

25 **PAGA ADMINISTRATIVE PREREQUISITE**

26 14. By this complaint, Plaintiff brings this case as a representative action seeking
27 penalties for the State of California in a representative capacity, as provided by the Private
28 Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), as aggrieved employees

1 employed by Defendant whom did not receive all wages due, were not paid regular wages, were
2 not paid overtime, were not provided accurate wage statements, were not reimbursed for
3 necessary expenditures, and were not able to take lawful meal and rest breaks or receive premium
4 compensation in lieu thereof.

5 15. Prior to filing this complaint, on July 6, 2020, Plaintiff gave written notice by
6 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
7 Defendants of the specified provisions alleged to have been violated, including the facts and
8 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
9 correct copy of Plaintiff’s original letter sent to the LWDA on July 6, 2020, is attached hereto as
10 Exhibit A.

11 16. Plaintiff specifically alleged the following in their notice to the LWDA and the
12 employer: violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174,
13 1174.5, 1194, 1197, and 2802.

14 17. More than sixty-five (65) days have passed since Plaintiff submitted his July 6,
15 2020, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the
16 LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
17 Plaintiff further has received no notice of Defendant’s intent to cure any of the alleged violations.
18 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
19 to their July 6, 2020, PAGA notice.

20 **FACTUAL ALLEGATIONS**

21 18. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny their
22 employees the benefits due under California’s wage and hour laws for work performed in
23 California. Defendants wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
24 wages, overtime compensation, and other statutory benefits mandated by California.

25 19. Throughout the Relevant Time Period, Defendants employed Plaintiff and the
26 Aggrieved Employees in non-exempt positions, such as groomers and sales persons throughout
27 its California locations. Accordingly, these positions remain non-exempt from California’s wage
28 and hour laws, yet Defendants failed to pay adequate overtime, provide meal and rest breaks and

1 otherwise pay all wages due to these non-exempt employees as required by law.

2 20. Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked
3 by (1) failing to pay minimum wages for performed work off-the-clock, during overtime periods
4 and during meal and rest periods when Mr. Lin and other employees were ostensibly off-duty and
5 (2) regularly and frequently worked beyond the eighth hour of the shift, but Employer only
6 compensated Mr. Lin and aggrieved employees for eight hours at their regular pay rate and did
7 not compensate Mr. Lin and similarly aggrieved employees for time worked beyond the eighth
8 hour of their scheduled shifts and/or forty hours per week

9 21. Moreover, when Mr. Lin and other aggrieved employees worked substantial off-
10 the-clock hours, because these off-the-clock hours were uncompensated, Employer violated
11 statutes and regulations mandating payment of the legal minimum wage. Furthermore, Employer
12 failed to include all remuneration when calculating Mr. Lin and other aggrieved employees'
13 regular rate of pay for purposes of overtime compensation.

14 22. During the PAGA Period, Defendants, and each of them failed and/or refused to
15 schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to reasonably
16 provide shift relief for meal and/or rest breaks, thereby causing Plaintiff and Aggrieved
17 Employees to work without being given paid ten (10) minute rest periods for every four (4) hours
18 or major fraction thereof worked and without being given a timely thirty (30) minute meal period
19 for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of at least
20 ten (10) hours during which Plaintiff and Aggrieved Employees were relieved of all duties and
21 free to leave the premises. Furthermore, Defendants failed and/or refused to pay Plaintiff and
22 Aggrieved Employees one (1) hour's pay at the employees' regular rate of pay as premium
23 compensation for failing to provide compliant meal and/or rest periods.

24 23. Employer did not keep accurate time records in violation of the Labor Code, the
25 applicable wage order, and actionable under PAGA. Employer failed to keep accurate time
26 records reflecting the time Mr. Lin and similarly aggrieved employees started their shift, the time
27 they began and ended their meal periods, and the time they ended their shifts. In addition,
28 Employer required Mr. Lin and other aggrieved employees to remain at their posts and wait for

1 approximately 5-10 minutes on a daily basis to be released by the next shift. Additionally, prior
2 to starting his daily shifts, Mr. Lin was required to arrive early but had to wait for a manager's
3 arrival. Mr. Lin and aggrieved employees were not compensated for the time waiting for a
4 manager to arrive. Employer also forced Mr. Lin and other aggrieved employees to clock out for
5 meal and rest periods not actually taken.

6 24. As a result of the violations mentioned above, Plaintiff and Aggrieved Employees
7 who ended their employment during the PAGA Period were not timely paid all compensation due
8 upon separation of employment as required by Cal. Labor Code §§ 201-203 and are entitled to
9 penalties.

10 25. Defendant's wage statements were inaccurate and in violation of Cal. Labor Code
11 § 226, because it failed to accurately include gross and net wages earned as a result of the above-
12 mentioned violations, the applicable rates of pay for all hours worked, and the correct name and
13 address of the employer, among other things.

14 26. Employer further required Mr. Lin and other Aggrieved Employees to wear
15 Employer-branded uniforms, which they were required to purchase on their own and were not
16 provided any equipment from Employer, but required the employees to clean and maintain the
17 uniforms themselves, without compensation, in violation of Labor Code section 2802 and 8 CCR
18 §11040, subdivision 9. Similarly, Employer required Mr. Lin and other Aggrieved Employees to
19 use their personal cellular phones to clock in and out for work, receive work-related text messages,
20 including the locations they were being assigned to, work updates and potential overtime
21 opportunities. Defendants failed to reimburse Plaintiff and Aggrieved Employees for these
22 business-related expenditures.

23 27. During the PAGA Period, the Defendant and each of them, required Plaintiff and
24 Aggrieved Employees to work without lawful compensation, in violation of the California Labor
25 Code, applicable Wage Orders, regulations and statutes, and Defendants: (1) Willfully failed and
26 refused, and continue to fail and refuse to pay compensation for all hours worked to the Plaintiff
27 and Aggrieved Employees; and (2) willfully failed and refused, and continue to fail and refuse to
28 pay due and owing wages promptly upon termination of employment to Plaintiff and Aggrieved

Employees.

FIRST CAUSE OF ACTION

**VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND
OVERTIME**

(Plaintiff Against All Defendants)

22. Plaintiff reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

23. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendants. Defendants failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked in excess of eight (8) hours per day and forty (40) hours per week for work performed for Defendants. Defendants failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40) hours per week.

24. Defendants willfully violated the Labor Code by failing to pay Plaintiff and Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and Aggrieved Employees were denied proper wages as a result of Defendant's policy of having Plaintiff and Aggrieved Employees work after clocking out for their meal periods and failing to compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay pursuant to Labor Code section 510.

25. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendants took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the State of California, seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of

1 the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
2 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

3 26. Plaintiff is informed and believes that Defendants have violated, and continues to
4 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
5 minimum wages and overtime.

6 27. Plaintiff, as a representative of the State of California, seek to recover any and all
7 penalties for each and every violation shown to exist or to have occurred during the Relevant
8 Time Period, in an amount according to proof, as to those penalties that are otherwise only
9 available to public agency enforcement actions. Funds recovered will be distributed in accordance
10 with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

11 28. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
12 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
13 interest.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
16 **PREMIUM COMPENSATION IN LIEU THEREOF**

17 **(Lab. Code, §§ 226.7 and 512)**

18 **(Plaintiff against All Defendants)**

19 29. Plaintiff reallege and incorporates by reference all preceding paragraphs as if fully
20 set forth herein.

21 30. Labor Code sections 226.7 and 512 and IWC Wage Order 5-2001, Sect. 11
22 provides that no employer shall employ any person for a work period of more than five (5) hours
23 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
24 or employ any person for a work period of more than ten (10) hours without a second meal period
25 of not less than thirty (30) minutes.

26 31. Labor Code section 226.7 provides that if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided in accordance with this section. Plaintiff alleges that Defendants failed to
2 provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or
3 not relieving employees from all work duties during meal periods thereby preventing employees
4 from taking legally compliant meal periods.

5 32. Industrial Welfare Commission (IWC) Wage Order No. 5-2001 (Wage Order 5)
6 section 11(A) states, “Unless the employee is relieved of all duty during a 30-minute meal period,
7 the meal period shall be considered an “on duty” meal period and counted as time worked. An
8 “on duty” meal period shall be permitted only when the nature of the work prevents an employee
9 from being relieved of all duty and when by written agreement between the parties an on-the-job
10 paid meal period is agreed to. The written agreement shall state that the employee may, in writing,
11 revoke the agreement at any time.”

12 33. The burden to prove that a meal or rest period violation has occurred normally
13 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,
14 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
15 presumption of meal and rest period violations is created, shifting the burden to the employer to
16 prove that meal and rest period violations did not occur.

17 34. Defendants failed to schedule non-exempt employees in an adequately
18 overlapping manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take
19 and/or receive such meal periods within the statutory timeframe. Further, Defendants obligated
20 Plaintiff and Aggrieved Employees to work through meal periods while off-the-clock.
21 Defendants denied Plaintiff and Aggrieved Employees duty-free meal periods, as a result,
22 Plaintiff and Aggrieved Employees were often forced to forego meal periods and/or work during
23 their meal periods. In so doing, Defendants have intentionally and improperly denied meal periods
24 to Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and
25 other regulations and statutes.

26 35. Defendants failed to keep accurate records of the meal periods taken by Plaintiff
27 and Aggrieved Employees.

28 36. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more

1 than five (5) hours in a workday.

2 37. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
3 worked more than ten (10) hours in a workday.

4 38. At all times relevant hereto, Defendants, failed offer or to schedule non-exempt
5 positions in a manner so as to reasonably provide meal and/or work free meal period as required
6 by Labor Code sections 226.7 and 512.

7 39. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
8 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
9 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
10 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
11 ascertained according to proof at trial.

12 40. Further, Defendant's failure to maintain accurate records of the meal periods taken
13 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
14 and shifts the burden to Defendants to prove they did not occur.

15 41. Plaintiff individually, and the Aggrieved Employees, request recovery of any civil
16 penalties against Defendants, and each of them, in a sum as provided by the Labor Code.

17 42. Since the LWDA has not indicated that it will be investigating and sixty-five (65)
18 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action
19 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
20 of California, seek any and all penalties otherwise capable of being collected by the Labor
21 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
22 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
23 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7
24 and 512.

25 43. Plaintiff is informed and believes that Defendants have violated and continues to
26 violate provisions of the Labor Code and applicable Wage orders related to the payment of
27 minimum wages, including overtime.

28 44. Plaintiff, as a representative of the State of California, seeks to recover any and all

1 penalties for each and every violation shown to exist or to have occurred during the Relevant
2 Time Period, in an amount according to proof, as to those penalties that are otherwise only
3 available to public agency enforcement actions. Funds recovered will be distributed in accordance
4 with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

5 45. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
6 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
9 **PREMIUM COMPENSATION IN LIEU THEREOF**

10 **(Lab. Code, §§ 226.7 and 512)**

11 **(Plaintiff against All Defendants)**

12 46. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
13 preceding paragraphs of this complaint as if fully set forth herein.

14 47. Labor Code section 226.7 provides that employers authorize and permit all
15 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

16 48. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
17 provide an employee rest periods in accordance with this section, the employer shall pay the
18 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
19 that the rest period is not provided.

20 49. Defendants, and each of them, failed and or refused to implement a relief system
21 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
22 periods. Defendants denied Plaintiff and Aggrieved Employees duty free rest periods by
23 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions,
24 Defendants intentionally and improperly denied duty free rest periods to the Plaintiff and
25 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

26 50. Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees
27 with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest
28 periods all together in violation of Labor Code section 226.7 and 512.

1 51. Defendants failed to keep accurate records of the rest periods taken by Plaintiff
2 and Aggrieved Employees.

3 52. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
4 more than four (4) hours in a workday.

5 53. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
6 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
7 Aggrieved Employees have suffered, and will continue to suffer damages.

8 54. Plaintiff, by virtue of his employment with Defendant, and Defendant's failure to
9 provide Plaintiff and Aggrieved Employees with rest breaks, requiring Plaintiff and Aggrieved
10 Employees to work through their rest periods without receiving compensation in lieu thereof, is
11 an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied
12 all prerequisites to serve as a representative of the general public to enforce California's labor
13 laws, and the penalty provisions identified in Labor Code section 2699.5.

14 55. Plaintiff individually, and the Aggrieved Employees, as a representative of the
15 State of California, seek any and all penalties otherwise capable of being collected by the Labor
16 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
17 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
18 alleged violation of the following provisions: 226.7 and 512.

19 56. Plaintiff, as a representative of the State of California, seek to recover any and all
20 penalties for each and every violation shown to exist or to have occurred during the Relevant
21 Time Period, in an amount according to proof, as to those penalties that are otherwise only
22 available to public agency enforcement actions. Funds recovered will be distributed in accordance
23 with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

24 57. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
25 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

26 ///

27 ///

28 //

FOURTH CAUSE OF ACTION
VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS

(Labor Code sections 1174, 226, subdivision (A), (E))

(Plaintiff against All Defendants)

58. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

59. Labor Code section 226, subdivision (a), states in pertinent part that, “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

60. Defendants knowingly and intentionally failed to provide timely and accurate itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code section 226, subdivision (a), by failing to record the accurate number of hours worked, the accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved Employees.

62. Plaintiff, as a representative of the State of California, seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only

1 available to public agency enforcement actions. Funds recovered will be distributed in accordance
2 with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

3 63. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
4 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

5 **FIFTH CAUSE OF ACTION**

6 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

7 **TERMINATION OF EMPLOYMENT**

8 **(Labor Code, sections 201, 203)**

9 **(Plaintiff against All Defendants)**

10 64. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
11 preceding paragraphs of this complaint as if fully set forth herein.

12 65. Plaintiff and certain members of the Aggrieved Employees who ended their
13 employment with Defendants during the Relevant Time Period, were entitled to be promptly paid
14 both minimum wage and lawful overtime compensation and other premiums, as required by Labor
15 Code sections 201 and 203.

16 66. Defendants refused and/or failed to promptly compensate Plaintiff and Aggrieved
17 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as
18 well as pay both minimum and overtime compensation owed for work performed for Defendant.

19 68. Plaintiff, as a representative of the State of California, seek any and all penalties
20 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
21 each of the following, as set forth in Labor Code section 2699.5, which provides that section
22 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203,
23 226, 226.7, 510, 512, 1174, and 1194.

24 69. Plaintiff, as a representative of the State of California, seek to recover any and all
25 penalties for each and every violation shown to exist or to have occurred during the Relevant
26 Time Period, in an amount according to proof, as to those penalties that are otherwise only
27 available to public agency enforcement actions. Funds recovered will be distributed in accordance
28 with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

EXHIBIT A



Michael A. Swift
(562) 590-5550 phone
(562) 590-8400 facsimile
mswift@mahoney-law.net

July 6, 2020

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL# 7019 0700 001 7488 7247

Return Receipt Requested

Clarker Inc.

1100 E. Orangethrope, Suite 130

Anaheim, CA 92801

Re: Christian Lin v. Clarker Inc., et al.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et seq.**

To: California Labor and Workforce Development Agency, Clarker Inc.

From: Christian Lin on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Christian Lin (hereinafter "Plaintiff" or "Mr. Lin"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Clarker Inc. (hereinafter referred to as "Employer") provide security and facility services and solutions. Mr. Lin alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 221-225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197 and 2802, and Wage Order no. 9, subdivisions 3, 4, 9, 11 and 12, by failing to provide Mr. Lin and all other

aggrieved employees all wages for all hours worked including, but not limited to, overtime wages, regular hours, and meal/rest period premium pay, in addition to violations for failing to provide legally compliant meal and rest periods or compensation in lieu thereof, failing to reimburse Mr. Lin and other aggrieved employees for business related expenses as well as collateral violations concerning inaccurate earnings statements and timely payment of wages at separation from employment.

Employer failed to pay Mr. Lin and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Specifically, Employer failed to pay Mr. Lin and his co-workers the legally mandated overtime rate for all work performed during their shifts in violation of California law. Mr. Lin and similarly aggrieved employees (1) performed work off-the-clock, during overtime periods and during meal and rest periods when Mr. Lin and other employees were ostensibly off-duty and (2) regularly and frequently worked beyond the eighth hour of the shift, but Employer only compensated Mr. Lin and aggrieved employees for eight hours at their regular pay rate and did not compensate Mr. Lin and similarly aggrieved employees for time worked beyond the eighth hour of their scheduled shifts and/or forty hours per week. Moreover, when Mr. Lin and other aggrieved employees worked substantial off-the-clock hours, because these off-the-clock hours were uncompensated, Employer violated statutes and regulations mandating payment of the legal minimum wage. Furthermore, Employer failed to include all remuneration when calculating Mr. Lin and other aggrieved employees regular rate of pay for purposes of overtime compensation.

Based on currently available information and records, Employer did not keep accurate time records in violation of the Labor Code, the applicable wage order, and actionable under PAGA. Employer failed to keep accurate time records reflecting the time Mr. Lin and similarly aggrieved employees started their shift, the time they began and ended their meal periods, and the time they ended their shifts. In addition, Employer required Mr. Lin and other aggrieved employees to remain at their posts and wait for approximately 5-10 minutes on a daily basis to be released by the next shift. Additionally, prior to starting his daily shifts, Mr. Lin was required to arrive early but had to wait for a manager's arrival. Mr. Lin and aggrieved employees were not compensated for the time waiting for a manager to arrive. Employer also forced Mr. Lin and other aggrieved employees to clock out for meal and rest periods not actually taken.

Further, Employer also failed to provide Mr. Lin and other aggrieved employees with timely meal and rest periods. In order to curtail labor costs, Employer understaffed work shifts in relation to reasonably foreseeable customer volume and instructed Mr. Lin and other aggrieved employees to continue working after clocking out for meal and rest periods which were not taken. In fact, Employer had a policy to automatically deduct meal periods regardless if they were taken or not. Mr. Lin was not provided with compliant meal periods because no relief as ever provided to him from Employer. Mr. Lin and other aggrieved employees were not provided with rest periods. Due to this policy and practice by Employer, Mr. Lin and similarly aggrieved employees missed meal and rest periods, received them untimely or had their meal and rest periods interrupted, due the lack of adequate relief coverage. Even though Mr. Lin and his co-workers were prevented from taking lawful timely uninterrupted meal and rest periods, Employer failed to provide them with premium pay for every untimely or uninterrupted meal and rest periods. Employer's conduct, which is in violation of Labor Code sections 226.7, 512, as well as 8 CCR §11040, subdivisions 11 and 12, is also actionable under PAGA.

Employer further required Mr. Lin and other aggrieved employees to wear Employer-branded uniforms, which they were required to purchase on their own and were not provided any equipment from Employer, but required the employees to clean and maintain the uniforms themselves, without compensation, in violation of Labor Code section 2802 and 8 CCR §11040, subdivision 9. Similarly, Employer required Mr. Lin and other aggrieved employees to use their personal cellular phones to clock in and out for work, receive work-related text messages, including the locations they were being assigned to, work updates and potential overtime opportunities. The Employer failed to reimburse for the expenses incurred. These violations are actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Lin and other aggrieved employees with complete and accurate wage statements showing the true number of hours worked and accurate overtime/premium wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, including failure to timely pay all wages owed at the time of separation from employment, Employer also violated Labor Code sections 201, 202, and 203, due to their uniform policy, practice and procedure of failing to pay all wages earned to former employees. These violations are actionable under PAGA.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael A. Swift'.

Michael A. Swift, Esq.
MAHONEY LAW GROUP, APC