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Superior Court of California
County of Los Angeles

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Romero and Adriana Diaz

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUAN ENRIQUEZ ROMERO, individually,
ADRIANA DIAZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

BOARDRIDERS WHOLESALE, LLC, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 20STCV31088

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

[Amended As of Right Pursuant to Labor
Code Section 2699.3(2)(C)]

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

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1 Plaintiffs Juan Enriquez Romero and Adriana Diaz (“Plaintiff”), based upon facts that
2 either have evidentiary support or are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiffs bring this action against Defendants Boardriders Wholesale, LLC and
6 Does 1 through 10 (Boardriders Wholesale, LLC and Does 1 through 10 are collectively referred
7 to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code §§ 2698 et seq. (“PAGA”) stemming from Defendants’ failure to pay
9 minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to
10 authorize and permit rest periods, failure to maintain accurate records of hours worked and meal
11 periods, failure to timely pay all wages to terminated employees, failure to indemnify necessary
12 business expenses, and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of himself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiffs bring this action against Defendants seeking only to recover penalties for
27 himself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
28

1 5. State of California. Plaintiffs do not seek to recover anything other than penalties
2 as permitted by California Labor Code Section 2699 at this time. To the extent that statutory
3 violations are mentioned for wage violations, Plaintiffs do not seek underlying general and/or
4 special damages for those violations, but simply penalties as permitted by California Labor Code
5 Section 2699, declaratory relief, and injunctive relief for himself and all aggrieved employees as
6 permitted by the PAGA.

7 6. Defendants own/owned and operate/operated an industry, business, and
8 establishment within the State of California, including Los Angeles County. As such, and based
9 upon all the facts and circumstances incident to Defendants' business in California, Defendants
10 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
11 Commission ("IWC"), and the California Business & Professions Code.

12 7. Despite these requirements, throughout the statutory period Defendants
13 maintained a systematic, company-wide policy and practice of:

- 14 (a) Failing to pay employees for all hours worked, including all minimum
15 wages, and overtime wages in compliance with the California Labor Code
16 and IWC Wage Orders;
- 17 (b) Failing to provide employees with timely and duty-free meal periods in
18 compliance with the California Labor Code and IWC Wage Orders, failing
19 to maintain accurate records of all meal periods taken or missed, and
20 failing to pay an additional hour's pay for each workday a meal period
21 violation occurred;
- 22 (c) Failing to authorize and permit employees to take timely and duty-free rest
23 periods in compliance with the California Labor Code and IWC Wage
24 Orders, and failing to pay an additional hour's pay for each workday a rest
25 period violation occurred;
- 26 (d) Failing to indemnify employees for necessary business expenses incurred;
- 27 (e) Willfully failing to pay employees all minimum wages, overtime wages,
28 meal period premium wages, and rest period premium wages due within

the time period specified by California law when employment terminates;
and

(f) Failing to maintain accurate records of the hours that employees worked.

(g) Failing to provide employees with accurate, itemized wage statements
containing all the information required by the California Labor Code and
IWC Wage Orders.

8. On information and belief, Defendants, and each of them were on actual and
constructive notice of the improprieties alleged herein and intentionally refused to rectify their
unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
willful and deliberate.

9. At all relevant times, Defendants were and are legally responsible for all of the
unlawful conduct, policies, practices, acts and omissions as described in each and all of the
foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are
responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
"respondeat superior".

THE PARTIES

A. Plaintiffs

10. Plaintiff Juan Enriquez Romero is a California resident that worked for
Defendants in the County of Los Angeles, State of California, as a forklift driver from
approximately 2006 to October 2019.

11. Plaintiff Adriana Diaz is a California resident that worked for Defendants in the
County of Los Angeles, State of California, as a forklift driver from approximately January 2017
to August 3, 2020.

12. Plaintiffs reserve the right to seek leave to amend this complaint to add new
plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
American Savings and Loan Association (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

13. Plaintiffs are informed and believe, and based upon that information and belief

alleges, that Defendant Boardriders Wholesale, LLC is:

- (a) A California limited liability company with its principal place of business in Los Angeles, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Los Angeles County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Boardriders Wholesale, LLC suffered and permitted Plaintiffs and the Class to work, and/or controlled their wages, hours, or working conditions.

14. Plaintiffs do not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiffs will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

15. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiffs and the Class in the State of California.

16. Plaintiffs are informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are informed and believes and thereon alleges that each Defendant

1 acted pursuant to and within the scope of the relationships alleged above, that each Defendant
2 knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided
3 and abetted the conduct of all other Defendants.

4 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 17. Plaintiff Juan Enriquez Romero is a California resident who worked for
6 Defendants in the County of Los Angeles, State of California, as a forklift driver from
7 approximately 2006 to October 2019. Plaintiff Adriana Diaz is a California resident that worked
8 for Defendants in the County of Los Angeles, State of California, as a forklift driver from
9 approximately January 2017 to August 3, 2020. During the statutory period, Defendants classified
10 Plaintiffs as non-exempt from California's overtime requirements, and paid Plaintiffs an hourly
11 wage. During the statutory period, Plaintiffs typically worked 5 days each workweek, and in
12 excess of 40 hours each workweek.

13 18. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours
14 worked (including minimum wages and overtime wages), failed to provide Plaintiffs with
15 uninterrupted meal periods, failed to authorize and permit Plaintiffs to take uninterrupted rest
16 periods, failed to indemnify Plaintiffs for necessary business expenses, failed to timely pay all
17 final wages to Plaintiffs when Defendants terminated Plaintiffs' employment, and failed to
18 furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience
19 working for Defendants was typical and illustrative.

20 19. Throughout the statutory period, Defendants also required Plaintiffs and the Class
21 to work "off-the-clock", uncompensated. For example, Plaintiffs and the Class were regularly
22 required to clock out and then go through security checks to get out of the work premises. While
23 waiting in line to go through the security check, and while going through the security check,
24 Plaintiffs and the Class were not compensated. Further, Plaintiffs and the Class were required to
25 wait in line to clock into work each workday, uncompensated. In failing to pay for all hours
26 worked, Defendants also failed to maintain accurate records of the hours Plaintiffs and the Class
27 worked.
28

1 20. Throughout the statutory period, Defendants have wrongfully failed to provide
2 Plaintiffs and the Class with legally compliant meal periods. Defendants sometimes, but not
3 always, required Plaintiffs and the Class to work in excess of five consecutive hours a day
4 without providing 30-minute, continuous and uninterrupted, duty-free meal period for every five
5 hours of work, or without compensating Plaintiffs and the Class for meal periods that were not
6 provided by the end of the fifth hour of work or tenth hour of work. Defendants also did not
7 adequately inform Plaintiffs and the Class of their right to take a meal period by the end of the
8 fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work.
9 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiffs and
10 the Class in compliance with California law.

11 21. Throughout the statutory period, Defendants have wrongfully failed to authorize
12 and permit Plaintiffs and the Class to take timely and duty-free rest periods. Defendants
13 sometimes, but not always, required Plaintiffs and the Class to work in excess of four
14 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
15 continuous and uninterrupted, rest period for every four hours of work (or major fraction of four
16 hours), or without compensating Plaintiffs and the Class for rest periods that were not authorized
17 or permitted. Defendants also did not adequately inform Plaintiffs and the Class of their right to
18 take a rest period. Moreover, Defendants did not have adequate policies or practices permitting
19 or authorizing rest periods for Plaintiffs and the Class, nor did Defendants have adequate policies
20 or practices regarding the timing of rest periods. Defendants also did not have adequate policies
21 or practices to verify whether Plaintiffs and the Class were taking their required rest periods.
22 Further, Defendants did not maintain accurate records of employee work periods, and therefore
23 Defendants cannot demonstrate that Plaintiffs and the Class took rest periods during the middle
24 of each work period. Accordingly, Defendants' policy and practice was to not authorize and
25 permit Plaintiffs and the Class to take rest periods in compliance with California law.

26 22. Throughout the statutory period, Defendants wrongfully required Plaintiffs and the
27 Class to pay expenses that they incurred in direct discharge of their duties for Defendants without
28 reimbursement. For example, Plaintiffs and the Class were required to purchase gloves for work

1 purposes without reimbursement. Plaintiffs and the Class incurred these substantial expenses as
2 a direct result of performing their job duties for Defendants, and Defendants have failed to
3 indemnify Plaintiffs and the Class for these employment-related expenses.

4 23. Throughout the statutory period, Defendants willfully failed and refused to timely
5 pay Plaintiffs and the Class at the conclusion of their employment all wages for all minimum
6 wages, overtime wages, meal period premium wages, and rest period premium wages.

7 24. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the
8 Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
9 and net wages earned (including correct hours worked, correct wages earned for hours worked,
10 correct overtime hours worked, correct wages for meal periods that were not provided in
11 accordance with California law, correct wages for rest periods that were not authorized and
12 permitted to take in accordance with California law, and Defendant's address). As a result of
13 these violations of California Labor Code § 226(a), the Plaintiffs and the Class suffered injury
14 because, among other things:

- 15 (a) the violations led them to believe that they were not entitled to be paid
16 minimum wages, overtime wages, meal period premium wages, and rest
17 period premium wages to which they were entitled, even though they were
18 entitled;
- 19 (b) the violations led them to believe that they had been paid the minimum,
20 overtime, meal period premium, and rest period premium wages, even
21 though they had not been;
- 22 (c) the violations led them to believe they were not entitled to be paid
23 minimum, overtime, meal period premium, and rest period premium wages
24 at the correct California rate even though they were;
- 25 (d) the violations led them to believe they had been paid minimum, overtime,
26 meal period premium, and rest period premium wages at the correct
27 California rate even though they had not been;
- 28

- 1 (e) the violations hindered them from determining the amounts of minimum,
2 overtime, meal period premium, and rest period premium owed to them;
3 (f) in connection with their employment before and during this action, and in
4 connection with prosecuting this action, the violations caused them to have
5 to perform mathematical computations to determine the amounts of wages
6 owed to them, computations they would not have to make if the wage
7 statements contained the required accurate information;
8 (g) by understating the wages truly due them, the violations caused them to
9 lose entitlement and/or accrual of the full amount of Social Security,
10 disability, unemployment, and other governmental benefits;
11 (h) the wage statements inaccurately understated the wages, hours, and wages
12 rates to which Plaintiffs and the Class were entitled, and Plaintiff and the
13 Class were paid less than the wages and wage rates to which they were
14 entitled.

15 Thus, Plaintiffs and the Class are owed the amounts provided for in California Labor Code §
16 226(e), including actual damages.

17 **FIRST CAUSE OF ACTION**

18 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
19 **2004, Cal. Lab. Code § 2698 et seq.)**

20 25. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
21 1 through 21 in this Second Amended Complaint.

22 26. At all times herein mentioned, Defendants were subject to the Labor Code of the
23 State of California and the applicable Industrial Welfare Commission Orders.

24 27. California Labor Code § 2699(a) specifically provides for a private right of action
25 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
26 law, any provision of this code that provides for a civil penalty to be assessed and collected by
27 the Labor and Workforce Development Agency or any of its departments, divisions,
28 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,

1 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
2 herself and other current or former employees pursuant to the procedures specified in Section
3 2699.3.”

4 28. Plaintiffs have exhausted their administrative remedies pursuant to California
5 Labor Code § 2699.3. On August 12, 2020 Plaintiff Juan Enriquez Romero gave written notice
6 by online filing to the Labor and Workforce Development Agency and by certified mail to
7 Defendants of the specific provisions of the Labor Code that Defendants have violated against
8 Plaintiff and current and former aggrieved employees, including the facts and theories to support
9 the violations. Plaintiff also paid the filing fee on August 12, 2020. On May 28, 2021, Plaintiff
10 Adriana Diaz gave written amended notice by online filing to the Labor and Workforce
11 Development Agency and by certified mail to Defendants of the specific provisions of the Labor
12 Code that Defendants have violated against Plaintiffs and current and former aggrieved
13 employees, including the facts and theories to support the violations. Plaintiff Adriana Diaz also
14 paid the filing fee on May 28, 2021. At the time of this filing, 65 days has elapsed since
15 Plaintiffs provided notice, but the Labor and Workforce Development Agency has not indicated
16 that it intends to investigate Defendants’ Labor Code violations discussed in the notice.
17 Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code §
18 2699 pursuant to §2699.3 for the violations of the Labor Code described in this Second Amended
19 Complaint. These penalties include, but are not limited to, penalties under California Labor
20 Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

21 29. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
22 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
23 employing labor who willfully fails to maintain accurate and complete records required by
24 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
25 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
26 begins and ends each work period. Meal periods, and total hours worked daily shall also be
27 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
28 keep total hours worked in the payroll period and applicable rates of pay.

30. During the time period of employment for Plaintiffs and the Aggrieved Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

31. Based on the conduct described in this Second Amended Complaint, Plaintiffs are entitled to an award of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

32. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1 1. That the Court declare, adjudge and decree that Defendants violated the California Labor
2 Code by failing to pay wages for all hours worked (including minimum, straight time, and
3 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
4 failing to furnish accurate wage statements, and failing to maintain accurate records of all hours
5 worked and meal periods;

6 2. An award of civil penalties on behalf of himself and all similarly aggrieved employees
7 pursuant to PAGA;

8 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

9 4. Attorneys' fees and costs reasonably incurred;

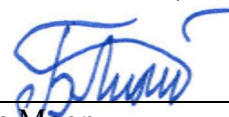
10 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

11 6. Such other and further relief that the Court deems proper.

12
13 Dated: August 4, 2021

Respectfully submitted,

14 MOON & YANG, APC

15
16 By:  _____

Kane Moon
H. Scott Leviant
Lilit Tunyan
Attorneys for Plaintiffs

EXHIBIT A

MOON & YANG, APC

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May 28, 2021

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Boardriders Wholesale, LLC
5600 Argosy Avenue, #100
Huntington Beach, CA 92649

Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Juan Enriquez Romero v. Boardriders Wholesale, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Juan Enriquez Romero and Adriana Diaz ("Plaintiffs") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Boardriders Wholesale, LLC. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Factual Background Regarding Plaintiffs' Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff Juan Enriquez Romero worked for Defendant forklift driver from approximately 2006 to October 2019, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked at least 5 days per week, and in excess of 8 hours each workday.

Plaintiff Adriana Diaz worked for Defendant forklift driver from January 2017 to August 3, 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from

overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked at least 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants also required Plaintiffs and the Aggrieved Employees to work "off-the-clock", uncompensated. For example, Plaintiffs and the Aggrieved Employees were regularly required to clock out and then go through security checks to get out of the work premises. Plaintiffs and the Aggrieved Employees also were required to go through security checks prior to clocking in. While waiting in line to go through the security check, and while going through the security check, Plaintiffs and the Aggrieved Employees were not compensated.

Further, Plaintiffs and the Aggrieved Employees were required to wait in line to clock into work each workday, uncompensated. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Further, Plaintiffs and the Aggrieved Employees were required to wait in line to wash their hands during their 30-minute meal period, which reduced the actual meal period itself. Defendant also did not have adequate policies or practices to verify whether Plaintiffs and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is

entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiffs and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiffs and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiffs seek penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of work gloves. Plaintiffs and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment

of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is 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) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiffs and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiffs allege that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

LWDA
Notice of Labor Code Violations and PAGA
May 28, 2021
Page 8 of 8

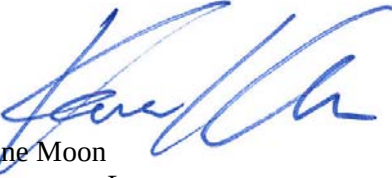
Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiffs have placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

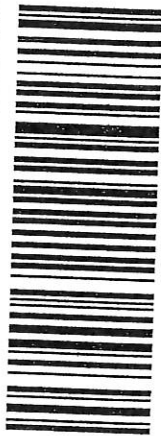
MOON & YANG, APC



Kane Moon
Attorney at Law

Boardriders Wholesale, LLC
5600 Argosy Avenue, #100
Huntington Beach, CA 92649

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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Boardriders Wholesale, LLC
5600 Argosy Avenue, #100
Huntington Beach, CA 92649



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2. Article Number (Transfer from service label)

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5600 Argosy Avenue, #100

City, State, Zip+4® Huntington Beach, CA 92649

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
7 Los Angeles, California 90017. On August 6, 2021, I served the foregoing document described as:

8 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:**

9 X by E-mailing ___ the original X a true copy to the following:

10 Graeme E. Sharpe
11 Adam Levin
12 Daniel Innamorati
13 **MITCHELL SILBERBERG & KNUPP LLP**
14 2049 Century Park East, 18th Floor
15 Los Angeles, CA 90067
16 dji@msk.com
17 axl@msk.com

18 *Attorneys for Defendant*

19 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the
20 parties to accept electronic service, I caused the documents to be sent to the
21 persons at the electronic service addresses listed above via third-party cloud
22 service **CASEANYWHERE**.

23 X (State) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25 Executed on August 6, 2021, at Los Angeles, California.

26 Jessica Reyes Flores
27 Name

28 
Signature