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ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 21 2020

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 BRENDA RIVERA, on behalf of herself and
12 others similarly situated,

13 Plaintiff,

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15 v.

16
17 ADIR INTERNATIONAL, LLC, a Delaware
18 limited liability company; and DOES 1
through 100,

19 Defendants.
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Case No.: 20STCV30300

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code § 2698, *et seq.*)

UNLIMITED CIVIL CASE

1 Plaintiff BRENDA RIVERA (“Plaintiff”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorneys General Act of 2004, section 2698, *et seq.* (“PAGA”) complains of
4 Defendant ADIR INTERNATIONAL, LLC (“Adir”) and DOES 1 to 100 (collectively,
5 “Defendants”) and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code section 2699, *et*
8 *seq.*, on behalf of the State of California and on behalf of aggrieved employees as follows: ***All***
9 ***current and former hourly paid or non-exempt employees who worked for Adir International,***
10 ***LLC, and/or its predecessor or merged entities, within the State of California within the longest***
11 ***applicable limitations period*** (the “Aggrieved Employees”).

12 2. Plaintiff reserves the right to amend or modify the definition of “Aggrieved
13 Employees” identified herein with greater specificity and/or amend or modify into further
14 divisions of subgroups or limitation of issues.

15 3. Throughout the time period involved in this case, Defendants willfully maintained
16 a consistent policy/practice of failing to pay all wages, including minimum wages, for all hours
17 worked; failing to pay all overtime wages; failing to provide timely duty-free meal periods;
18 failing to authorize and permit duty-free rest breaks; failing to reimburse for business expenses;
19 failing to provide reporting-time pay; failing to maintain and provide accurate itemized wage
20 statements; failing to pay vested vacation time as wages upon separation of employment; and
21 failing to pay all wages owed timely and upon separation of employment. Defendants’ illegal
22 conduct has given rise to claims for violation of the Private Attorneys General Act of 2004
23 (“PAGA”).

24 4. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
25 action against Defendants to recover penalties owed pursuant to Labor Code section 2699.
26 Plaintiff was compelled to retain the services of counsel to file this action to protect her interests
27 and those of Aggrieved Employees and has thereby incurred attorneys’ fees and costs, which she
28 is entitled to recover under Labor Code section 2699.

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1 to the same employment policies and practices that affected Aggrieved Employees.

2 10. Plaintiff represents the State of California as well as Aggrieved Employees.

3 11. Plaintiff and Aggrieved Employees at all times pertinent hereto are or were
4 employees of Defendants during the statutory time period (“PAGA period”).

5 12. Upon information and belief, Plaintiff and Aggrieved Employees are covered by
6 California Industrial Welfare Commission (“IWC”) Occupational Wage Order No(s). 4-2001
7 and/or 7-2001.

8 13. Defendant Adir International, LLC is a Delaware limited liability company
9 headquartered and with its principal place of business in Los Angeles, California.

10 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
11 business in the State of California and, at all times hereinafter mentioned, were and are employers
12 as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are
13 engaged throughout this county and the State of California. During the relevant period,
14 Defendants employed Plaintiff and Aggrieved Employees within the State of California.

15 15. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
17 to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil
18 Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of
19 the defendants designated herein as DOE is legally responsible in some manner for the unlawful
20 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
21 true names and capacities of the defendants designated hereinafter as DOES when such identities
22 become known.

23 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
24 include DOES 1 through 100 identified herein.

25 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
27 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
28 Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes

1 and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and
2 Aggrieved Employees at the same time and were operating as a joint enterprise and single entity
3 at all relevant time periods.

4 18. California courts have recognized that the definition of “employer” for purposes
5 of enforcement of the California Labor Code goes beyond the concept of traditional employment
6 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
7 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
8 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
9 person to work or exercises control over the wages, hours, or working conditions of any person
10 may be liable for violations of the California Labor Code as to that person.

11 19. California law also permits and recognizes the piercing of a corporate veil
12 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.
13 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise
14 rule applies where “there are two or more personalities, there is but one enterprise; and that this
15 enterprise has been so handled that it should respond, as a whole, for the debts of certain
16 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
17 App. 4th at 512.

18 20. At all times throughout their employment, Plaintiff and Aggrieved Employees
19 were regularly and consistently subject to the common policies and practices utilized by
20 Defendants.

21 21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
22 Aggrieved Employees to perform services from which they benefitted. Moreover, the
23 aforementioned Defendants had the right to exercise control over the wages, hours, and/or
24 working conditions over Plaintiff and Aggrieved Employees at all relevant times herein, so as to
25 be considered joint employers. By reason of their status as joint employers, they are each liable
26 for civil penalties for violation of the California Labor Code as to Plaintiff and Aggrieved
27 Employees as set forth herein.

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1 **V. REPRESENTATIVE ACTION ALLEGATIONS**

2 **Defendants Systematically Violated State Wage and Hour Laws**

3 22. Defendants employ over 2,000 individuals at about a dozen retail department
4 stores known as Curacao in and around Los Angeles County and Orange County, California.
5 Plaintiff worked for Defendants as a non-exempt, hourly paid and commissioned salesperson
6 until her separation on March 23, 2020, in Lynwood, California.

7 23. Plaintiff and Aggrieved Employees are, and were at all times pertinent hereto,
8 non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods,
9 reimbursement of expenses, and the other underlying claims alleged herein.

10 24. Labor Code section 510 requires an employer to compensate an employee who
11 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
12 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
13 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
14 compensate employees at no less than twice the regular rate of pay when an employee works
15 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
16 of work.

17 25. During the relevant period, Defendants have had a consistent policy/practice of
18 failing to pay overtime wages to Plaintiff and Aggrieved Employees for all overtime hours
19 worked they worked. The work times of Plaintiff and Aggrieved Employees have been, and
20 continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because
21 Defendants did not pay Plaintiff and Aggrieved Employees wages for, *inter alia*, hours that were
22 worked off the clock, including work performed during meal periods, as discussed and alleged
23 *infra*, Plaintiff and Aggrieved Employees were deprived wages at overtime premium amounts
24 attributable to overtime hours. Additionally, if there was any overtime paid to Plaintiff and
25 Aggrieved Employees, upon information and belief, Defendants did not properly include
26 commissions and/or other non-discretionary pay in determining the correct rate of overtime pay,
27 thus depriving Plaintiff and Aggrieved Employees of the full and proper amount of overtime pay
28 due to them.

1 26. By their common policy/practice of requiring Plaintiff and Aggrieved Employees
2 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
3 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
4 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order Nos. 4-2001 and
5 7-2001.

6 27. Throughout the applicable period of time, Defendants did not pay and continue
7 not to pay Aggrieved Employees at least the California minimum wage for all hours worked.
8 Labor Code section 1197 states the California requirement that employees must be paid at least
9 the minimum wage fixed by the Commission, and any payment of less than the minimum wage
10 is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the
11 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
12 minimum wage.” The applicable IWC Wage Order(s) also obligate employers to pay each
13 employee minimum wages for all hours worked.

14 28. These minimum wage standards apply to each hour employees worked for which
15 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
16 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked,
17 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*
18 (2005) 135 Cal. App. 4th 314, 324.

19 29. Labor Code section 1194.2 authorizes employees to recover wages to recover
20 liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff
21 and Aggrieved Employees, is not paid for all hours worked under Labor Code section 1194, the
22 employee may recover minimum wages and liquidated damages for the time for which he or she
23 received no compensation. *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.
24 3d 891 (holding that employees suing for failure to pay overtime could recover liquidated
25 damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord*
26 *Andrade v. Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S.
27 Dist. LEXIS 172319, at *20-21.) Since Defendants failed to provide Plaintiff and Aggrieved
28 Employees with compensation for all hours worked, they are entitled to recover liquidated

1 damages under Labor Code section 1194.2 through PAGA.

2 30. Labor Code section 1197.1 authorizes employees who are paid less than the
3 minimum fixed by an applicable state or local law, or by an order of the commission a civil
4 penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that
5 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
7 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
8 pay period for which the employee is underpaid regardless of whether the initial violation is
9 intentionally committed. Accordingly, through PAGA and to the extent permitted by law Plaintiff
10 and Aggrieved Employees are entitled to recover for violations of Labor Code section 1197.1.

11 31. Defendants regularly failed to provide Plaintiff and Aggrieved Employees with
12 timely duty-free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-
13 2001 and 7-2001 require employers to provide employees with a thirty (30) minute uninterrupted
14 and duty-free meal period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior*
15 *Court* (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more
16 than five hours.”). Moreover, an employee who works more than ten (10) hours per day is
17 entitled to receive a second thirty- (30-) minute uninterrupted and duty-free meal period. *See*,
18 Labor Code § 512.

19 32. Defendants regularly denied Plaintiff and Aggrieved Employees meal periods that
20 comply with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-2001.
21 Plaintiff and Aggrieved Employees suffered late, short, interrupted, and/or missed meal breaks.
22 Upon information and belief, despite working shifts that exceeded ten hours, Aggrieved
23 Employees were consistently deprived of second meal breaks altogether.

24 33. Defendants were also obligated but failed to provide Plaintiff and Aggrieved
25 Employees with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a
26 major fraction thereof worked as required by Labor Code section 226.7 and IWC Wage Order
27 Nos. 4-2001 and 7-2001. Defendants regularly failed to provide Plaintiff and Aggrieved
28 Employees with timely duty-free rest breaks.

1 34. In addition to failing to authorize and permit compliant meal and rest periods,
2 Plaintiff and Aggrieved Employees were not compensated with one (1) hour's worth of pay at
3 their regular rate of compensation when they were not provided with compliant meal and rest
4 periods in accordance with Labor Code section 226.7(b).

5 35. Plaintiff and Aggrieved Employees regularly reported to work at their scheduled
6 times, but would sometimes be sent home by their supervisors. Defendants did not pay Plaintiff
7 and Aggrieved Employees reporting-time pay in those instances. On such days, an employee
8 must be paid for at least half of the hours scheduled to work, but in no case less than two (2)
9 hours at the employee's regular rate of pay; this is called reporting-time pay. *See, e.g.*, Section 5
10 (A) and (B) of Wage Orders 4-2001 and 7-2001.

11 36. Plaintiff and Aggrieved Employees were entitled to paid vacations by contract of
12 employment or employer policy. Plaintiff and certain Aggrieved Employees ended their tenure
13 of employment without having taken off their vested vacation time, and the contract of
14 employment or employer policy did not provide for forfeiture of vested vacation time upon
15 termination. In such instances, Plaintiff and Aggrieved Employees are entitled to the payment of
16 their vested vacation time as wages at their final rate of pay upon the termination of the
17 employment relationship, in accordance with Labor Code section 227.3. Defendants did not pay
18 Plaintiff and, upon information and belief, Aggrieved Employees for their vested vacation time
19 as wages at their final rate of pay upon separation of employment, in violation of Labor Code
20 section 227.3.

21 37. Plaintiff and Aggrieved Employees incurred necessary business expenses (i.e.,
22 purchase and use of personal cell phones) in discharging their duties. However, Defendants did
23 not pay fully, or at all, for these necessary business expenses incurred by Plaintiff and Aggrieved
24 Employees. Defendants violated Labor Code section 2802 by failing to pay and indemnify
25 Plaintiff and Aggrieved Employees for their necessary business expenditures and losses incurred
26 in direct consequence of the discharge of their duties.

27 38. Labor Code section 203 provides "if an employer willfully fails to pay...any
28 wages of an employee who is discharged or who quits, the wages of the employee shall continue

as a penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th 487, 492.

39. Due to Defendants’ non-compliant policies/practices described herein, Plaintiff and Aggrieved Employees whose employment with Defendants concluded were not compensated for all straight-time and overtime hours worked, were not paid all meal and rest break premiums owed, were not paid for vested vacation time as wages upon separation of employment, were not provided reporting-time pay, and were not reimbursed for necessary business expenses. Thus, Defendants have failed to pay Plaintiff and Aggrieved Employees all wages owed, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

40. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.”

41. Due to Defendants’ failure to pay Plaintiff and Aggrieved Employees with minimum and overtime wages, reporting-time pay, along with meal period and rest break premiums and unreimbursed business expenses, as described above, Defendants failed to timely pay employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC* (N.D. Cal. May 2, 2016) No. 1 6-cv-00405-JST, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (finding after *Ling v. P.F Chang’s China Bistro, Inc.* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

42. Plaintiff and Aggrieved Employees were not furnished with accurate itemized wage statements that accurately showed their gross wages earned, net wages earned, premium payments for meal and rest breaks, all applicable hourly rates and corresponding number of hours worked at each hourly rate in effect during their pay periods, and other information required by Labor Code section 226(a).

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1 43. As a result of Defendants’ violation of Labor Code section 226(a), Plaintiff and
2 Aggrieved Employees suffered injury because, among other things: (a) the violations hindered
3 them from determining the amounts of wages owed; (b) the violations caused them to have to
4 perform mathematical computations to determine the amounts of wages owed to them and made
5 it exponentially more difficult than if the wage statement contained the required accurate
6 information; and (c) the wage statements inaccurately understated the wages, hours, and wage
7 rates to which they were entitled.

8 44. In addition to Labor Code section 226(a), Defendants also knowingly and
9 intentionally failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
10 statements in violation of Labor Code section 226(e). Defendants undeniably knew that they
11 were not providing Plaintiff and Aggrieved Employees with wage statements required by
12 California law. *See Garnett v. ADT LLC* (E.D. Cal. Oct. 6, 2015) 139 F. Supp. 1121, 1131
13 (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the
14 “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
15 paid on commission” even though it believed that employees paid solely on commission or
16 commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

17 45. Plaintiff and Aggrieved Employees will prevail on their claim for PAGA penalties
18 under Labor Code section 226(a). *See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 4th
19 773, 788 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code
20 section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements
21 of section 226(e)(1).”); *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F. Supp. 3d 1116, 1136
22 (To obtain judgment on a PAGA claim, “all [Plaintiffs] needs to establish is a violation of section
23 226(a), which she has done, as discussed above.”); *McKenzie v. Fed Exp. Corp.* (C.D. Cal. 2011)
24 765 F. Supp. 2d 1222, 1232 (holding that “for the purposes of recovering PAGA penalties, one
25 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
26 *Aguirre v. Genesis Logistics* (C.D. Cal. July 3, 2013) 2013 U.S. Dist. LEXIS 189815, at *28
27 (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under
28 § 2699(f) of PAGA.”)

1 46. Following *Friant*, courts have found that employees can recover separate
2 penalties under PAGA for a defendant’s violations of Labor Code section 226(a) and (e). *See e.g.*
3 *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5
4 [finding after *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home
5 Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’
6 derivative claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be
7 read to grant summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of
8 section 226(a).”)].

9 47. Further and in addition to the penalties outlined above, Labor Code section 226.3
10 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
11 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
12 initial violation and one thousand dollars (\$1,000) per employee for each violation in a
13 subsequent citation, for which the employer fails to provide the employee a wage deduction
14 statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail
15 above, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized
16 wage statements.

17 48. Accordingly, Plaintiff and Aggrieved Employees may also recover Labor Code
18 section 226.3 penalties for Defendants’ violations of Labor Code section 226(a). *See Finder v.*
19 *Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151,
20 at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a
21 PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073,
22 at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform
23 actions mandated by § 226(a) may trigger civil penalties.”).

24 49. Moreover, California Labor sections 1174(d) and 1174.5 require an employer to
25 keep, at a central location in the state or at the plants or establishments at which employees are
26 employed, payroll records showing the hours worked daily by the wages paid to employees
27 employed at the respective plants or establishments. These records shall be kept with rules
28 established for this purpose by the commission but in any case, shall be kept on file for not less

1 than two years. During the relevant time period, Defendants failed to keep accurate and complete
2 payroll records showing the actual hours worked daily and the wages earned by Plaintiff and
3 Aggrieved Employees, including earned and unpaid minimum, overtime, and premium wages
4 discussed herein.

5 **FIRST CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
7 **Cal. Labor Code §§ 2698, *et seq.***
8 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

9 50. Plaintiff, on behalf of herself and Aggrieved Employees, re-alleges and
10 incorporates by reference all of the allegations contained in the previous paragraphs of this
11 Complaint as though fully set forth herein.

12 51. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
13 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
14 General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*

15 52. Based on the above allegations incorporated by reference, Defendants have
16 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 227.3, 450, 510,
17 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as IWC Wage
18 Order Nos. 4-2001 and 7-2001.

19 53. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
20 section 2699, *et seq.* because of Defendants’ violations of Labor Code sections 201, 202, 203,
21 204, 210, 226, 226.2, 226.3, 226.7, 227.3, 450, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197,
22 1197.1, 1198, 1199, and 2802, as well as IWC Wage Order Nos. 4-2001 and 7-2001.

23 54. Under Labor Code sections 2699(f)(2) and 2699.5, for each such violation,
24 Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown
25 at the time of trial subject to the following formula:

26 \$100 for the initial violation per employee per pay period; and

27 \$200 for each subsequent violation per employee per pay period.

28 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These

1 penalties may be stacked separately for each of Defendants violations of the California Labor
2 Code. *See e.g., Hernandez v. Towne Park, Ltd.* (C.D. Cal. June 22, 2012) No. CV 12-02972
3 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (holding that although the plaintiffs
4 did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e., multiple
5 PAGA penalties can be assessed for the same pay period for different Labor Code violations.”);
6 *See Lopez v. Friant & Assocs., LLC* (Ct. App. Sep. 26, 2017) No. A148849, 2017 Cal. App.
7 LEXIS 839, at *1 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of
8 Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
9 requirements of section 226(e)(1) and acknowledging that a plaintiff could recover separately
10 under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David’s*
11 *Bridal, Inc.* (E.D. Cal. July 14, 2010) No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS
12 81128, at *17; *Pulera v. F & B, Inc.* (E.D. Cal. Aug. 19, 2008) No. 2:08-cv-00275-MCE-DAD,
13 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3; *Smith v. Brinker Intern, Inc.* (N.D.
14 Cal. May 5, 2010) No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at
15 * 2-6.

16 55. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff
17 and Aggrieved Employees with accurate itemized wage statements in compliance with Labor
18 Code section 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor
19 Code section 226(a) and (e). *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788;
20 *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S.
21 Dist. LEXIS 204493, at *5 [finding after *Friant* that “[t]o the extent the Court’s Order [granting
22 summary judgment to *Home Depot*] was ambiguous, the Court now clarifies that it granted
23 summary judgment on Plaintiffs’ derivative claim for [PAGA] penalties under section
24 226(e)...the Court’s Order should not be read to grant summary judgment on Plaintiffs’ claim
25 for PAGA penalties based on violation of section 226(a).”]). For violations of Labor Code section
26 226(a), Plaintiff seeks the default penalty provided by Labor Code section 226.3. Labor Code
27 section 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be
28 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.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226(a).

56. Labor Code section 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices, Plaintiff and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

57. A civil penalty against Defendants, pursuant to Labor Code section 1197.1, authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

58. Plaintiff has fully and completely exhausted her administrative remedies under PAGA prior to proceeding with the PAGA claim. On August 3, 2020, Plaintiff filed her PAGA Notice online with the Labor and Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendant Adir International, LLC setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code section 2698, *et seq.* As

1 required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA. Pursuant to Labor
2 Code section 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing
3 its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA
4 notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to
5 Labor Code section 2699.

6 59. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred
8 during the one year period before Plaintiff filed notice with the LWDA of her intent to bring an
9 action, in an amount according to proof, as to those penalties that are otherwise only available to
10 public agency enforcement actions. Funds recovered will be distributed in accordance with the
11 PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the
12 LWDA.

13 60. Plaintiff was compelled to retain the services of counsel to file this action to
14 protect her interests and those of Aggrieved Employees, and to assess and collect the wages and
15 penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
16 she is entitled to recover under Labor Code section 2699(g)(1).

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of the State of California, prays for judgment
19 against Defendants as follows:

20 1. For penalties and other relief allowable under Labor Code section 2699, *et seq.*
21 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.2,
22 226.3, 226.7, 227.3, 450, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
23 2802, and IWC Wage Order Nos. 4-2001 and/or 7-2001;

24 2. A civil penalty against Defendants in the amount of \$100 for the initial violation
25 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor
26 Code for Plaintiff and Aggrieved Employees for each and every pay period that occurred during
27 the PAGA period;

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1 3. A civil penalty against Defendants pursuant to Labor Code section 1197.1 for the
2 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee is underpaid, and for each
4 subsequent violation, two hundred fifty dollars (\$250) for each subsequent violation for each pay
5 period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and
6 every pay period that occurred during the PAGA period;

7 4. A civil penalty against Defendants pursuant to Labor Code section 210 for the
8 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
9 underpaid employee for each pay period for which the employee is underpaid, and for each
10 subsequent violation, two hundred dollars (\$200) for each underpaid employee for each pay
11 period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and
12 every pay period that occurred during the PAGA period;

13 5. A civil penalty in the amount of \$50 for the initial violation and \$100 for each
14 subsequent violation as specified by Labor Code sections 2699(f) and 226(e) for Plaintiff and
15 Aggrieved Employees for each and every pay period that occurred during the PAGA period;

16 6. A civil penalty in the amount of \$250 for the initial violation and \$1000 for each
17 subsequent violation as specified by Labor Code sections 2699(f) and 226.3 for Plaintiff and
18 Aggrieved Employees for each and every pay period during occurred during the PAGA period
19 for violations of Labor Code section 226(a);

20 7. An award of reasonable attorney's fees against Defendants as specified in Labor
21 Code section 2699(g) and Code of Civil Procedure section 1021.5, for all the work performed by
22 the undersigned counsel in connection with the PAGA claims;

23 8. An award of all costs incurred by the undersigned counsel for Plaintiff in
24 connection with Plaintiff's and Aggrieved Employees' claims against Defendants as provided
25 for in Labor Code section 2699(g)(1); and

26 9. All other relief as this Court deems proper.

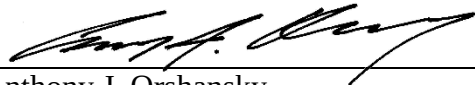
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DATED: October 20, 2020

Respectfully submitted,
COUNSELONE, PC

By 
Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiff and Aggrieved
Employees

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650, Beverly Hills, California 90210, lanie@counselonegroup.com.

On October 20, 2020, I served the foregoing **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** on Interested Parties in this action by sending a true copy thereof addressed as follows:

Jennifer N. Lutz, Esq. Attorneys for Defendants
jlutz@pettitkohn.com
Blake J. Woodhall, Esq.
bwoodhall@pettitkohn.com
Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, CA 92130

☐ **(BY U.S. MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Los Angeles, California for regular delivery. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(BY PERSONAL SERVICE)** I caused said envelope to be personally delivered to the office of the person and address identified on the attached service list.

☐ **(BY FACSIMILE)** On _____ before 5:00 p.m., I transmitted such documents from our facsimile machine number (424) 277-3727 to the person(s) at the facsimile numbers listed on the attached service list. Said transmission was reported as complete and without error. A copy of the transmission report which was properly issued by the transmitting facsimile machine is attached hereto.

☒ **(BY ELECTRONIC SERVICE)** Based on a Emergency Rule 12, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons listed above by email. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 20, 2020, at Los Angeles, California.


Lanie Lim