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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

EMILY FERRER, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC, a
California Limited Liability Company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 37-2020-00044088-CU-DE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") AND RESTITUTION**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO RECORD
HOURS WORKED**
- 6. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE DURING AND
UPON TERMINATION OF
EMPLOYMENT**

1 Plaintiff EMILY FERRER (“Plaintiff”), on behalf of others aggrieved and as a
2 Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against her former
7 employer and Defendants FITNESS INTERNATIONAL, a California Limited Liability
8 Company, and DOES 1-100 (collectively referred to as “Defendants”) under the California
9 Labor Code to recover civil penalties arising out of Defendants’ multiple labor code violations
10 as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay her or other hourly
14 employees all wages for all hours worked at the applicable minimum and/or overtime rates of
15 pay. Defendants also failed to provide compliant meal and rest periods, failed to provide
16 compliant wage statements, and failed to provide all wages due during and upon termination of
17 employment.

18 3. Plaintiff brings this lawsuit as a PAGA Representative Action behalf of the state
19 of California, and aggrieved current and former non-exempt employees. Pursuant to Labor
20 Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and reasonable attorney’s
21 fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a
22 representative of the State of California. On September 22, 2020, Plaintiff submitted written
23 notice of the specific provisions of the Labor Code that Defendants violated, as alleged herein,
24 including the facts and theories to support the alleged violations by mailing the notice to
25 Defendant Fitness International, LLC and submitting the notice online to the LWDA pursuant
26 to Labor Code section 2699.3. Defendants did not provide notice of cure and the LWDA did not
27 provide notice of investigation in the 65 days after the mailing of the PAGA notice.

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1 II.

2 **JURISDICTION AND VENUE**

3 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure section 395. Defendants conduct business in the city and county of San Diego
5 in the state of California and each Defendant is within the jurisdiction of this Court for service
6 of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other
7 employees within the State of California and San Diego County. Defendants employ numerous
8 employees in San Diego County and in California generally. There is no federal question at
9 issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on
10 California statutes and law, including the Labor Code, IWC Wage Orders, and Code of Civil
11 Procedure.

12 5. Plaintiff alleges, on information and belief, that no federal question is raised and
13 that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in
14 the alternative, that exceptions for local case or controversy under the CAFA do apply and
15 prohibit removal of the action the federal court. Plaintiff is also informed and believes that
16 based on the total number of pay periods she worked, her individual PAGA claims do not arise
17 to the necessary amount in controversy so as to implicate traditional jurisdiction under 28
18 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under
19 the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA
20 civil penalty actions are not subject to federal jurisdiction.

21 III.

22 **THE PARTIES**

23 6. Plaintiff EMILY FERRER is a former employee of Defendants. At all relevant
24 times, she was employed by Defendants as a non-exempt hourly employee in San Diego County
25 from approximately February 2019 to July 2020.

26 7. Plaintiff alleges that all other non-exempt hourly employees in the State of
27 California worked under Defendants' policies and as a result, suffered the same violations
28 alleged herein.

1 8. Plaintiff is an “aggrieved employee” because she was employed by the alleged
2 violators and had one or more of the alleged violations committed against her and, therefore, is
3 properly suited to represent the interests of all other current and former employees of
4 Defendants.

5 9. Pursuant to Cal Labor Code section 2698, *et seq.*, Plaintiff seeks to represent all
6 current and former non-exempt employees who suffered one or more of the alleged violations
7 as described herein (“aggrieved employees”) during the applicable limitations period for the
8 time period covered by the PAGA (which is defined as any time from one year and 65 days
9 prior to the commencement of this action until the commencement of trial in the matter). The
10 applicable limitations period is referred herein as “the PAGA Period.”

11 10. Plaintiff is informed and believes, and alleges Defendant Fitness International,
12 LLC operates sports and fitness gyms throughout the state of California.

13 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
14 employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or
15 caused to be violated, any provision regulating minimum wages or hours and days of work in
16 the applicable order of the Industrial Welfare Commission, as well as California Labor Code
17 sections 203, 226, 226.7, 1193.6, 1194, and 2802, and as such, are liable as an employer of
18 Plaintiff for such violations pursuant to California Labor Code sections 558 and 558.1.

19 12. At all times relevant, Defendants did, and do, transact and conduct business in
20 the state of California, including, but not limited to, within the jurisdiction of the Court. At all
21 times relevant, Defendants, and each of them, were Plaintiff’s and aggrieved employees’
22 employer for purposes of the California wage and hour laws at issue in this action.

23 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
24 participation in the conduct alleged of Defendants sued as DOES 1 through 100, but is informed
25 and believes, and based on that alleges, DOE Defendants are legally responsible for the
26 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
27 amend this complaint when their true names and capabilities are ascertained.

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

1 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
2 other aggrieved employees, and exercised control over their wages, hours, and working
3 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
5 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
6 Defendant is legally attributable to the other Defendants.

7 IV.

8 **GENERAL ALLEGATIONS**

9 15. At all times during the liability period, Plaintiff and aggrieved current and
10 former employees were employed by Defendants and each of them, including Doe Defendants,
11 within the state of California.

12 16. At all relevant times, Plaintiff and other aggrieved employees of Defendants
13 worked under the same policies, practices, and procedures relating to their employment,
14 including those governing wage statements, recordkeeping, payment of wages, and provision of
15 rest and meal periods applicable to Defendants' facilities.

16 17. The California Labor Code and applicable IWC Wage Order and portions of the
17 California Code of Regulations provide that all persons employed in the State of California
18 shall be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked"
19 and subject to the control of the employer, whether exercised or not, are to be paid at least the
20 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
21 the regular rate of pay or 2.0x the regular rate of pay when "hours worked" exceeds 8 hours in a
22 single day or shift, or over 40 hours in a 168-total hour workweek.

23 18. Plaintiff and each aggrieved employee were non-exempt employees covered
24 under one or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or
25 other applicable wage orders, regulations and statutes, and each aggrieved employee was not
26 subject to an exemption for executive, administrative, professional employees, or any other
27 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and each
28 aggrieved employee lawful minimum and overtime compensation, as well as to provide

1 statutory meal periods.

2 19. Plaintiff and each aggrieved employee worked in excess of the maximum regular
3 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore
4 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
5 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
6 and/or statutes.

7 20. During the PAGA Period, Defendants maintained common policies and practices
8 of failing to pay all required wages for all hours worked.

9 21. Defendants failed to pay Plaintiff and aggrieved employees all minimum,
10 regular, and overtime wages for all applicable hours of work, including the time spent
11 performing work before and after clocking in and time spent working outside of the pre-
12 scheduled shifts.

13 22. Prior to clocking in, Plaintiff and other aggrieved employees were required to
14 open up the club, turn on the lights, and boot up the computers. Similarly, Plaintiff and other
15 employees were required to clock out, and then close up the fitness club while off the clock.
16 The time spent opening up and closing the fitness club was compensable time, but Defendants
17 failed to pay any wages for this time spent working and under the direction and control of the
18 Defendants.

19 23. Additionally, Defendants paid employees based on pre-scheduled hours. If
20 employees worked outside these pre-scheduled hours or during pre-scheduled meal periods,
21 they were not paid for this time worked.

22 24. As a result, the Defendants failed to pay at least minimum wage for all hours
23 worked. To the extent this time should have been compensated at overtime rates, the
24 Defendants failed to pay all applicable overtime wages.

25 25. Plaintiff and each PAGA represented employee regularly worked overtime hours
26 exceeding eight hours per day, but were not paid at the correct overtime rate of pay because not
27 all remuneration was included in their regular rate of pay, as required by Labor Code sections
28 510 and 1194, and section 3 of the applicable IWC wage order. Plaintiff and other aggrieved

1 employees earned incentive pay, including commissions and bonuses. The additional
2 compensation was not included in the employees' regular rate of pay for purposes of calculating
3 the proper overtime payment.

4 26. Defendants did not maintain a compliant meal and rest period policy applicable
5 to Plaintiff and other aggrieved employees, nor did they inform their employees, including
6 Plaintiff, that they were permitted to take meal and rest periods as provided under the California
7 Labor Code.

8 27. Often times, Plaintiff and other aggrieved employees were scheduled to be the
9 sole employee working. Plaintiff and other aggrieved employees were not permitted to take a
10 rest or meal period without having another employee relieve him or her. When she or she was
11 the sole person working, he or she was therefore unable to authorized to take off-duty, timely
12 and uninterrupted meal and rest periods.

13 28. At times, Plaintiff and other aggrieved employees were pre-scheduled to take a
14 meal period even if they were ultimately unauthorized or unable to take a meal period at the
15 pre-scheduled time. The timeclock mechanisms nevertheless forced Plaintiff and other
16 aggrieved employees to clock out even though he or she continued to remain on duty and
17 continued working. As a result, Defendant failed to pay Plaintiff and aggrieved employees for
18 this compensable time worked at the applicable minimum and overtime rates of pay.

19 29. During the PAGA Period, Plaintiff and other aggrieved employees were
20 regularly prevented from taking timely, off-duty meal periods and/or were required to miss their
21 meal periods completely due to the working conditions imposed by Defendants. Plaintiff and
22 other aggrieved employees were also not provided an opportunity to take a second meal period
23 when they worked shifts greater than 10 hours. Accordingly, Defendants failed to provide
24 Plaintiff and other aggrieved employees an opportunity to take 30-minute, uninterrupted off-
25 duty meal periods for days in which they worked more than 5 hours.

26 30. Additionally, Defendants failed to provide all required rest periods. Defendants
27 did not relieve employees of all work in order to take off-duty rest period and instead required
28 him or her to continue to work throughout his or her shift. As a result, Plaintiff and other

1 aggrieved employees were not authorized and permitted to take compliant off-duty rest periods.

2 31. During the PAGA Period, the Defendants, and each of them, required the
3 Plaintiff and aggrieved employees to work without taking statutory meal and rest periods and
4 failed to pay putative aggrieved employees an hour's pay in lieu thereof.

5 32. As a result of the failures to pay all minimum, regular, and overtime wages and
6 meal and rest periods premium wages, as described herein, Defendants further failed to pay
7 Plaintiff and all other aggrieved employees timely during employment as required by Cal.
8 Labor Code sections 204(a) and (d).

9 33. Furthermore, Defendants failed to record (and maintain records reflecting) the
10 total daily hours worked, and when the employees begin and end each work period, including
11 meal periods.

12 34. During the PAGA Period, the Defendants, and each of them, failed to provide
13 accurate, itemized wage statements to Plaintiff and other aggrieved employees.

14 35. During the PAGA period, the Defendants, by virtue of centralized and uniform
15 pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and aggrieved
16 employees, as required by Labor Code section 226. As a result of the failures to pay all
17 minimum, regular, and overtime wages, and meal and rest periods premium wages, and the
18 failure to record all hours worked, as described herein, the wage statements did not accurately
19 state the total number of hours worked, the gross and net wages earned, and all applicable
20 hourly rates and the corresponding number of hours worked at each rate.

21 36. Plaintiff's employment ended in or around July 2020. At the time of her
22 separation from employment, she was owed minimum wages, regular wages, and overtime
23 wages from Defendants for all hours worked. Defendants therefore did not timely pay Plaintiff
24 all wages within the time required by California Labor Code sections 201 and/or 202. Similarly,
25 during the PAGA Period, the Defendants, and each of them, failed to pay all wages owed to
26 aggrieved employees whose employment was terminated in violation of Labor Code sections
27 201 and 202.

28 37. Additionally, Defendants failed to pay terminated and aggrieved employees,

1 including Plaintiff, all applicable waiting time penalties in violation of Labor Code section 203.

2 V.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **PAGA Penalties for Failure to Pay Minimum and Overtime Wages in**
6 **Violation of Labor Code §§ 510, 1194, and 1197, and the applicable IWC Wage Order**
7 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

8 38. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
9 full herein.

10 39. Labor Code section 1197 provides: “The minimum wage for employees fixed by
11 the commission or by any applicable state or local law, is the minimum wage to be paid to
12 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

13 40. Labor Code section 1198 provides: “The maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and
15 the standard conditions of labor for employees. The employment of any employee for longer
16 hours than those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful.”

18 41. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
19 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to recover in a civil action the
21 unpaid balance of the full amount of this minimum wage or overtime compensation, including
22 interest thereon, reasonable attorney’s fees, and costs of suit.”

23 42. Labor Code section 510, states in pertinent part: “Any work in excess of eight
24 hours in one workday and any work in excess of 40 hours in any one workweek and the first
25 eight hours worked on the seventh day of work in any one workweek shall be compensated at
26 the rate of no less than one and one-half times the regular rate of pay for an employee. Any
27 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
28 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the regular

1 rate of pay of an employee.”

2 43. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
3 law, any provision of this code that provides for a civil penalty to be assessed and collected by
4 the Labor and Workforce Development Agency or any of its departments, divisions,
5 commissions, boards, agencies, or employees, for a violation of this code, may, as an
6 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
7 himself or herself and other current or former employees pursuant to the procedures specified in
8 Section 2699.3.”

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

15 45. As described herein, Defendants failed to pay all minimum wages and overtimes
16 wages for all applicable hours worked.

17 46. Defendants further failed to pay all overtime wages when they failed to properly
18 calculate the regular rate of pay by including all remuneration paid thereto.

19 47. Defendants’ conduct violates Labor Code sections 510, 1194, and 1197 as well
20 as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage
21 Order.

22 48. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
23 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
24 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs
25 all recoverable in an amount according to proof.

26 49. Plaintiff, as a representative of the general public, will and does seek to recover
27 any and all penalties for each and every violation, in an amount according to proof, as to those
28 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance

1 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
2 of California.

3 **SECOND CAUSE OF ACTION**

4 **PAGA Penalties for Failure to Provide Meal Periods in Violation of Labor Code §§**
5 **226.7, 512, and 558, and the applicable IWC Wage Order**
6 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

7 50. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
8 full herein.

9 51. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
10 of civil penalties for violations of the labor code, to be recovered through a civil action brought
11 by an aggrieved employee on behalf of himself or herself and other current or former
12 employees pursuant to the procedures specified in Section 2699.3.

13 52. Labor Code section 226.7 provides in pertinent part:

14 (b) An employer shall not require an employee to work during a meal or
15 rest or recovery period mandated pursuant to an applicable statute, or
16 applicable regulation, standard, or order of the Industrial Welfare
17 Commission, the Occupational Safety and Health Standards Board, or
18 the Division of Occupational Safety and Health.

19 (c) If an employer fails to provide an employee a meal or rest or recovery
20 period in accordance with a state law, including, but not limited to, an
21 applicable statute or applicable regulation, standard, or order of the
22 Industrial Welfare Commission, the Occupational Safety and Health
23 Standards Board, or the Division of Occupational Safety and Health, the
24 employer shall pay the employee one additional hour of pay at the
25 employee's regular rate of compensation for each workday that the meal
26 or rest or recovery period is not provided.

27 53. Labor Code section 512(a) provides in pertinent part:

28 An employer may not employ an employee for a work period of more
than five hours per day without providing the employee with a meal
period of not less than 30 minutes, except that if the total work period
per day of the employee is no more than six hours, the meal period may
be waived by mutual consent of both the employer and employee. An
employer may not employ an employee for a work period of more than
10 hours per day without providing the employee with a second meal
period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal
period was not waived.

55. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

56. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 558, and the Applicable IWC Wage Order
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

57. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

58. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

59. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety

and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

60. Defendants failed to authorize and permit all rest periods as required by law. Plaintiff and other aggrieved employees were never paid a rest period premium for non-compliance with Labor Code section 226.7 and aggrieved employees were not provided rest period premium for non-compliance with Labor Code section 226.7.

61. Defendants violated Labor Code sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable Wage Order. As a result, Plaintiff is entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

62. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Accurate Itemized Wages Statements in Violation of Labor Code § 226 and the applicable IWC Wage Order (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

63. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

64. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the other aggrieved employees. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved employees.

65. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each

1 subsequent violation.

2 66. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
3 of civil penalties for violations of the labor code, to be recovered through a civil action brought
4 by an aggrieved employee on behalf of himself or herself and other current or former employees
5 pursuant to the procedures specified in Section 2699.3.

6 67. As alleged herein, Defendants failed to provide any all adequate wage statements
7 violated Labor Code section 226(a).

8 68. Additionally, with respect to any wage statements which were issued,
9 Defendants failed to list the correct total amount of hours worked, net and gross wages earned,
10 all applicable hourly rates and the total hours worked at each rate. As a result, they thereby
11 issued inaccurate itemized wage statements to Plaintiff and other aggrieved employees.

12 69. Defendants' conduct violates Labor Code section 226.

13 70. Defendants willfully violated the Labor Code and are liable to Plaintiff, and
14 other aggrieved employees, for civil penalties as required by Labor Code sections 226.3 and
15 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all
16 recoverable in an amount according to proof.

17 71. Plaintiff, as a representative of the general public, will and does seek to recover
18 any and all penalties for each and every violation, in an amount according to proof, as to those
19 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
20 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
21 of California.

22 **FIFTH CAUSE OF ACTION**

23 **PAGA Penalties for Failure to Maintain Accurate Records in Violation of Labor Code §§**
24 **1174 and 1198**

25 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

26 72. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
27 full herein.

28 73. Labor Code section 1174(d) requires each employee to "[k]eep, at a central
location in the state or at the plants or establishments at which employees are employed, payroll

1 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
2 units earned by and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments.”

4 74. The “Records” section of the applicable IWC wage order requires each employer
5 to maintain “[t]ime records showing when the employee begins and ends each work period.
6 Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

7 75. California Labor Code section 1174.5 imposes a \$500 civil penalty for any
8 failure to maintain records required by Section 1174(d).

9 76. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
10 of civil penalties for violations of the labor code, to be recovered through a civil action brought
11 by an aggrieved employee on behalf of himself or herself and other current or former employees
12 pursuant to the procedures specified in Section 2699.3.

13 77. Defendants failed to maintain all records as required by law, including but not
14 limited to the beginning and ending time of each work period and meal period.

15 78. As a result, Defendants willfully violated the Labor Code and are liable to
16 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections
17 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
18 according to proof.

19 79. Plaintiff, as a representative of the general public, will and does seek to recover
20 any and all penalties for each and every violation, in an amount according to proof, as to those
21 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
22 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
23 of California.

24 **SIXTH CAUSE OF ACTION**

25 **PAGE Penalties for Failure to Pay All Wages Owed During and Upon Termination of**
26 **Employment in Violation of Labor Code §§ 201-203 and 204.**
27 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

28 80. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
full herein.

1 81. Labor Code section 204(a) states in pertinent part: “All wages . . . earned by any
2 person in any employment are due and payable twice during each calendar month, on days
3 designated in advance by the employer as the regular paydays.” Section 204(d) states, “The
4 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
5 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
6 following the close of the payroll period.” The “Minimum Wages” Section of the applicable
7 Wage Order further states “every employer shall pay to each employee, on the established
8 payday for the period involved, not less than the applicable minimum wage for all hours worked
9 in the payroll period.”

10 82. Labor Code section 210(a) provides: “In addition to, *and entirely independent*
11 *and apart from*, any other penalty provided in this article, every person who fails to pay the
12 wages of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 204.11, 205,
13 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
14 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
15 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
16 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

17 83. California Labor Code section 256 states that a civil penalty shall be imposed “in
18 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

19 84. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
20 of civil penalties for violations of the labor code, to be recovered through a civil action brought
21 by an aggrieved employee on behalf of himself or herself and other current or former employees
22 pursuant to the procedures specified in Section 2699.3.

23 85. As set forth herein, Defendants failed to pay all wages and penalties owed to
24 Plaintiff and other aggrieved employees within the timeline required by Cal. Labor Code
25 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
26 by Labor Code section 203.

27 86. As a result, Defendants willfully violated the Labor Code and are liable to
28 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,

256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

87. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Emily Ferrer, on behalf of herself and all other aggrieved employees and as a Representative of the Labor and Workforce Development Agency, prays for judgment as follows:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and her counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement ("DLSE");

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3 for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

d. For recovery of civil penalties as permitted by Labor Code sections 210 for failing to pay wages timely during employment;

e. For recovery of civil penalties as permitted by Labor Code section 256 for failing to provide wages timely to terminated employees upon separation of employment;

f. For recovery of civil penalties as permitted by Labor Code sections 1174 and 1174.5 for failing to maintain records;

g. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that 2699(a) does not apply and/or where a statutory civil penalty is not provided for

1 failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 1198, and 1174.

2 h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
3 to any restitution recovery;

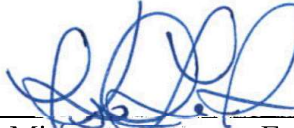
4 i. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
5 California Labor Code sections 218.5, 226(e), 1194, the PAGA, and/or Code of Civil Procedure
6 section 1021.5 on a public benefit theory; and all other applicable state laws;

7 j. For injunctive relief; and

8 k. Such other legal equitable relief as this Court deems necessary, just, equitable
9 and proper.

10 **COHELAN KHOURY & SINGER**

11
12 Dated: December 2, 2020

By: 

Michael D. Singer, Esq.

Kristina De La Rosa, Esq.

14 Counsel for Plaintiff EMILY FERRER