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7 Attorneys for PLAINTIFF in his role as representative
for the State of California's Labor Code claims pursuant
8 to the California Labor Code Private Attorneys General Act

9
10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12 GLENN FITE, representing the State of
13 California pursuant to the California Labor
14 Code Private Attorneys General Act,

15 **PLAINTIFF,**

16 vs.

17 SHAMROCK FOODS COMPANY, an
18 Arizona Corporation, and DOES 1-50,
inclusive,

19 **DEFENDANTS.**
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Case No. 2:21-cv-00023-JAM-KJN

FIRST AMENDED COMPLAINT FOR:

**1. Remedies Pursuant to California's
Private Attorneys General Act,
Labor Code §§ 2698 *et seq.***

Demand for Jury Trial

[Amended Complaint Filed Pursuant to Fed. R.
Civ. Proc. 15(a)(1)(B)]

1 PLAINTIFF Glenn Fite (hereinafter "PLAINTIFF") brings this action against
2 DEFENDANTS SHAMROCK FOODS COMPANY and DOES 1-50 (hereafter "DEFENDANTS")
3 on behalf of the State of California pursuant to California's Private Attorneys General Act, Labor
4 Code §§ 2698 *et seq.* All allegations herein are made upon PLAINTIFF'S personal knowledge or
5 upon information and belief based upon the investigation of counsel.

6 **I. NATURE OF THE ACTION**

7
8 1. This action is brought on behalf of the state of California through PLAINTIFF as a
9 Private Attorney General pursuant to California's Private Attorney's General Act, Labor Code §§
10 2698 *et seq.* ("PAGA"). PLAINTIFF'S PAGA claim is brought as an enforcement action on behalf
11 of the State of California for penalties and other remedies expressly permitted by the statute. All
12 PAGA administrative requirements have been met for this purpose prior to service of this Complaint.

13 2. The labor violations alleged herein spring from DEFENDANTS' unlawful policies or
14 practices, which include (1) failure to pay all wages when due; (2) failure to pay employees overtime
15 wages; (3) failure to comply with minimum and contractual wage requirements; (4) failure to comply
16 with rest and meal period requirements; and (5) failure to comply with the record-keeping, wage
17 statement, and payment deadline provisions of California law. As a result of these violations,
18 DEFENDANTS have violated provisions of the California Labor Code and the proper IWC Wage
19 Order, resulting in the PAGA claims at issue here.

20 3. The PAGA cause of action is brought as a non-class PAGA claim to pursue the State
21 of California's claims concerning all employees of DEFENDANTS. PLAINTIFF has suffered the
22 Labor Code violations described herein, and is therefore an "aggrieved employee" within the meaning
23 of PAGA. PLAINTIFF may assert a PAGA cause of action because he has exhausted the
24 administrative remedies detailed in California Labor Code § 2699.3 prior to service of this Complaint,
25 clearing the way for PLAINTIFF to avail himself of PAGA. True and correct copies of the notice
26 demonstrating compliance with Labor Code § 2699.3 are attached hereto as **Exhibit A**. PLAINTIFF
27 has a substantive right pursuant to the California Labor Code to stand in the shoes of the State of
28 California for purposes of this claim, and no class certification is required as the claim is that of the

1 State of California and is an enforcement action pursuant to the guidance provided by the California
2 Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. As such, PLAINTIFF, standing in
3 the shoes of the state of California, wishes to pursue the PAGA claim as a non-class action to claim
4 recovery to penalties pursuant to Labor Code, and the authority of *Thurman v. Bayshore Transit*
5 *Management, Inc.* (2012) Cal.App.4th 1112. DEFENDANTS, including DOES 1-50, are sued as
6 employer as well as “persons,” pursuant to Labor Code who violated or caused to be violated the
7 Labor Code and other regulations governing wages, hours and conditions of employment. These
8 penalties include all penalties that the State of California could pursue pursuant to the California
9 Labor Code. This case is not brought to recover individual or class claims other than those sought
10 pursuant to PAGA.

11 II. JURISDICTION & VENUE

12
13 4. Subject matter jurisdiction of this Court is based on diversity jurisdiction in that the
14 jurisdictional amount exceeds \$75,000 and no plaintiff shares a state of citizenship with any
15 defendant. Plaintiff is a resident of California and is acting in a representative capacity on behalf of
16 the state of California, and Defendant is an Arizona corporation.

17 5. This Court is a proper venue, since substantially all events giving rise to this lawsuit
18 have occurred in this District, and specifically in Sacramento County.

19 III. PARTIES

20 *PLAINTIFF*

21 6. PLAINTIFF GLENN FITE (“PLAINTIFF”) is a California resident. During the
22 relevant time period, PLAINTIFF was employed by DEFENDANTS as a non-exempt employee at
23 DEFENDANTS’ facilities in Sacramento, California. PLAINTIFF was hired pursuant to written and
24 implied contracts of employment impliedly or explicitly promising to pay in conformance with
25 Federal and California wage and hour requirements. The text of any written terms of contract are
26 contained within DEFENDANTS’ records. As such, by operation of law and implied into any
27 employment contract, PLAINTIFF must be paid in conformance with California labor laws.
28

1 PLAINTIFF has worked for DEFENDANTS during the relevant time period. PLAINTIFF was
2 employed by DEFENDANTS to work in DEFENDANTS' facilities in Sacramento, California as a
3 non-exempt warehouse order selector. As a result of DEFENDANTS' violations described herein,
4 PLAINTIFF has suffered injury in fact and has lost money or property. As such, he is an aggrieved
5 employee.

6 7. On information and belief, PLAINTIFF, and each employee, were regularly subjected
7 to, or had personal knowledge of, the violations described in this Complaint and/or the allegations
8 contained herein made on information and belief based upon investigation of counsel. All employees
9 working at any SHAMROCK FOODS COMPANY facility are therefore witnesses to the allegations
10 of this Complaint.

11 ***DEFENDANTS***

12 8. On information and belief, DEFENDANT SHAMROCK FOODS COMPANY is an
13 Arizona corporation with the following corporate address: 3900 E. Camelback Road, Ste. 300,
14 Phoenix, AZ 85018. The address for the corporation's Agent for Service of Process, CT
15 CORPORATION SYSTEM, is 818 West Seventh Street, Suite 930, Los Angeles, CA 90017.
16 PLAINTIFF alleges that at all relevant times, DEFENDANT SHAMROCK FOODS COMPANY
17 employed, or otherwise suffered or permitted to work PLAINTIFF and employees. DEFENDANT
18 SHAMROCK FOODS COMPANY conducts business in California at their facilities located at 856
19 National Drive, Sacramento, CA 95834.

20 9. Plaintiff is unaware of the identity of "DOE" DEFENDANTS. DOE DEFENDANTS
21 are all other persons who caused the violations as described in this Complaint. Plaintiff will amend
22 this Complaint to add the true names of these DOE DEFENDANTS upon discovery. On information
23 and belief, DOE DEFENDANTS are not residents of California.

24 10. DEFENDANTS' violations as described in this Complaint were knowing, intentional,
25 deliberate and willful.

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1 **IV. FACTUAL BACKGROUND**

2 11. This is a representative action pursuant to the California Private Attorneys General
3 Act, and is brought on behalf of PLAINTIFF and the State of California concerning the treatment of
4 non-exempt employees of DEFENDANTS at DEFENDANTS' California facilities. PLAINTIFF
5 seeks recovery of penalties owed to the State of California for the maximum allowable period as set
6 forth below. For at least one year prior to the filing of PLAINTIFF'S PAGA Notice and to the present,
7 DEFENDANTS maintained and enforced against their non-exempt employees the following unlawful
8 practices and policies, in violation of California wage and hour laws:

- 9 a. failure to pay employees, including PLAINTIFF, all minimum and overtime wages
10 due pursuant to the California Labor Code and Industrial Welfare Commission Wage
11 Orders by, for example, not compensating employees for all hours worked, and
12 disincentivizing employees from taking their meal and rest periods because they will
13 suffer decreased wage rates as a result, and dissuading employees from taking meal
14 and rest periods because employees who fail to meet DEFENDANTS' productivity
15 requirements suffer disciplinary measures;
- 16 b. failure to provide rest periods or to pay PLAINTIFF and employees additional pay for
17 missed rest periods, in violation of California law by, for example, disincentivizing
18 employees from taking their rest periods because they will suffer decreased wage rates
19 as a result, and dissuading employees from taking rest periods because employees who
20 fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures;
- 21 c. failure to provide timely unpaid meal periods of at least 30 minutes per five hours
22 worked on shifts of at least six hours, and failing to pay PLAINTIFF and employees
23 additional pay for such missed meal periods in violation of California law by, for
24 example, disincentivizing employees from taking their meal periods because they will
25 suffer decreased wage rates as a result, and dissuading employees from taking meal
26 periods because employees who fail to meet DEFENDANTS' productivity
27 requirements suffer disciplinary measures;
- 28

1 d. failure to provide employees, including PLAINTIFF, with accurate itemized wage
2 statements as required by California law because, for example, wage statements did
3 not have accurate hours worked;

4 e. failure to pay employees, including PLAINTIFF, statutory penalties pursuant to
5 California Labor Code §§ 201, 202, 203 and other California law upon termination or
6 resignation;

7 12. On information and belief, DEFENDANTS' violations alleged above, during all
8 relevant times herein were willful and deliberate.

9 13. DEFENDANTS have made it difficult to account with precision for the unlawfully
10 withheld wages that DEFENDANTS' owe non-exempt employees, including PLAINTIFF, during all
11 relevant times herein, because DEFENDANTS did not accurately record all hours worked.

12 **V. CAUSE OF ACTION**

13 **PENALTIES FOR VIOLATIONS PURSUANT TO THE**
14 **PRIVATE ATTORNEYS GENERAL ACT**
15 **(California Labor Code §§ 2698 *et seq.*, 558 and 558.1)**

16 PLAINTIFF against all DEFENDANTS

17 14. PLAINTIFF incorporates all paragraphs in this Complaint as though fully set forth
18 herein.

19 15. PLAINTIFF brings this representative claim ONLY for the State of California against
20 DEFENDANTS as a non-class claim, as expressly authorized by the statute.

21 16. This PAGA cause of action is brought against all DEFENDANTS pursuant to
22 provisions of the California Labor Code.

23 17. PLAINTIFF has complied with the PAGA's administrative requirements.
24 Specifically, in the manner prescribed in California Labor Code § 2699.3, PLAINTIFF gave notice
25 to DEFENDANTS and the Labor & Workforce Development Agency ("LWDA") of the Labor Code
26 provisions that DEFENDANTS are alleged to have been violated, as well as the facts and theories
27 surrounding those allegations. The LWDA failed to respond within the time allotted by statute.

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1 18. PLAINTIFF is an aggrieved employee within the meaning of California Labor Code
2 § 2699(a). PLAINTIFF brings this cause on behalf of the State of California ONLY.

3 19. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties as provided under
4 applicable Labor Code sections for violations alleged herein.

5 20. To the extent that any violation of statute or regulation alleged herein does not carry a
6 penalty, PLAINTIFF seeks civil penalties pursuant to Labor Code § 2699(f).

7 21. DEFENDANTS are liable to Plaintiff as a representative of the State as a result of the
8 violations alleged in this Complaint. PLAINTIFF is also entitled to an award of attorneys' fees and
9 costs for bringing this claim as set forth below.

10 22. PLAINTIFF'S PAGA claim does not require class certification because both the
11 language of the PAGA and the express intent of the Legislature indicate that an aggrieved employee
12 may act in place of the State and bring a representative action on behalf of the State. Such an action
13 is fundamentally a law enforcement action designed to protect the public and penalize the defendant
14 for past illegal conduct. Restitution is not the primary object of a PAGA action, as its purpose is not
15 recovering damages, but civil penalties. PAGA does not preclude an employee from pursuing any
16 other claim he may have available under law.

17 23. As such, PLAINTIFF individually holds a substantive right to stand in the shoes of the
18 State of California and bring this PAGA claim for the State to be distributed as described by statute.

19 24. WHEREFORE, PLAINTIFF requests penalties pursuant to PAGA as described herein
20 and any other relief this Court deems proper.

21 **VI. PAGA BASES OF COMPLAINT**

22 **FIRST BASIS FOR PAGA**

23 **FAILURE TO PAY OVERTIME WAGES**

24 25. Applicable California Industrial Welfare Commission ("IWC") Wage Orders require
25 that overtime hours be compensated as follows:

26 (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
27 hours worked in excess of eight (8) hours up to and including 12 hours in any
28 workday, and for the first eight (8) hours worked on the seventh (7th)
consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

The Wage Orders are authorized under California Labor Code § 1185.

26. California Labor Code § 500 defines, "workday" and "day" to mean any consecutive 24-hour period commencing at the same time each calendar day, and defines "workweek" and "week" to mean "any seven consecutive days starting with the same calendar day each week."

27. As described herein, DEFENDANTS violated the above Wage Orders, by employing PLAINTIFF and employees in excess of the limits provided by these Wage Orders without time and one half or double time pay of regular rates. DEFENDANTS' violations largely stem from an illegal policy that disincentivizes employees from taking their meal and rest periods because they will suffer decreased wage rates as a result. This unlawful policy further dissuades employees from taking meal and rest periods because employees who fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures. Employees work off-the-clock during meal periods and are therefore not compensated the appropriate minimum and overtime wages.

28. PLAINTIFF, on behalf of the State of California, may enforce these provisions pursuant to Labor Code § 1194(a).

29. WHEREFORE, PLAINTIFF, acting on behalf of the State of California is entitled to penalties pursuant to PAGA.

SECOND BASIS FOR PAGA

FAILURE TO PAY MINIMUM OR CONTRACTUAL WAGES

30. DEFENDANTS failed to pay employees at least the minimum wage rates "for all hours worked," or the contractual or agreed upon rates for all hours worked.

31. The failure to properly compensate employees results from DEFENDANTS' following wage and hour practices (among others described in this complaint): (1) failing to record accurately employees' work periods, meal periods, and hours worked, (2) failing to pay for all hours worked, including recorded and unrecorded hours; (3) disincentivizing employees from taking their meal and rest periods because they will suffer decreased wage rates as a result; and (4) dissuading

1 employees from taking meal and rest periods because employees who fail to meet DEFENDANTS'
2 productivity requirements suffer disciplinary measures. Employees work off-the-clock during meal
3 periods and are therefore not compensated the appropriate minimum and overtime wages.

4 32. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

5 The minimum wage for employees fixed by the commission is the minimum
6 wage to be paid to employees, and the payment of a less wage than the
7 minimum so fixed is unlawful.

8 33. DEFENDANTS have the ability to pay minimum wages for all time worked and have
9 willfully refused to pay such wages with the intent to secure for DEFENDANTS a discount upon this
10 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud employees and have,
11 therefore, also violated California Labor Code § 226(a).

12 34. As a result of DEFENDANTS' violations of the minimum wage and agreed upon
13 contractual rates by failing to record and pay wages for all hours worked, DEFENDANTS violated
14 California Labor Code § 226(a) by inaccurately stating gross wages earned, total hours worked,
15 deductions, net wages, gross wages, and other issues as described above. DEFENDANTS also
16 violated California Labor Code and IWC Wage Orders.

17 35. WHEREFORE, PLAINTIFF, acting on behalf of the State of California, is entitled to
18 recover penalties pursuant to PAGA, including Labor Code § 226.3, from DEFENDANTS.

19 **THIRD BASIS FOR PAGA**

20 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

21 36. California Labor Code § 226.7 states:

22
23 (a) No employer shall require any employee to work during any meal or rest
24 period mandated by an applicable order of the Industrial Welfare Commission.

25 37. The applicable Wage Order states with regards to rest periods:

26
27 (A) Every employer shall authorize and permit all employees to take rest
28 periods, which insofar as practicable shall be in the middle of each work
period. The authorized rest period time shall be based on the total hours worked

1 daily at the rate of ten (10) minutes net rest time per four (4) hours or major
2 fraction thereof. However, a rest period need not be authorized for employees
3 whose total daily work time is less than three and one-half (3 1/2) hours.
Authorized rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

4 38. DEFENDANTS violated California Labor Code § 226.7 and the Wage Orders by
5 disincentivizing employees from taking their rest periods because they will suffer decreased wage
6 rates as a result, and further dissuading employees from taking rest periods because employees who
7 fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures.
8 DEFENDANTS also failed to provide one hour of additional wages at the employees' regular rate of
9 compensation for each workday that the rest periods were not provided.

10 39. PLAINTIFF and, on information and belief, the employees at issue, did not voluntarily
11 or willfully waive rest periods. Any express or implied waivers obtained from PLAINTIFF and/or
12 other employees were not willfully obtained, were not voluntarily agreed to, were a condition of
13 employment, or were part of an unlawful contract of adhesion. DEFENDANTS did not provide,
14 permit or authorize PLAINTIFF and, on information and belief, employees to take rest periods in
15 accordance with law.

16 40. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and DEFENDANTS'
17 employees have been deprived of wages, which is an amount resulting directly from the acts
18 complained of.

19 41. WHEREFORE, PLAINTIFF, acting on behalf of the State of California, is entitled to
20 penalties pursuant to PAGA.

21 **FOURTH BASIS FOR PAGA**

22 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

23 42. DEFENDANTS failed to comply with the requirement under California law regarding
24 meal periods. PLAINTIFF and, on information and belief, the employees were not afforded meal
25 periods as required by California law, because DEFENDANTS disincentivize employees from taking
26 their meal periods because they will suffer decreased wage rates as a result, and further dissuade
27 employees from taking meal periods because employees who fail to meet DEFENDANTS'
28

1 productivity requirements suffer disciplinary measures. On information and belief, PLAINTIFF and
2 the other employees were not compensated for missed meal periods.

3 43. California Labor Code § 226.7 states:

4 (a) No employer shall require any employee to work during any meal or rest
5 period mandated by an applicable order of the Industrial Welfare Commission.

6 44. The applicable wage order issued by the Industrial Welfare Commission states with
7 regards to meal periods:

8 (A) No employer shall employ any person for a work period of more than five
9 (5) hours without a meal period of not less than 30 minutes, except that when
10 a work period of not more than six (6) hours will complete the day's work the
11 meal period may be waived by mutual consent of the employer and employee.
12 Unless the employee is relieved of all duty during a 30-minute meal period, the
13 meal period shall be considered an "on duty" meal period and counted as time
14 worked. An "on duty meal period shall be permitted only when the nature of
15 the work prevents an employee from being relieved of all duty and when by
16 written agreement between the parties an on-the-job paid meal period is agreed
17 to. The written agreement shall state that the employee may, in writing, revoke
18 the agreement at any time.

15 A similar provision is contained at California Labor Code § 512.

16 45. PLAINTIFF and other employees did not voluntarily or willfully waive rest and/or
17 meal periods. Any express or implied waivers obtained from PLAINTIFF and other employees were
18 not willfully obtained or voluntarily agreed to, but rather was a condition of employment or part of
19 an unlawful contract of adhesion.

20 46. PLAINTIFF and other employees were scheduled and required to work for periods of
21 more than five hours without an off-duty meal period of at least 30 minutes, and DEFENDANTS
22 violated California law by failing to comply with the meal period requirements mandated by Labor
23 Code § 226.7 and the applicable Wage Orders.

24 47. WHEREFORE, PLAINTIFF and other employees request relief as described herein
25 and below.

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FIFTH BASIS FOR PAGA

FAILURE TO PAY TIMELY WAGES AFTER TERMINATION OR RESIGNATION

48. California Labor Code § 201(a) states:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately...

49. California Labor Code § 202(a) states:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

50. DEFENDANTS willfully failed to timely pay PLAINTIFF and other employees all of their wages due for work performed and this failure continued through the time in which PLAINTIFF and many other employees quit or were discharged from their employment with DEFENDANTS. As a result, DEFENDANTS violated California Labor Code §§ 201 and 202.

51. California Labor Code § 203 states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days... Suit may be filed for these penalties at any time before the expiration of the statute of limitations on any action for the wages from which the penalties arose.

52. PLAINTIFF and other employees were entitled to compensation for all forms of wages earned, including, but not limited to, compensation for work done “off-the-clock” and/or at hourly rates below the minimum or double wage, overtime premium wages, additional wages for unprovided

1 rest and meal periods, and other claims described in this complaint, but to date have not received such
2 compensation therefore entitling them to penalties pursuant to PAGA.

3 53. More than 30 days have passed since PLAINTIFF and many affected employees have
4 left DEFENDANTS' employ, and on information and belief, have not received payment pursuant to
5 Labor Code §§ 201, 202 and 203.

6 54. WHEREFORE, PLAINTIFF and the State of California he seeks to represent is
7 entitled to penalties pursuant to PAGA.

8
9 **SIXTH BASIS FOR PAGA**
10 **FAILURE TO PROVIDE ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**

11 55. California Labor Code § 226(a) states:

12
13 Every employer shall, semimonthly or at the time of each payment of wages,
14 furnish each of his or her employees, either as a detachable part of the check,
15 draft, or voucher paying the employee's wages, or separately when wages are
showing

- 16 i) gross wages earned,
- 17 ii) total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from
19 payment of overtime under subdivision (a) of Section 515 or any
20 applicable order of the Industrial Welfare Commission,
- 21 iii) the number of piece-rate units earned and any applicable piece rate if
22 the employee is paid on a piece-rate basis,
- 23 iv) all deductions, provided that all deductions made on written orders of
24 the employee may be aggregated and shown as one item,
- 25 v) net wages earned,
- 26 vi) the inclusive dates of the period for which the employee is paid,
- 27 vii) the name of the employee and his or her social security number, except
28 that by January 1, 2008, only the last four digits of his or her social
security number or an employee identification number other than a
social security number may be shown on the itemized statement,
- viii) the name and address of the legal entity that is the employer, and

- ix) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

56. DEFENDANTS failed to provide “accurate itemized statements” to PLAINTIFF and other employees because the wage statements contain all or many of the following issues:

- a) Falsely understated the gross wages earned by failing to pay for all hours worked
- b) Falsely understated the total hours worked by PLAINTIFFS and employees by ignoring the total of hours actually worked.
- c) Falsely understated the net wages earned by failing to pay for all hours worked.
- d) the name and address of the legal entity that is the employer
- e) Falsely understated the “number of hours worked at each hourly rate.”

PLAINTIFF and other employees suffered injury as a result of the above false wage statements.

57. California Labor Code §§ 226.3 provides the basis for the PAGA remedy for the violations described above.

58. In addition, Section 1174 of the California Labor Code, and the Wage Orders, require DEFENDANTS to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to its employees. DEFENDANTS have created a uniform practice of knowingly and intentionally failing to comply with California Labor Code § 1174. The failure of DEFENDANTS, and each of them, to comply with California Labor Code § 1174 is unlawful pursuant to California Labor Code § 1175. When an employer fails to keep such records, employees may establish the hours worked solely by their testimony and the burden of overcoming such testimony shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d 721 (1988).

59. By failing to keep adequate time records required by Sections 226 and 1174 (d) of the California Labor Code, DEFENDANTS have injured PLAINTIFF and other employees.

60. WHEREFORE, PLAINTIFF and the State of California is entitled to penalties, cost of suit, attorneys' fees pursuant to PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment as follows:

- a) For all provisions of the Labor Code violated as described above for which a civil penalty is specifically provided, civil penalties for each employee as specifically provided by statute;
- b) For all provisions of the Labor Code violated as described above except those for which a civil penalty is specifically provided, the penalty provided by Labor Code § 2699(f);
- c) For attorneys' fees, interest and costs of suit pursuant to PAGA, Labor Code §§ 2699 *et seq.*;
- d) For such other and further relief as the Court deems just and proper pursuant to the procedures detailed in Labor Code §§ 2698 *et seq.*

VIII. DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of the PAGA claim by jury to the extent authorized by law.

Dated: April 21, 2021

MALLISON & MARTINEZ

By: /s/ Liliana Garcia

Stan S. Mallison
Hector R. Martinez
Liliana Garcia

Attorneys for Plaintiff