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Attorneys for Plaintiffs
JUAN ALCARAZ, on behalf
of all other similarly situated aggrieved employees

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

JUAN ALCARAZ, on behalf
of all other similarly situated aggrieved
employees

Plaintiffs,

v.

IRHYTHM TECHNOLOGIES, INC., a
Delaware corporation; and DOES 1 through
100, Inclusive

Defendants.

) **CASE NO.: 30-2021-01177810-CU-OE-CJC**
)
) **COMPLAINT FOR CIVIL PENALTIES UNDER**
) **THE LABOR CODE PRIVATE ATTORNEYS**
) **GENERAL ACT (“PAGA”) [Labor Code §§2698,**
) **et seq.] for:**
)
) **1. FAILURE TO PAY OVERTIME WAGES;**
) **2. FAILURE TO PAY MINIMUM WAGES;**
) **3. FAILURE TO PAY OVERTIME WAGES**
) **AT THE LEGAL OVERTIME PAY RATE**
) **4. FAILURE TO PROVIDE MEAL PERIODS**
) **OR COMPENSATION IN LIEU OF;**
) **5. FAILURE TO PROVIDE PAID REST**
) **PERIODS;**
) **6. FAILURE TO TIMELY FURNISH**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **7. VIOLATION OF LABOR CODE §203;**

Assigned for All Purposes
Judge Theodore Howard

Plaintiff JUAN ALCARAZ, on behalf the State of California and all other similarly situated
aggrieved employees (hereinafter collectively referred to as “Plaintiffs”), complain and allege as
follows against Defendant IRHYTHM TECHNOLOGIES, INC., a Delaware corporation, (hereinafter
“IRHYTHM”); and DOES 1 through 100, Inclusive (hereinafter collectively referred to as
“Defendants”). Plaintiffs are informed and believe, and on the basis of that information and belief,
allege as follows:

1 **I. INTRODUCTION**

2 1. This is a representative action seeking recovery of civil penalties under the Private
3 Attorneys General Act of 2004 (“PAGA”), California Labor Code (“Labor Code”) §§2698, et seq.
4 PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of
5 themselves and other aggrieved current and former employees to recover civil penalties for Defendants’
6 violations of the Labor Code, and all applicable Industrial Welfare Commission (“IWC”) Orders.

7 2. The acts complained of herein occurred, occur and will occur, at least in part, within the
8 time period from one (1) year preceding the filing of the PAGA notice, up to and through the time of
9 trial for this matter. Plaintiffs timely exhausted their administrative remedies with the Labor Workforce
10 Development Agency (“LWDA”) by sending a letter stating the facts and theories of liability to the
11 LWDA and a copy to Defendant via certified mail. Plaintiffs waited sixty-five (65) days from the date
12 of their notice to the LWDA before commencing this lawsuit.

13 3. The relevant employees in this action are Defendants’ hourly-paid non-exempt
14 California based current and former employees during the relevant time period from one (1) year
15 preceding the filing of the PAGA notice, up to and through the time of trial for this matter (hereinafter,
16 the “aggrieved employees”).

17 **SUMMARY OF CLAIMS**

- 18 4. With regard to Defendants’ aggrieved employees, Defendants have:
- 19 a. Failed to pay all minimum wages and overtime wages, including but not limited to overtime at
20 the correct legal rate;
- 21 b. Failed to provide all legally-requisite meal periods;
- 22 c. Failed to authorize and permit all paid legally-requisite rest periods;
- 23 d. Derivatively failed to timely furnish accurate itemized wage statements; and
- 24 e. Derivatively violated Labor Code §203.

25 5. With regard to Defendant’s hourly-paid non-exempt California based current and former
26 employees, Defendants have established a rounding policy which does not compensate said employees
27 for the time they actually worked and as a result Defendants have failed to pay all wages due including
28 overtime wages for all hours worked and failed to pay the required minimum wage for all hours

1 worked. Defendants further failed pay overtime wages at the legal overtime pay rate for overtime work
2 as Defendants failed to include non-discretionary bonuses and/or shift differential pay in the regular
3 rate for the purposes of calculating overtime pay. Defendants further “auto-deducted” meal periods
4 even when meal periods were missed, short and/or late. Defendants have failed to provide uninterrupted
5 30-minute meal periods; failed to provide paid rest periods; failed to timely furnish accurate itemized
6 wage statements; and violated Labor Code §203. Such policies and practices, as described herein,
7 violate the Labor Code, and therefore trigger civil penalties. Therefore, Plaintiffs, on behalf of all
8 aggrieved employees, bring this representative PAGA action pursuant to violations of the Labor Code,
9 seeking penalties for the violations alleged herein, reasonable attorney’s fees and costs, and other relief
10 as deemed proper.

11 **II. PARTIES**

12 **PLAINTIFF JUAN ALCARAZ**

13 6. Plaintiff JUAN ALCARAZ (hereinafter “ALCARAZ” or “Plaintiff”) is an individual
14 over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen
15 of the state of California. Plaintiff worked for Defendants as a non-exempt hourly paid employee
16 during the relevant time period in California. Plaintiff is a former employee of Defendant.

17 **DEFENDANT IRHYTHM**

18 7. Plaintiff is informed and believes, and thereon alleges, that, at all times herein
19 mentioned, defendant IRHYTHM was and is a Delaware corporation, and also a California citizen, duly
20 organized, authorized, and licensed to do business in the State of California, with its principal places of
21 business, in San Francisco County, California, and in Orange County, California. IRHYTHM and
22 DOES 1 through 100 were joint employers of Plaintiffs in that they were operating as a joint enterprise
23 and both suffered and permitted Plaintiffs to work for each and both of them; controlled Plaintiffs’
24 hours and working conditions; Controlled Plaintiffs’ wages. Both IRHYTHM and DOES 1 through 100
25 made the decision to hire Plaintiffs and had control of termination of a Plaintiff’s employment and
26 therefore jointly employed Plaintiffs. These Defendants and DOES are collectively hereinafter referred
27 to as “Defendants”.

28 **DOES 1 TO 100, INCLUSIVE**

1 8. DOES 1 to 100, inclusive are, and/or at all times mentioned in this Complaint were
2 doing business in the State of California.

3 9. Plaintiffs do not know the true names or capacities, whether individual, partner or
4 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
5 fictitious names pursuant to California Code of Civil Procedure (“CCP”) §474.

6 10. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
7 capacities as soon as they are ascertained.

8 ALL DEFENDANTS

9 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
10 were in some manner legally responsible for the events, happenings and circumstances alleged in this
11 Complaint.

12 12. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices,
13 wrongs, complaints, injuries and/or damages alleged in the Complaint.

14 13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
15 were the agents, servants and/or employees of some or all other Defendants, and vice versa, and in
16 doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this
17 Complaint were acting within the course and scope of that agency, servitude and/or employment.

18 14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
19 were members of and/or engaged in a joint venture, partnership and common enterprise, and were
20 acting within the course and scope of, and in pursuance of said joint venture, partnership and common
21 enterprise.

22 15. Defendants, and each of them, at all times mentioned in this Complaint concurred and
23 contributed to the various acts and omissions of each and every one of the other Defendants in
24 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

25 16. Defendants, and each of them, at all times mentioned in this Complaint approved of,
26 condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this
27 Complaint.

28 17. Defendants, and each of them, at all times mentioned in this Complaint aided and

1 abetted the acts and omissions of each and every one of the other Defendants thereby proximately
2 causing the damages alleged in this Complaint.

3 **III. JURISDICTION AND VENUE**

4 18. The California Superior Court has jurisdiction in this matter due to Defendants'
5 violations of Labor Code §201 et seq, Labor Code §500 et seq., Labor Code §1194, the IWC Wage
6 Order(s) and related common law principles.

7 19. The California Superior Court also has jurisdiction in this matter because both the
8 individual and aggregate monetary damages and restitution sought herein exceed the minimal
9 jurisdictional limits of the Superior court and will be established at trial according to proof. The
10 California Superior Court also has jurisdiction in this matter because the Class Action Fairness Act of
11 2005 ("CAFA") does not apply. Further, there is no federal question at issue, as the issues herein are
12 based solely on California statutes and law, including the Labor Code, IWC Wage Order(s) and the
13 California Code of Civil Procedure.

14 20. Venue is proper in Orange County pursuant to CCP §395(a) and CCP §395.5 in that
15 liability arose there because at least some of the transactions that are the subject matter of this
16 Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business,
17 and/or has an agent therein.

18 **IV. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **PENALTIES PURSUANT TO LABOR CODE §§2698, et seq.**

21 **(On Behalf of the Aggrieved Employees)**

22 **(Against All Defendants)**

23 21. Plaintiffs incorporate by reference and reallege each and every one of the allegations
24 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

25 **A. FAILURE TO PAY OVERTIME WAGES AND MINIMUM WAGES AND OVERTIME** 26 **WAGES AT THE LEGAL OVERTIME PAY RATE**

27 22. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one
28 workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate

1 of no less than one and one-half times the regular rate of pay for any employee.”

2 23. Labor Code §204 establishes the fundamental right of all employees in the State of
3 California to be paid wages in a timely fashion for their work.

4 24. The minimum wage for employees with twenty six (26) employees or more is not less
5 than ten dollars fifty cents (\$10.50) per hour on and after January 1, 2017, Eleven dollars (\$11) per hour
6 on and after January 1, 2018, Twelve dollars (\$12) per hour on and after January 1, 2019, Thirteen
7 dollars (\$13) per hour on or after January 1, 2020, Fourteen dollars (\$14) per hour on and after January
8 1, 2021, Fifteen dollars (\$15) per hour on and after January 1, 2022 and Fifteen dollars (\$15) per hour
9 for all employers regardless of size on and after January 1, 2023.

10 25. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed
11 by the Labor Commission is unlawful.

12 26. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the
13 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage
14 Order(s).

15 27. Pursuant to the IWC Wage Order(s), Defendants are required to pay all aggrieved
16 employees for all hours worked, meaning the time during which an employee is subject to the control of
17 an employer, including all the time the employee is suffered or permitted to work, whether or not
18 required to do so.

19 28. Defendants, as a matter of established company policy and procedure, at each and every
20 one of the individual facilities owned and/or operated by Defendants had a consistent policy of failing
21 to pay wages and/or overtime to Plaintiffs and aggrieved employees. Plaintiff and aggrieved employees
22 were not properly compensated for wages/overtime at the appropriate rate of pay because Defendants
23 have established a rounding policy which does not compensate said employees for the time they
24 actually worked and as a result Defendants have failed to pay all wages due including overtime wages
25 for all hours worked and failed to pay the required minimum wage for all hours worked. Defendants
26 further failed pay overtime wages at the legal overtime pay rate for overtime work as Defendants failed
27 to include non-discretionary bonuses and/or shift differential pay in the regular rate for the purposes of
28 calculating overtime pay and as such, Plaintiffs and the aggrieved employees were not compensated at

1 the appropriate rate of pay for this time worked. Because Defendants required certain aggrieved
2 employees to remain under Defendants' control without paying therefore, this resulted in those
3 aggrieved employees earning less than the legal minimum wage in the State of California. Defendants
4 have had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and the aggrieved
5 employees. Plaintiff and aggrieved employees who worked one or more pay periods with overtime pay
6 and shift differential pay were not properly compensated at the appropriate rate of pay because
7 Defendants failed to include shift differential pay when calculating Plaintiff's and the aggrieved
8 employees' regular rate in pay periods where they were paid a shift differential pay and were also paid
9 overtime. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate
10 required under California law. Defendants' pattern, practice and uniform administration of corporate
11 policy regarding illegal employee compensation as described herein is unlawful and creates an
12 entitlement to all applicable civil penalties.

13 **B. FAILURE TO PROVIDE ALL MEAL PERIODS**

14 29. Labor Code §226.7(b) provides that "An employer shall not require an employee to
15 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
16 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
17 Health Standards Board, or the Division of Occupational Safety and Health."

18 30. Labor Code §512 provides that "An employer may not employ an employee for a work
19 period of more than five hours per day without providing the employee with a meal period of not less
20 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
21 the meal period may be waived by mutual consent of both the employer and employee. An employer
22 may not employ an employee for a work period of more than 10 hours per day without providing the
23 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
24 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
25 the employee only if the first meal period was not waived."

26 31. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or amend
27 working condition orders with respect to break periods, meal periods, and days of rest for any workers
28 in California consistent with the health and welfare of those workers."

1 32. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is relieved
2 of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal
3 period and counted as time worked. An “on duty” meal period shall be permitted only when the nature
4 of the work prevents an employee from being relieved of all duty and when by written agreement
5 between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that
6 the employee may, in writing, revoke the agreement at any time.”

7 33. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to provide
8 an employee a meal period in accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
10 workday that the meal period is not provided.”

11 34. Labor Code §204 establishes the fundamental right of all employees in the State of
12 California to be paid wages in a timely fashion for their work.

13 35. Defendants, as a matter of established company policy and procedure, at each and every
14 one of the individual facilities owned and/or operated by Defendants in California, consistently:

15 a. Administered a uniform company policy and practice as to the pay policies regarding the
16 aggrieved employees; and

17 b. On one or more occasions, certain aggrieved employees worked over five (5) hours per
18 shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to exceeding
19 five (5) hours of employment.

20 36. Further, on one or more occasions, certain aggrieved employees worked over ten (10)
21 hours per shift and therefore were entitled to a second meal period of not less than 30 minutes.

22 37. These aggrieved employees did not validly or legally waive their meal periods, by
23 mutual consent with Defendants or otherwise.

24 38. These aggrieved employees did not enter into any written agreement with Defendants
25 agreeing to an on-the-job paid meal period.

26 39. As such, as a matter of Defendants’ established company policy, Defendants failed to
27 always comply with the meal period requirements established by Labor Code §226.7, Labor Code §512,
28 Labor Code §516 and Section 11 of the IWC Wage Order(s) by failing to always provide these

1 aggrieved employees with a first and in some cases a second legally compliant meal period, which
2 creates an entitlement to recovery by the aggrieved employees of penalties pursuant to Labor Code
3 §§2698, et seq. Defendants further “auto-deducted” meal periods even when meal periods were missed,
4 short and/or late.

5 40. Pursuant to Labor Code §§2699(g)(1), and/or any other applicable statute, these
6 aggrieved employees request that the Court award reasonable attorneys’ fees and costs incurred by
7 them in this action.

8 **C. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

9 41. Labor Code §226.7(b) provides that “An employer shall not require an employee to
10 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
12 Health Standards Board, or the Division of Occupational Safety and Health.”

13 42. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend
14 working condition orders with respect to break periods, meal periods, and days of rest for any workers
15 in California consistent with the health and welfare of those workers.”

16 43. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
17 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
18 work period. The authorized rest period time shall be based on the total hours worked daily at the rate
19 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
20 need not be authorized for employees whose total daily work time is less than three and one-half (3 ½)
21 hours. Authorized rest period time shall be counted as hours worked for which there shall be no
22 deduction from wages.”

23 44. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
24 employee a rest period in accordance with the applicable provisions of this order, the employer shall
25 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
26 that the rest period is not provided.”

27 45. Labor Code §204 establishes the fundamental right of all employees in the State of
28 California to be paid wages in a timely fashion for their work.

1 46. Here, certain aggrieved employees sometimes worked over four (4) hours per shift and
2 therefore were entitled to a rest period of not less than ten (10) minutes prior to exceeding four (4)
3 hours of employment.

4 47. As a matter of Defendants' established company policy, Defendants failed to always
5 authorize and permit the required rest periods established by Labor Code §226.7 and Labor Code §516
6 and Section 12 of the IWC Wage Order(s), which creates an entitlement to recovery by the aggrieved
7 employees of penalties pursuant to Labor Code §§2698, et seq.

8 48. Pursuant to Labor Code §§2699(g)(1) and/or any other applicable statute, these
9 aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by
10 them in this action.

11 **D. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE**
12 **STATEMENTS**

13 49. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at
14 the time of each payment of wages, furnish each of his or her employees, either as a detachable part of
15 the check, draft, or voucher paying the employee's wages, or separately when wages are paid by
16 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
17 total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates
18 of the period for which the employee is paid... (8) the name and address of the legal entity that is the
19 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee....".

21 50. Further, the IWC Wage Orders §7(A) states in pertinent part: "(A) Every employer shall
22 keep accurate information with respect to each employee including the following: (3) Time records
23 showing when the employee begins and ends each work period. Meal periods, split shift intervals, and
24 total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and
25 applicable rates of pay...."

26 51. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A), California
27 employers are required to maintain accurate records pertaining to the total hours worked for Defendants
28 by the aggrieved employees, including but not limited to, beginning and ending of each work period,

meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

52. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each of the aggrieved employees with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. On a regular and consistent basis, Defendant has failed to provide Plaintiff and the aggrieved employees with itemized wage statements that comply with Labor Code § 226(a). Defendants failed to accurately show total hours worked by the employee in violation of Labor Code § 226(a)(2) and failed to accurately show the applicable hourly rates in effect for shift differential pay and overtime pay as required and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

53. As set forth herein in prior causes of action, Defendants allegedly failed to pay the aggrieved employees all wages due and owing.

54. As a derivative result of this failure to pay wages and as a pattern and practice in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by the aggrieved employees, including but not limited to, beginning and ending of each work period, meal period interval, total daily hours worked, total hours worked per pay period, and the applicable rates of pay.

55. Pursuant to *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, employers who fail to provide accurate itemized wage statements are subject to PAGA penalties even when the mistake is inadvertent and/or promptly corrected, and even though employees admittedly suffered no injury; said employees are permitted to recover PAGA penalties without needing to prove the “injury” and “knowing and intentional” elements of a Labor Code §226(e) claim. As such, the aggrieved employees are entitled to recovery of penalties pursuant to Labor Code §§2698, et seq.

56. Pursuant to Labor Code §2699(g)(1) and/or §226(g), and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys’ fees.

E. DERIVATIVE VIOLATIONS OF LABOR CODE §203

57. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

58. The aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

59. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

60. As set forth above, Defendants willfully failed to pay the aggrieved employees their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation and failed to pay those sums for up to thirty (30) days thereafter.

61. Defendants' willful failure to pay wages to the aggrieved employees violates Labor Code §203 because Defendants knew or should have known wages were due to the aggrieved employees, as set forth above, but Defendants failed to pay them. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all members aggrieved employees quit or were discharged. This failure was willful, without legal justification, and interfered with the rights of Plaintiffs' and aggrieved employees who worked one or more pay periods with overtime pay and shift differential pay.

62. Thus, the aggrieved employees are entitled to recovery of penalties pursuant to Labor Code §§2698, et seq.

F. PENALTIES ASSESSED

63. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") (or any of its departments, divisions, commissions, board agencies or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code

§2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, including but not limited to the following:

a. As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §204 in the amount of a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

c. As applicable, civil penalties under Labor Code §256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

d. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

e. Any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

64. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to all aggrieved employees.

1 65. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to
2 Labor Code §§2699(g)(1) and any other applicable statute.

3 66. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee
4 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
5 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved
6 employee or representative shall give written notice by online filing with the Labor and Workforce
7 Development Agency and by certified mail to the employer of the specific provisions of this code
8 alleged to have been violated, including the facts and theories to support the alleged violation."

9 67. Labor Code §2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved
10 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other
11 than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only
12 after the following requirements have been met: (1) (A) The aggrieved employee or representative shall
13 give written notice by online filing with the Labor and Workforce Development Agency and by
14 certified mail to the employer of the specific provisions of this code alleged to have been violated,
15 including the facts and theories to support the alleged violation."

16 68. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code
17 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor
18 Code §2699.3(a) and §2699.3(c) apply to this action.

19 69. On or about October 26, 2020, Plaintiffs complied with Labor Code §2699.3(a) and
20 Labor Code §2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by
21 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated,
22 including the facts and theories to support the alleged violations.

23 70. Labor Code §2699.3(a) further states in pertinent part: "(2)(A) The agency shall notify
24 the employer and the aggrieved employee or representative by certified mail that it does not intend to
25 investigate the alleged violation within 60 calendar days of the postmark date of the notice received
26 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar
27 days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may
28 commence a civil action pursuant to Section 2699."

71. As of today (more than 65 calendar days after Plaintiffs' LWDA letters were filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code §2699.3(a) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

72. Further, as of today (more than 65 calendar days after Plaintiffs' LWDA letter was mailed via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

As to the First Cause of Action for Penalties Pursuant to Labor Code §§2698, et seq.:

a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

b. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

c. For civil penalties per Labor Code §226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

d. For civil penalties per Labor Code §256, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of one day of pay, at the same rate, for each day that

1 an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a
2 maximum of thirty (30) days;

3 e. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §§2699(g)(1) and any
4 other applicable statute; and

5 f. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and
6 costs incurred.

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8 DATED: January 6, 2021

KOKOZIAN LAW FIRM, APC

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10 By:



Bruce Kokozyan, Esq.
Attorneys for Plaintiff