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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
STANLEY MOSK COURTHOUSE**

JESUS A. CARRILLO MADERA,

Plaintiff,

v.

F & R CYCLE, INC.; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: **20STCV48498**

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Minimum Wage and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Pay Wages Due upon Termination of Employment;

1 Plaintiff JESUS A. CARRILLO MADERA (“Plaintiff”), individually, and on behalf of
2 all others similarly situated, complains and alleges on information and belief as follows:

3 **PRELIMINARY STATEMENT**

4 1. This is an action brought on behalf of Plaintiff and similarly aggrieved employees
5 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
6 Defendants F & R CYCLE, INC. (“F&R CYCLE” or “Defendant”).

7 2. The term “RELEVANT TIME PERIOD” or “TIME PERIOD” is defined as one
8 (1) year prior plus sixty-five (65) days from the filing of the Complaint. Plaintiff reserves the right
9 to amend this complaint to reflect a different “Time Period” as further discovery is conducted.

10 3. Plaintiff, individually, and on behalf of the Aggrieved Employees, seeks relief
11 against Defendant for their: (1) failure to pay all wages due, including regular and overtime
12 wages; (2) failure to provide meal breaks or premium compensation in lieu thereof; (3) failure to
13 provide rest breaks or premium compensation in lieu thereof; (4) failure to provide accurate
14 itemized wage statements; and (5) failure to pay wages due upon termination of employment.
15 Plaintiff seeks penalties pursuant to Labor Code section 2608 et seq., the Private Attorneys
16 General Act of 2004 (“PAGA”) in connection with Defendant’s Labor Code violations.

17 4. At all relevant times herein, Defendant consistently maintained and enforced
18 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: a)
19 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
20 minimum wage and overtime; b) willfully refusing to provide Plaintiff and Aggrieved Employees
21 with meal or rest breaks or premium compensation in lieu thereof; c) willfully refusing to
22 compensate Plaintiff and Aggrieved Employees wages due and owing at the time Plaintiff’s and
23 Aggrieved Employees’ employment with Defendant ended; and d) willfully refusing to furnish to
24 Plaintiff and Aggrieved Employees accurate itemized wage statements upon payment of wages.

25 **JURISDICTION AND VENUE**

26 6. This Court has subject matter jurisdiction over the causes of action alleged in this
27 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
28 excluded from exercising subject matter jurisdiction over said causes of action. The penalties

1 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
2 collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00.).

3 7. Defendant is a California corporation. There is no federal question at issue, as the
4 issues herein are based solely on California statutes and law, including the Labor Code, Industrial
5 Welfare Commission (“IWC”) Wage Orders, Code of Civil Procedure, Business and Professions
6 Code, and Rules of Court. By doing business in the state of California, Defendant has purposefully
7 availed itself of the state’s jurisdiction.

8 8. Venue is in Los Angeles, and the acts set forth herein occurred in the County of Los
9 Angeles.

10 **THE PARTIES**

11 **Plaintiff**

12 9. Plaintiff was employed by Defendant from on/in around March 27, 2017 through
13 on/in around October 14, 2019, at Defendant’s Paramount, California location. At all relevant
14 times herein, Plaintiff was employed by Defendant in a non-exempt, hourly position as a bicycle
15 assembler and entitled to compensation for all hours worked, including overtime compensation
16 and penalties from Defendant.

17 10. Plaintiff and Aggrieved Employees consist of identifiable, current, and/or former
18 similarly situated persons who worked for Defendant as bicycle assemblers, repairmen, shipment
19 handlers, or salespersons during the RELEVANT TIME PERIOD.

20 **Defendants**

21 11. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff’s
22 employer, Defendant F & R CYCLE, INC. is a California Corporation that is a company that
23 engages in bicycle sales and repairs.

24 12. Plaintiff is ignorant of the true names, capacities, relationships and extent of
25 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
26 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
27 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
28 capacities of the DOE Defendants when that information is ascertained.

1 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
3 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
4 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
5 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
6 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
7 the conduct described in this complaint.

8 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
9 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
10 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
11 below was acting, at least in part, within the course and scope of that authority as such agent,
12 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
13 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
14 are legally attributable to the other Defendants.

15 **PAGA ADMINISTRATIVE PREREQUISITE**

16 15. Plaintiff brings this case as a representative action seeking penalties for the State
17 of California in a representative capacity, as provided by the Private Attorney General Act, Labor
18 Code section 2698 et seq. (“PAGA”), as an aggrieved employee, formerly employed by
19 Defendant and did not receive all wages due, was not paid regular wages, was not paid overtime,
20 was not provided with meal or rest breaks or premium pay in lieu thereof, was not provided with
21 accurate wage statements, and was not paid all wages due at termination.

22 16. Prior to filing this complaint on October 14, 2020, Plaintiff gave written notice by
23 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
24 Defendant of the specified provisions alleged to have been violated, including the facts and
25 theories to support the alleged violation as required by Labor Code section 2699.3. Plaintiff was
26 given a LWDA case number of LWDA-CM-809626-20. A true and correct copy of Plaintiff’s
27 original letter sent to the LWDA on October 14, 2020, is attached hereto as “Exhibit A”.

28 17. More than sixty-five (65) days have passed since Plaintiff submitted his October

1 14, 2020, notice to the LWDA and Defendant of the specific alleged Labor Code violations and
2 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
3 Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations.
4 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
5 to his October 14, 2020, PAGA notice.

6 **FACTUAL ALLEGATIONS**

7 18. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
8 employees the benefits due under California's wage and hour laws for work performed in
9 California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
10 wages, overtime compensation, and other statutory benefits mandated by California. Labor Code
11 section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee
12 receiving less than the legal overtime compensation or minimum wage compensation is entitled
13 to recover in a civil action the unpaid balance of their overtime compensation and/or minimum
14 wage compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

15 19. During all, or a portion of the RELEVANT TIME PERIOD, Plaintiff and
16 Aggrieved Employees were employed by Defendant in the State of California.

17 20. Plaintiff and each of the Aggrieved Employees, as non-exempt employees, were
18 covered under Labor Code § 510, and/or other applicable wage orders, regulations, and statutes,
19 and each of the Aggrieved Employees were not subject to an exemption for executive,
20 administrative and professional employees, which imposed obligations on the part of Defendant
21 to pay Plaintiff and Aggrieved Employees lawful overtime compensation. Plaintiff and
22 Aggrieved Employees were covered by Labor Code § 226.7 and other applicable wage orders,
23 regulations, and statutes which imposed an obligation on the part of Defendant to pay Plaintiff
24 and Aggrieved Employees rest and meal period compensation.

25 21. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
26 Aggrieved Employees for all hours worked.

27 22. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
28 Aggrieved Employees Members minimum wages for all regular hours worked.

1 23. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
2 Aggrieved Employees overtime compensation of one-and-a-half time for all hours worked over
3 eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and double-time for
4 hours worked in excess of twelve (12) in one day.

5 24. During the Relevant Time Period, Defendant was obligated to provide Plaintiff
6 and Aggrieved Employees with a work free meal and/or on-duty meal periods, as well as rest
7 period(s).

8 25. Plaintiff and each Aggrieved Employee primarily performed non-exempt work in
9 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
10 regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime
11 compensation at time-and-a-half rate, and when applicable, double-time rates as set forth by the
12 applicable Wage Orders, regulations and/or statutes.

13 26. Aggrieved Employees ended their employment during the Relevant Time Period,
14 but were not paid the above due compensation for all hours worked, including minimum wage
15 for regular hours and overtime compensation, timely upon the termination of their employment
16 as required by Labor Code §§ 201-203, are entitled to penalties as provided by Labor Code § 203.

17 27. During the Relevant Time Period, Defendant required Plaintiff and Aggrieved
18 Employees to work beyond the eighth hour of their shift without lawful compensation in violation
19 of the various applicable Wage Orders, regulations and statutes, and Defendant: (1) Willfully
20 failed and refused, and continues to fail and refuse, to pay compensation for all hours worked,
21 including minimum wage and lawful overtime compensation to Plaintiff and Aggrieved
22 Employees; and (2) willfully failed and refused, and continues to fail and refuse, to pay due and
23 owing wages promptly upon termination of employment to Plaintiff and Aggrieved Employees.

24 28. During the Relevant Time Period, Defendant failed and/or refused to schedule
25 Plaintiff and Aggrieved Employees in a manner that would reasonably provide meal and/or rest
26 breaks and/or shift relief for Plaintiff and Aggrieved Employees, thereby causing Plaintiff and
27 Aggrieved Employees to work without being given paid ten (10) minute rest periods for every
28 four (4) hours or major fraction thereof worked and without being given a thirty (30) minute meal

1 period for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of
2 at least ten (10) hours during which Plaintiff and Aggrieved Employees were relieved of all duties
3 and free to leave the premises. Defendant further failed and/or refused to schedule Plaintiff and
4 Aggrieved Employees in an overlapping manner so as to reasonably ensure meal and/or rest
5 breaks were taken within the required statutory time frame as required by law. Furthermore,
6 Defendant failed and/or refused to pay any Plaintiff and Aggrieved Employees one (1) hour's pay
7 at the employees' regular rate of pay as premium compensation for failure to provide rest and/or
8 meal periods or to providing such rest and/or meal periods within the statutory time frame as a
9 result of their scheduling policy.

10 29. Aggrieved Employees who ended their employment during the Relevant Time
11 Period, but were not paid the above due overtime compensation or premium compensation timely
12 upon the termination of their employment as required by Labor Code §§ 201, 202, 203, are
13 entitled to penalties as provided by California Labor Code § 203.

14 30. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
15 policies and practices described herein are common across each of Defendant's locations within
16 the State of California.

17 **FIRST CAUSE OF ACTION**

18 **Violation of PAGA for Failure to Pay All Wages Including Overtime**

19 **Cal. Labor Code §§ 510, 1194**

20 **(By Plaintiff against Defendant and Does 1-50)**

21 31. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
22 preceding paragraphs of this Complaint as if fully set forth herein.

23 32. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
24 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
25 minimum wage for all hours worked and overtime premium for hours worked in excess of over
26 eight (8) hours per day and forty (40) hours per week for work performed for the Defendant.
27 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
28 in excess of eight (8) hours per day and forty (40) hours per week for work performed for

1 Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner
2 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
3 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
4 forty (40) hours per week. As such, Plaintiff and Aggrieved Employees seek overtime in an
5 amount according to proof. Pursuant to Labor Code § 1194, the Aggrieved Employees seek the
6 payment of all overtime compensation which they earned and accrued four (4) years prior to filing
7 this complaint, according to proof, as part of the civil penalty pursuant to Labor Code section
8 558(a).

9 33. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
10 Aggrieved Employees all wages including both minimum wage and overtime. Plaintiff and
11 Aggrieved Employees were denied proper wages as a result of Defendant' policy of having
12 Plaintiff and Aggrieved Employees work through meal and/or rest periods and failing to
13 compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay
14 pursuant to Labor Code §510. Defendant has regularly violated the Labor Code with respect to
15 meeting the requirements of paying wages earned, including minimum wage, overtime, double-
16 time and remuneration when calculating the employees' regular rate of pay, as herein before
17 alleged. Defendant intentionally excluded remuneration that must be included in all employees'
18 regular rate of pay in order to avoid payment of overtime wages and other benefits in violation of
19 the Labor Code and the order issued by the IWC. Thereby, Defendant is able to reduce its
20 overhead and operating expenses and gain an unfair advantage over competing airlines who
21 comply with state law.

22 34. Since the LWDA has not indicated that it will be investigating more than 65 days
23 since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy the
24 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
25 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
26 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
27 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a)
28 applies to any alleged violation of the following provisions: 510 and 1194.

1 35. Plaintiff is informed and believes that Defendant has violated, and continues to
2 violate, provisions of the California Labor Code and applicable Wage Orders related to the
3 payment of minimum wages and overtime.

4 36. Plaintiff, as a personal representative of the general public, will and does seek to
5 recover any and all penalties for each and every violation shown to exist or to have occurred
6 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
7 otherwise only available to public agency enforcement actions. Funds recovered will be
8 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
9 reimbursed to the LWDA.

10 37. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
11 and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and prejudgment interest.

12 **SECOND CAUSE OF ACTION**

13 **Violation of PAGA for Failure to Provide Meal Periods or Compensation in Lieu Thereof,**

14 **Cal. Labor Code §§ 226.7 and 512, and Applicable IWC Wage Orders**

15 **(By Plaintiff against Defendant and Does 1-50)**

16 38. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
17 preceding paragraphs of this Complaint as if fully set forth herein.

18 39. Labor Code §§ 226.7 and 512 provide that no employer shall employ any person
19 for a work period of more than five (5) hours without providing a meal period of not less than
20 thirty (30) minutes or employ any person for a work period of more than ten (10) hours without
21 a second meal period of not less than thirty (30) minutes.

22 40. Labor Code § 226.7 provides that if an employer fails to provide an employee a
23 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
24 pay at the employee's regular rate of compensation for each workday that the meal period is not
25 provided in accordance with this section.

26 41. Industrial Welfare Commission (IWC) Wage Order No. 9-2001 (Wage Order 9)
27 section 11(C) states,
28

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

8 42. The burden to prove that a meal or rest period violation has occurred normally
9 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th
10 1138, 1159-60), where an employer fails to keep accurate records of meal and rest periods, a
11 presumption of meal and rest period violations is created, shifting the burden to the employer to
12 prove that meal and rest period violations did not occur.

13 43. Defendant failed to schedule non-exempt employees in an adequate manner so as
14 to reasonably ensure Plaintiff and Aggrieved Employees could take and/or receive such meal
15 periods within the statutory timeframe. Defendant denied Plaintiff and Aggrieved Employees
16 duty free meal periods, as a result, Plaintiff and Aggrieved Employees were often forced to forego
17 meal periods and/or work during their meal periods. In so doing, Defendant have intentionally
18 and improperly denied meal periods to Plaintiff and Aggrieved Employees in violation of Labor
19 Code §§ 226.7 and 512 and other regulations and statutes.

20 44. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
21 and Aggrieved Employees.

22 45. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
23 than five (5) hours in a workday.

24 46. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
25 worked more than ten (10) hours in a workday.

26 47. At all times relevant hereto, Defendant, failed to schedule non-exempt positions
27 in a manner so as to reasonably provide meal and/or work free meal period as required by Labor
28 Code §§ 226.7 and 512.

1 48. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
2 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
3 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
4 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, damages in amounts which
5 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
6 ascertained according to proof at trial.

7 49. Further, Defendant's failure to maintain accurate records of the meal periods taken
8 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
9 and shifts the burden to Defendant to prove they did not occur.

10 50. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
11 recovery of meal period compensation pursuant to Labor Code § 226.7 which they are owed
12 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
13 penalties against these Defendant, and each of them, in a sum as provided by the Labor Code
14 and/or other statutes.

15 51. Since the LWDA has not indicated that it will be investigating and 65 days have
16 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to
17 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
18 California, will seek any and all penalties otherwise capable of being collected by the Labor
19 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE").
20 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
21 that section 2699.3(a) applies to any alleged violation of the following provisions: 510 and 1194.

22 52. Plaintiff is informed and believes that Defendant has violated and continues to
23 violate provisions of the California Labor Code and applicable Wage orders related to the
24 payment of minimum wages including overtime.

25 53. Plaintiff, as a personal representative of the general public, will and does seek to
26 recover any and all penalties for each and every violation shown to exist or to have occurred
27 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
28 otherwise only available to public agency enforcement actions. Funds recovered will be

distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

54. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699(g)(1), and prejudgment interest.

THIRD CAUSE OF ACTION

Violation of PAGA for Failure to Provide Rest Period or Compensation in Lieu Thereof,

Cal. Labor Code §§ 226.7 and 512, and Applicable IWC Wage Orders

(By Plaintiff against Defendant and Does 1-50)

55. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

56. Labor Code § 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

57. Labor Code § 226.7(b) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

58. Defendant, and each of them, failed and or refused to implement a relief system by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest periods. Defendant also denied Plaintiff and Aggrieved Employees duty free rest periods by interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions, Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and Aggrieved Employees in violation of Labor Code §§ 226.7 and 512.

59. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all together in violation of Labor Code §§ 226.7 and 512.

60. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and Aggrieved Employees.

1 61. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
2 more than four (4) hours in a workday.

3 62. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
4 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
5 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
6 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
7 ascertained according to proof at trial.

8 63. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure
9 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
10 requiring employees to work through their rest periods without receiving compensation in lieu
11 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
12 satisfied all prerequisites to serve as a representative of the general public to enforce California's
13 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

14 64. Plaintiff, as a representative of the people of the State of California, will seek any
15 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
16 and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5,
17 which provides that section 2699.3(a) applies to any alleged violation of the following provisions:
18 226.7 and 512.

19 65. Plaintiff, as a personal representative of the general public, will and does seek to
20 recover any and all penalties for each and every violation shown to exist or to have occurred
21 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
22 otherwise only available to public agency enforcement actions. Funds recovered will be
23 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
24 reimbursed to the LWDA.

25 66. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
26 and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of PAGA for Failure to Provide Accurate Wage Statements,**

3 **Cal. Labor Code § 1174 and 226 (A), (E)**

4 **(By Plaintiff against Defendant and Does 1-50)**

5 67. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
6 preceding paragraphs of this Complaint as if fully set forth herein.

7 68. Labor Code section 226, subsection (a) states in pertinent part that, “every
8 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
9 employees, either as a detachable part of the check, draft, or voucher paying the employee’s
10 wages, or separately when wages are paid by personal check or cash, an accurate itemized
11 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
12 . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
13 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
14 only the last four digits of his or her social security number or an employee identification number
15 other than a social security number; (8) the name and address of the legal entity that is the
16 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
17 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

18 69. Defendant knowingly and intentionally failed to provide timely and accurate
19 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with California
20 Labor Code section 226, subsection (a) by failing to record the accurate number of hours worked,
21 the accurate rate of pay for each hour worked, the accurate amount of premiums wages earned,
22 the accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and
23 Aggrieved Employees.

24 70. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
25 section 226 subsection (a) and the greater of all actual damages or fifty dollars (\$50.00) for the
26 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
27 violation in each subsequent pay period, pursuant to Labor Code section 226 subsection (e).
28

71. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

72. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, and 1194.

73. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

74. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

FIFTH CAUSE OF ACTION

Violation of PAGA for Failure to Pay Wages of Terminated or Resigned Employees,

Cal. Labor Code §§ 201-203

(By Plaintiff against Defendant and Does 1-50)

75. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

76. Plaintiff and certain members of the Aggrieved Employees who ended their employment with Defendant during the Relevant Time Period were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by Labor Code §§ 201-203.

77. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as well as pay both minimum and overtime compensation owed for work performed for Defendant.

78. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

79. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, and 1194.

80. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

81. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code §558;
2. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 2699(g) and any other statutory basis or pursuant to the California Rules of Court;

- 1 3. For reasonable attorneys' fees pursuant to Labor Code §§ 2699(g) and any other
2 statutory basis, and;
3 4. That the Court award such other and further relief as this Court may deem appropriate.
4

5 Dated: December 16, 2020

MAHONEY LAW GROUP, APC

6
7 By: 

8 Kevin Mahoney
9 Attorney for Plaintiff JESUS A.
10 CARRILLO MADERA, as an individual,
11 and on behalf of all similarly situated
12 employees.
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