

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S) / PETITIONER(S): Daniel Franco	
DEFENDANT(S) / RESPONDENT(S): Kings & Convicts BP LLC	
FRANCO VS KINGS & CONVICTS BP LLC [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2021-00004476-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Gregory W Pollack

Department: C-71

COMPLAINT/PETITION FILED: 01/29/2021

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	07/09/2021	01:30 pm	C-71	Gregory W Pollack

Due to the COVID-19 pandemic, all hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com. Please make arrangements with CourtCall as soon as possible.

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2021-00004476-CU-OE-CTL

CASE TITLE: Franco vs Kings & Convicts BP LLC [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Daniel Franco	
DEFENDANT(S): Kings & Convicts BP LLC	
SHORT TITLE: FRANCO VS KINGS & CONVICTS BP LLC [IMAGED]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2021-00004476-CU-OE-CTL

Judge: Gregory W Pollack

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| ☐ Mediation (court-connected) | ☐ Non-binding private arbitration |
| ☐ Mediation (private) | ☐ Binding private arbitration |
| ☐ Voluntary settlement conference (private) | ☐ Non-binding judicial arbitration (discovery until 15 days before trial) |
| ☐ Neutral evaluation (private) | ☐ Non-binding judicial arbitration (discovery until 30 days before trial) |
| ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 02/01/2021

JUDGE OF THE SUPERIOR COURT

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

KINGS & CONVICTS BP LLC.; and DOES 1 through 50;

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

DANIEL FRANCO, an individual, for the real party in interest, the State of California,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/29/2021 at 01:12:07 PM

Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court, Central Div.

330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2021-00004476-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Tamim Jami, 3525 Del Mar Heights Rd #941, San Diego, CA 92130; Tel: 858-284-0248

DATE: 02/01/2021

(Fecha)

Clerk, by
(Secretario)

M. Acevedo
M. Acevedo

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.40 (association or partnership) ☐ other (specify):	☐ CCP 416.60 (minor) ☐ CCP 416.70 (conservatee) ☐ CCP 416.90 (authorized person)
--	---
4. ☐ by personal delivery on (date):

1 Alex Asil Mashiri, Esq. (SBN 283798)
alex@mashirilawfirm.com
2 **MASHIRI LAW FIRM**
A Professional Corporation
11251 Rancho Carmel Drive #500694
3 San Diego, CA 92150
Tel: (858) 348-4938
4 Fax: (858) 348-4939

5 Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
6 **THE JAMI LAW FIRM P.C.**
3525 Del Mar Heights Rd #941
7 San Diego, CA 92130
Tel: (858) 284-0248
8 Fax: (858) 284-0977

9 Attorneys for Plaintiff
10 DANIEL FRANCO

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14 DANIEL FRANCO, an individual, for the
real party in interest, the State of California,

15 Plaintiff,

16
17 vs.

18 KINGS & CONVICTS BP LLC.; and
19 DOES 1 through 50;

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21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/29/2021 at 01:12:07 PM
Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

Case No. 37-2021-00004476-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS
GENERAL ACT (Labor Code Section
2698 et seq.)**

1 Plaintiff DANIEL FRANCO (“Plaintiff”), in his capacity as the State of California’s
2 designated proxy under the Private Attorneys General Act, and on behalf of other current
3 and former California employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor
6 Code sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against
7 Defendant KINGS & CONVICTS BP LLC dba Ballast Point (“BALLAST POINT”), and
8 DOES 1 through 50 (all defendants are hereinafter collectively referred to as “Defendants”)
9 for wage and hour violations of the California Labor Code and the applicable Industrial
10 Welfare Commission Wage Order (the “IWC Wage Order”).

11 2. Pursuant to Labor Code section 2699, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards,
14 agencies or employees for violation of the code may, as an alternative, be recovered through
15 a civil action brought by an aggrieved employee on behalf of himself or herself and other
16 current or former employees pursuant to the procedures specified in Labor Code section
17 2699.3.

18 3. By this action, Plaintiff, who is an aggrieved employee, seeks civil penalties on
19 behalf of the state, who is the real party in interest.

20 4. Through this representative action, Plaintiff seeks to recover civil penalties
21 under the PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46
22 Cal.4th 969.)

23 **JURISDICTION AND VENUE**

24 5. Pursuant to Article VI, section 10 of the California Constitution, subject matter
25 jurisdiction is proper in the Superior Court of California, County of San Diego, State of
26 California because Plaintiff alleges claims arising under California law.

27 6. This Court has jurisdiction over Defendants because each is believed to be an
28 association, corporation, business entity, or individual that conducts substantial business in

1 the State of California, County of San Diego.

2 7. This Court has jurisdiction over Plaintiff's claims for civil penalties under
3 PAGA.

4 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in
5 the Superior Court of California for the County of San Diego because this is where Plaintiff
6 was employed and where the wrongful misconduct alleged herein occurred.

7 **THE PARTIES**

8 9. The State of California is the real party in interest in a PAGA action. (*Kim v.*
9 *Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81. [The "government entity on whose
10 behalf the plaintiff files suit is always the real party in interest."].)

11 10. Plaintiff is an "aggrieved employee" because he was employed by Defendants
12 and had one or more of the alleged violations committed against him, and therefore is
13 properly suited to act on behalf the state, and collect civil penalties for all violations
14 committed against the Represented Employees, who are also aggrieved employees as
15 defined by subdivision (c) of Labor Code section 2699.

16 11. Defendants do business in the County of San Diego, State of California.

17 12. The true names and capacities, whether individual, corporate, associate or
18 otherwise of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at
19 this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to
20 California Code of Civil Procedure section 474. Plaintiff will seek leave to amend the
21 operative complaint ("Complaint") to allege the true names and capacities of DOES 1
22 through 50 when their names are ascertained. Plaintiff is informed and believes, and based
23 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiff for the
24 events and actions alleged herein.

25 13. Plaintiff is informed and believes, and based thereon allege, that at all times,
26 each defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego
27 for each of the other defendants and each were co-conspirators with respect to the acts and
28 the wrongful conduct alleged herein so that each is responsible for the acts of the other in

1 connection with the conspiracy and in proximate connection with the other defendants.

2 14. Plaintiff is informed and believes, and based thereon alleges, that each
3 Defendant was acting partly within and partly without the scope and course of their
4 employment, and was acting with the knowledge, permission, consent, and ratification of
5 every other Defendant.

6 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

7 15. Defendants are the owners and operators of a brewery in California.

8 16. Plaintiff worked for Defendants during which time he was paid hourly and
9 considered non-exempt.

10 **PAGA REPRESENTATIVE ACTION CLAIMS**

11 17. On information and belief, current and former employees of Defendants were
12 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
13 Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.7, 227.3, 246,
14 248.5, 510, 512, 1194, 1997, 1197.1, 1198, 2698, and 2699 et seq.

15 18. California law provides that an aggrieved employee may file an action under
16 the PAGA against an employer for penalties in connection with violations of the Labor Code
17 and Wage Order.

18 19. At all material times, Defendants were and/or are Represented Employees'
19 employers or persons acting on behalf of Represented Employees' employer, within the
20 meaning of California Labor Code sections 558 and 558.1.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 20. On November 25, 2020, Plaintiff, via counsel, sent the statutorily required
23 notice to the LWDA, indicating that Plaintiff intends to pursue claims against Defendants for
24 violations of the Labor Code.

25 21. On November 25, 2020, Plaintiff, via counsel, sent a copy of the November
26 25, 2020 notice to Defendant BALLAST POINT.

27 22. The statutory period expired since Plaintiff sent the November 25, 2020 notice
28 to the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume

1 jurisdiction over the applicable penalty claims and did not provide notice as set forth in
2 Labor Code section 2699.3(a)(2)(A).

3 23. Therefore, Plaintiff has exhausted the administrative requirements under the
4 PAGA.

5 24. The Causes of Action alleged in this Complaint are appropriately suited for a
6 Representative Action under the PAGA because:

- 7 a. Their action involves allegations of violations of provisions of the California
8 Labor Code that provide for a civil penalty to be assessed and collected by the
9 LWDA or any departments, divisions, commissions, boards, agencies or
10 employees;
- 11 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the
12 alleged violator and had one or more of the alleged violations committed
13 against him; and
- 14 c. Plaintiff has satisfied the procedural requirements of Labor Code section
15 2699.3, as set forth above.

16 25. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties
17 under the PAGA for violations of the following Labor Code provisions.

- 18 a. failure to provide overtime wages in violation of Labor Code sections 510,
19 1194, 1198, and the IWC Wage Order;
- 20 b. failure to provide accurate itemized wage statements in violation of Labor
21 Code sections 226, 226.2, and 226.3;
- 22 c. failure to provide meal and rest periods in violation of Labor Code section
23 512, 226.7, and IWC Wage Order;
- 24 d. failure to provide accurate sick pay in violation of Labor Code sections 246,
25 1197, 1197.1;
- 26 e. denying employees the right to use sick days in violation of Labor Code
27 sections 233, 234, and 246.5;
- 28 f. failure to accrue vacation in violation of Labor Code sections 227.3;

- 1 g. failure to pay earned wages in violation of Labor Code section 204; and
2 h. failure to pay earned wages in violation of Labor Code sections 201, 202, and
3 203.

4 **FIRST CAUSE OF ACTION**

5 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code**
6 **Sections 510 and 1194 against all Defendants)**

7 26. Plaintiff re-alleges and incorporate by reference the foregoing allegations as
8 though set forth herein.

9 27. Eight hours of labor constitutes a day's work, and any work in excess of 8
10 hours in 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8
11 hours worked on the 7th consecutive day of work in a workweek, shall be compensated at the
12 rate of no less than one and one half times the regular rate of pay for an employee. Any
13 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
14 the regular rate of pay for an employee. (Labor Code § 510 and Applicable IWC Wage
15 Orders § 3(A).)

16 28. Upon information and belief, Defendants failed to properly provide Plaintiff
17 and the Represented Employees with overtime pay for hours worked in excess of eight hours
18 in a workday and/or hours worked in excess of 40 hours in one workweek.

19 29. By way of one example, Plaintiff and Represented Employees would receive
20 nondiscretionary earnings, including incentive based bonuses, etc.

21 30. As a result, Plaintiff and Represented Employees were not paid proper
22 overtime when they worked overtime hours because Defendants failed to include all
23 compensation earned during a given period when determining the applicable regular rate of
24 pay.

25 31. Upon information and belief, during all times relevant to this action,
26 Defendants violated Labor Code sections 510, 558, 1194, 1198, and the Applicable IWC
27 Wage Order section 3(A).
28

32. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

33. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

34. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

35. Pursuant to Labor Code section 1194, Plaintiff seeks to recover attorney's fees, costs, interest, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

36. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

SECOND CAUSE OF ACTION

**(Representative Claims for Penalties Under PAGA for Violation of Labor Code
Sections 246 against all Defendants)**

37. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

1 38. Under Labor Code section 246, employers in California must provide
2 employees with paid sick leave or paid time off in lieu of such leave.

3 39. Under Labor Code section 246(i), employers must “provide an employee with
4 written notice that sets forth the amount of paid sick leave available, or paid time off leave
5 an employer provides in lieu of sick leave, for use on either the employee’s itemized wage
6 statement described in Section 226 or in a separate writing provided on the designated pay
7 date with the employee’s payment of wages.”

8 40. Plaintiff was entitled to paid sick leave.

9 41. Upon information and belief, Defendants failed to properly provide Plaintiff
10 and the Represented Employees with paid sick leave.

11 42. At all times during his employment, Plaintiff did not receive paid sick leave
12 according to the express provisions of Labor Code section 246.

13 43. At all times during his employment, Plaintiff did not receive wage statements
14 reflecting his paid sick leave accrual and available balance according to the express
15 provisions of Labor Code section 246(i).

16 44. Labor Code section 246(l)(1) provides that any paid sick time shall be
17 calculated in the same manner as the regular rate of pay for the workweek in which the
18 employee uses paid sick time.

19 45. Labor Code section 246(l)(2) provides that any paid sick time shall be
20 calculated by dividing the employee’s total wages, not including overtime premium pay, by
21 the employee’s total hours worked in the full pay periods of the prior 90 days of
22 employment.

23 46. Plaintiff and Represented Employees would regularly receive nondiscretionary
24 earnings, such as bonuses, that would result in an adjustment to their corresponding regular
25 rate of pay for the period in question. By way of example, for the pay period of 5/18/2020
26 through 5/31/2020, Defendants failed to calculate Plaintiff’s appropriate rate of pay when
27 issuing payment for his use of sick leave hours.

28

1 47. Upon information and belief, Defendants failed to provide Represented
2 Employees with the appropriate regular rate of pay for sick leave use.

3 48. Defendants also failed to accrue paid sick days at the rate of not less than one
4 hour per every 30 hours worked. By way of example, for the pay period of 8/10/2020
5 through 8/23/2020, Plaintiff worked 74.73 hours yet only accrued 2.000 hours of paid sick
6 leave rather than the appropriate accrual of 2.491 hours of paid sick leave.

7 49. PAGA imposes upon Defendants, and each of them, penalties for violating
8 Labor Code section 246 and for failing to pay employees all earned due and owed.

9 50. Labor Code section 2699(f) imposes upon Defendants, and each of them,
10 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
11 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
12 subsequent violations for all Labor Code provisions for which a civil penalty is not
13 specifically provided.

14 51. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover the relief
15 available under Labor Code section 248.5 on behalf of himself and the Represented
16 Employees as alleged herein in an amount to be shown according to proof.

17 52. Pursuant to Labor Code section 1197 and 1197.1, Plaintiff seeks to recover the
18 relief available under Labor Code section 1197.1 on behalf of himself and the Represented
19 Employees as alleged herein in an amount to be shown according to proof.

20 53. Plaintiff is seeking penalties against Defendants under Labor Code sections
21 2699(f), 248.5, 1197.1, and/or any other applicable statute allowing recovery of penalties
22 under PAGA on behalf of himself and the Represented Employees as alleged herein in an
23 amount to be shown according to proof.

24 54. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney's
25 fees, costs, civil penalties, and equitable, injunctive, or restitutionary relief on behalf of
26 himself and the Represented Employees as alleged herein in an amount to be shown
27 according to proof.

28 55. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover

1 attorney's fees, costs, filing fees paid to the LWDA and civil penalties on behalf of himself
2 and the Represented Employees as alleged herein in an amount to be shown according to
3 proof.

4 **THIRD CAUSE OF ACTION**

5 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code** 6 **Sections 233 and 234 against all Defendants)**

7 56. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
8 though set forth herein.

9 57. Under Labor Code section 233, "[a]n employer shall not deny an employee the
10 right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner
11 discriminate against an employee for using, or attempting to exercise the right to use, sick
12 leave to attend to an illness or the preventive care of a family member, or for any other
13 reason specified in subdivision (a) of Section 246.5."

14 58. "An employer absence control policy that counts sick leave taken pursuant to
15 Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or
16 suspension is a per se violation of Section 233. An employee working under this policy is
17 entitled to appropriate legal and equitable relief pursuant to Section 233."

18 59. Because Defendants did not provide Plaintiff with paid sick leave pursuant to
19 the Healthy Workplaces Healthy Families Act, codified in section 245 et seq., Defendant
20 denied Plaintiff the right to use sick leave in accordance with his statutory entitlements.

21 60. Upon information and belief, Defendants had a policy to discharge, threaten to
22 discharge, demote, suspend, or in any manner discriminate against an employee for using, or
23 attempting to exercise the right to use, sick leave to attend to an illness or the preventive care
24 of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

25 61. Plaintiff and Represented Employees seek to recover from Defendants, and
26 each of them civil penalties, and attorney's fees and costs pursuant to Labor Code section
27 233 and 234.

28 62. Plaintiff is seeking penalties against Defendants under Labor Code sections
2699(f), and/or any other applicable statute allowing recovery of penalties under PAGA on

1 behalf of himself and the Represented Employees as alleged herein in an amount to be
2 shown according to proof.

3 63. Plaintiff and Represented Employees seek to recover from Defendants, and
4 each of them, civil penalties, injunctive relief, and attorney's fees and costs pursuant to
5 Labor Code section 2699 (g)(1) (referred to as the PAGA action) in an amount to be
6 determined at trial.

7 **FOURTH CAUSE OF ACTION**

8 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section 9 227.3 against all Defendants)**

10 64. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
11 though set forth herein.

12 65. Under Labor Code section 227.3, "whenever a contract of employment or
13 employer policy provides for paid vacations, and an employee is terminated without having
14 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his
15 final rate in accordance with such contract of employment or employer policy respecting
16 eligibility or time served [...]."

17 66. Defendants violated Labor Code section 227.3 by failing to issue Plaintiff all
18 his accrued, vested and unused vacation earnings in an amount that was equal to this regular
19 rate of pay as provided for in the governing employee handbook. Instead, Defendants
20 would simply issue Plaintiff his vacation wages at his base rate of pay.

21 67. PAGA imposes upon Defendants, and each of them, penalties for violating
22 Labor Code section 227.3.

23 68. Labor Code section 2699(f) imposes upon Defendants, and each of them,
24 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
25 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
26 subsequent violations for all Labor Code provisions for which a civil penalty is not
27 specifically provided.

28 69. Plaintiff is seeking penalties against Defendants under Labor Code section
2699(f) and/or any other applicable statute allowing recovery of penalties under PAGA on

1 behalf of himself and the Represented Employees as alleged herein in an amount to be
2 shown according to proof.

3 70. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
4 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
5 and the Represented Employees as alleged herein in an amount to be shown according to
6 proof.

7 **FIFTH CAUSE OF ACTION**

8 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section
9 226(a)(1) against all Defendants)**

10 71. Plaintiff re-alleges and incorporate by reference the foregoing allegations as
11 though set forth herein.

12 72. Labor Code section 226(a)(1) requires that the wage statements accurately
13 state the gross wages earned.

14 73. Defendants failed to accurately state the proper gross on the wage statements
15 in violation of Labor Code section 226(a)(1). By way of one example, the wage statements
16 failed to include the proper amounts of gross wages because it failed to include the proper
17 amount of overtime wages, sick pay wages, vacation wages, and premium wages. Other
18 examples of such failures exist.

19 74. PAGA imposes upon Defendants, and each of them, penalties for violating
20 Labor Code section 226(a)(1).

21 75. Labor Code section 2699(f) imposes upon Defendants, and each of them,
22 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
23 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
24 subsequent violations for all Labor Code provisions for which a civil penalty is not
25 specifically provided.

26 76. With respect to violations of Labor Code section 226, Labor Code section
27 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
28 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent

1 violation for each employee for each pay period.

2 77. Plaintiff is seeking penalties against Defendants under Labor Code sections
3 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under
4 PAGA on behalf of himself and the Represented Employees as alleged herein in an amount
5 to be shown according to proof.

6 78. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
7 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
8 and the Represented Employees as alleged herein in an amount to be shown according to
9 proof.

10 **SIXTH CAUSE OF ACTION**

11 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section** 12 **226(a)(5) against all Defendants)**

13 79. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
14 though set forth herein.

15 80. Labor Code section 226(a)(5) requires that the wage statements accurately
16 state the net wages earned.

17 81. Defendants failed to accurately state the proper net on the wage statements in
18 violation of Labor Code section 226(a)(5). By way of one example, the wage statements
19 failed to include the proper amount of overtime wages, sick pay wages, vacation wages, and
20 premium wages. Other examples of such failures exist.

21 82. PAGA imposes upon Defendants, and each of them, penalties for violating
22 Labor Code section 226(a)(5).

23 83. Labor Code section 2699(f) imposes upon Defendants, and each of them,
24 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
25 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
26 subsequent violations for all Labor Code provisions for which a civil penalty is not
27 specifically provided.
28

84. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

85. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

86. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

SEVENTH CAUSE OF ACTION

(Representative Claim for Penalties Under PAGA for violations of Labor Code section 226(a)(9) against all Defendants)

87. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

88. Labor Code section 226(a)(9) requires that the employer's wage statements accurately state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

89. Defendants failed to provide the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9).

90. By way of one example, the line item “OT Premium” fails to include any applicable rate and lists “0.00” Hours for the pay period of 5/18/2020 through 5/31/2020. Other examples of such failures exist.

91. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement under Labor Code section 226(a)(9).

92. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226(a)(9).

93. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

94. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

95. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

96. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

EIGHTH CAUSE OF ACTION

(Representative Claims for Penalties Under PAGA for violation of Labor Code section 226(a) against all Defendants)

97. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

98. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage statement provided to an employee or a computer-generated record that accurately shows all of the information required under 226(a)(1) through (a)(9).

1 99. Upon information and belief, during all times relevant to this action,
2 Defendants failed to keep records required under Labor Code section 226(a). By way of one
3 example, the copies of the wage statements that Defendants kept do not include the proper
4 gross and net wages, all applicable hourly rates and corresponding hours worked as
5 described herein and in the aforementioned paragraphs.

6 100. PAGA imposes upon Defendants, and each of them, civil penalties for
7 violating Labor Code section 226(a).

8 101. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
9 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
10 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
11 subsequent violations for all Labor Code provisions for which a civil penalty is not
12 specifically provided.

13 102. With respect to violations of Labor Code section 226, Labor Code section
14 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
15 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
16 violation for each employee for each pay period.

17 103. Plaintiff is seeking civil penalties against Defendants under Labor Code
18 sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil
19 penalties under PAGA on behalf of himself and the Represented Employees as alleged
20 herein in an amount to be shown according to proof.

21 104. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
22 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
23 and the Represented Employees as alleged herein in an amount to be shown according to
24 proof.

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1 **NINTH CAUSE OF ACTION**

2 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code**
3 **Sections 512, 226.7 and the IWC Wage Order against all Defendants)**

4 105. Plaintiffs re-allege and incorporate by reference the foregoing allegations as
5 though set forth herein.

6 106. Under Labor Code section 512 and the IWC Wage Order, an employer must
7 provide a meal period of at least thirty minutes if the employee works more than five hours.
8 California Labor Code section 512 “requires a first meal period no later than the end of an
9 employee’s fifth hour of work [...]” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th
10 1004.)

11 107. Labor Code section 226.7 prohibits an employer from requiring an employee
12 to work during a meal period and provides that an employee must be paid a wage for doing
13 so.

14 108. Upon information and belief, during all times relevant to this action,
15 Defendants violated Labor Code sections 512 and the IWC Wage Order.

16 109. Upon information and belief, during all times relevant to this action,
17 Defendants failed to provide Plaintiffs and the Aggrieved Employees with proper meal
18 periods in violation of Labor Code sections 512 and the IWC Wage Order. By way of
19 example, Plaintiff would regularly be required to work shifts of five hours or more but was,
20 on occasion, not permitted nor relieved to take a 30-minute meal period before the end of the
21 fifth hour of work.

22 110. Plaintiff worked numerous hours during the day and was not provided nor
23 relieved to take meal periods before the fifth hour of work. Upon information and belief,
24 Defendants would be understaffed, thereby preventing Plaintiff and other Represented
25 Employees from taking their proper meal periods.

26 111. This conduct of failing to relieve employees for meal breaks became standard
27 practice, and the supervisors were aware of or should have known that they were required to
28 relieve their employees of all duty, relinquish control over their activities, permit them a

1 reasonable opportunity to take an uninterrupted, 30-minute break, and to not impede or
2 discourage them from taking their breaks before their fifth hour of work.

3 112. Under Labor Code section 226.7(c), if an employer fails to provide an
4 employee with a proper meal period, the employer shall pay the employee one hour of pay at
5 the employee's regular rate of compensation for each workday that the meal period is not
6 provided.

7 113. At minimum, Plaintiff and the Represented Employees should have been paid
8 a meal break premium for each and every missed, delayed, or shortened meal periods in an
9 amount that was equivalent to their regular rate of pay for the pay period. Because
10 Defendants failed to issue such meal premiums at the regular rate of pay for the pay period,
11 Defendants violated Labor Code section 226.7(c).

12 114. PAGA imposes upon Defendants, and each of them, penalties for violating
13 Labor Code sections 512, 226.7 and the IWC Wage Order.

14 115. Labor Code section 2699(f) imposes upon Defendants, and each of them,
15 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
16 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
17 subsequent violations for all Labor Code provisions for which a civil penalty is not
18 specifically provided.

19 116. Pursuant to Labor Code section 558, any employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to
21 558.1 or any provision regulating hours and days of work in any order of the Industrial
22 Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section
23 558 imposes upon Defendants, and each of them, penalties of one hundred dollars (\$50) per
24 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100) per
25 pay period, per aggrieved employee for subsequent violations.

26 117. Plaintiff is seeking penalties against Defendants under Labor Code sections
27 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing
28

1 recovery of penalties under PAGA on behalf of himself and the Represented Employees as
2 alleged herein in an amount to be shown according to proof.

3 118. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
4 attorney's fees, costs, filing fees paid to the LWDA, civil penalties, and wages on behalf of
5 himself and the Represented Employees as alleged herein in an amount to be shown
6 according to proof.

7 **TENTH CAUSE OF ACTION**

8 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code** 9 **Sections 226.7 and the IWC Wage Order against all Defendants)**

10 119. Plaintiffs re-allege and incorporate by reference the foregoing allegations as
11 though set forth herein.

12 120. Rest breaks under California labor law are required for non-exempt employees
13 who work three and a half (3 1/2) or more hours in a day. Employees are entitled to ten (10)
14 minutes of rest period for each four (4) hours, or a substantial fraction thereof, that they
15 work in a day.

16 121. Labor Code section 226.7 prohibits an employer to require an employee to
17 work during a rest break and provides that an employee must be paid a wage for doing so.

18 122. Upon information and belief, during all times relevant to this action,
19 Defendants violated the IWC Wage Order.

20 123. Upon information and belief, during all times relevant to this action,
21 Defendants failed to provide Plaintiff and the Represented Employees with proper rest
22 periods in violation of the IWC Wage Order. By way of example, Plaintiff would regularly
23 work shifts of three and a half hours or more but was not always permitted nor relieved to
24 take a 10-minute rest period as it would be too busy for him to do so.

25 124. Upon information and belief, Defendants would be understaffed, thereby
26 preventing Plaintiff from taking his proper rest periods.

27 125. This conduct of failing to relieve employees for rest breaks became standard
28 practice, and the supervisors were aware of or should have known that they were required to

1 relieve their employees of all duty, relinquish control over their activities, permit them a
2 reasonable opportunity to take an uninterrupted, 10-minute break, and to not impede or
3 discourage them from taking their breaks.

4 126. Under Labor Code section 226.7(c), if an employer fails to provide an
5 employee with a proper rest period, the employer shall pay the employee one hour of pay at
6 the employee's regular rate of compensation for each workday that the rest period is not
7 provided.

8 127. At minimum, Plaintiff and the Represented Employees should have been paid
9 a rest break premium for missed, delayed, or shortened rest periods, which Defendants failed
10 pay at times. As such, Defendants violated Labor Code section 226.7(c).

11 128. PAGA imposes upon Defendants, and each of them, penalties for violating
12 Labor Code section 226.7 and the IWC Wage Order.

13 129. Labor Code section 2699(f) imposes upon Defendants, and each of them,
14 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
15 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
16 subsequent violations for all Labor Code provisions for which a civil penalty is not
17 specifically provided.

18 130. Pursuant to Labor Code section 558, any employer or other person acting on
19 behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to
20 558.1 or any provision regulating hours and days of work in any order of the Industrial
21 Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section
22 558 imposes upon Defendants, and each of them, penalties of one hundred dollars (\$50) per
23 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100) per
24 pay period, per aggrieved employee for subsequent violations.

25 131. Plaintiff is seeking penalties against Defendants under Labor Code sections
26 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing
27 recovery of penalties under PAGA on behalf of himself and the Represented Employees as
28 alleged herein in an amount to be shown according to proof.

132. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, civil penalties, and wages on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION

(Representative Claims for Penalties Under PAGA for Violation of Labor Code section 204 Against all Defendants)

133. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

134. Pursuant to Labor Code section 204, Wages must be paid at least twice monthly on days designated in advance by the employer. Wages earned between the 1st and the 15th of each month must be paid by no later than the 26th of that month. (Labor Code § 204.) Wages earned between the 16th and the last day of each month must be paid no later than the 10th day of the following month. (*Id.*)

135. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages. By way of one example, Plaintiff and Represented Employees were not paid proper wages because Defendants failed to appropriately compensate Plaintiff and the Represented Employees for their overtime wages, sick leave wage, vacation wages, and meal and rest premiums. This resulted in the underpayment of wages.

136. Defendants have failed to pay Plaintiff and Represented Employees all wages due and owed.

137. PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 204.

138. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not

1 specifically provided.

2 139. Plaintiff is seeking civil penalties against Defendants under Labor Code
3 section 2699(f), and any other applicable statute allowing recovery of penalties under PAGA
4 on behalf of himself and the Represented Employees as alleged herein in an amount to be
5 shown according to proof.

6 140. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
7 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
8 and the Represented Employees as alleged herein in an amount to be shown according to
9 proof.

10 **TWELFTH CAUSE OF ACTION**

11 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code** 12 **Sections 201, 202, and 203 against all Defendants)**

13 141. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
14 though set forth herein.

15 142. Under Labor Code section 201, if an employee is discharged by his/her
16 employer, the wages earned and unpaid at the time of discharge are due and payable
17 immediately.

18 143. Under Labor Code section 202, if on the other hand, "an employee not having
19 a written contract for a definite period quits his or her employment, his or her wages shall
20 become due and payable not later than 72 hours thereafter, unless the employee has given 72
21 hours previous notice of his or her intention to quit, in which case the employee is entitled to
22 his or her wages at the time of quitting."

23 144. Labor Code section 203 provides, in pertinent part: "If an employer willfully
24 fails to pay, without abatement or reduction, ... any wages of an employee who is discharged
25 or who quits, the wages of the employee shall continue as a penalty from the due date
26 thereof at the same rate until paid or until an action therefore is commenced; but the wages
27 shall not continue for more than 30 days. ..."
28

145. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. Defendants violated Labor Code section 203 because they failed to timely pay Plaintiff and the Represented Employees all earned wages. By way of one example, Plaintiff and the Represented Employees for their overtime wages, sick leave wage, vacation wages, and meal and rest premiums. This resulted in the underpayment of wages.

146. Defendants have failed to pay Plaintiff and Represented Employees all wages due and owed.

147. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code sections 201, 202, and 203.

148. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

149. Plaintiff is seeking penalties against Defendants under Labor Code section 2699(f), and any other applicable statute allowing recovery of civil penalties under PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

150. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

THIRTEENTH CAUSE OF ACTION

(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section 1197 and the Applicable IWC Wage Order against all Defendants)

151. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

1 152. Under Labor Code section 1197, “The minimum wage for employees fixed by
2 the commission or by any applicable state or local law, is the minimum wage to be paid to
3 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

4 153. Upon information and belief, Defendants failed to properly provide Plaintiff
5 and the Represented Employees with minimum wages for all hours worked as fixed by law.
6 As explained in the foregoing causes of action, Plaintiff and the Represented Employees
7 were not paid the minimums fixed by applicable state law, including but not limited to,
8 Labor Code section 246 of the HWHFA.

9 154. PAGA imposes upon Defendants, and each of them, penalties for violating
10 Labor Code sections 1197.

11 155. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
12 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
13 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
14 subsequent violations for all Labor Code provisions for which a civil penalty is not
15 specifically provided.

16 156. Plaintiff is seeking civil penalties against Defendants under Labor Code
17 sections 2699(f), 1197.1, the Applicable IWC Wage Order, and/or any other applicable
18 statute allowing recovery of penalties under PAGA on behalf of himself and the Represented
19 Employees as alleged herein in an amount to be shown according to proof.

20 157. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
21 attorney’s fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
22 and the Represented Employees as alleged herein in an amount to be shown according to
23 proof.

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