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Attorneys for Plaintiff JESUS SANCHEZ SAUCEDO, as representative of the State of California and other aggrieved employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JESUS SANCHEZ SAUCEDO, on behalf
of himself and all others aggrieved
employees,

Plaintiff,

v.

LARGO CONCRETE, INC., a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No.: 21CV378911

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Pay Minimum Wages 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 Keep Accurate Payroll Records and 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; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff JESUS SANCHEZ SAUCEDO (“Plaintiff” or “Mr. Saucedo”) as a representative
2 of the State of California and the Labor and Workforce Development Agency (“LWDA”), and on
3 behalf of himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
7 Defendant LARGO CONCRETE, INC. (“LCI” or “Defendant”). The term “Relevant Time
8 Period” or “Time Period” is defined as one (1) year plus sixty-five (65) days prior to the filing
9 of the complaint. Plaintiff reserves the right to amend this complaint to reflect a different “Time
10 Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
14 rest periods or premium compensation in lieu thereof; (4) failure to keep accurate payroll records
15 and provide accurate itemized wage statements; (5) failure to pay wages due upon termination of
16 employment; and (6) failure to indemnify for expenditures or losses in discharge of duties.

17 3. At all relevant times herein, Defendant has consistently maintained and enforced
18 the following unlawful policies and practices against Plaintiff:

- 19 (a) Willfully refusing to pay all hours worked, including both regular and overtime
20 wages;
- 21 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
22 lieu thereof;
- 23 (c) Willfully refusing to permit rest periods or providing compensation in lieu
24 thereof;
- 25 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
26 wages;
- 27 (e) Willfully refusing to pay all wages due upon separation of employment; and
28 (f) Willfully refusing to pay for expenditures or losses in the discharge of their duties.

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5. Venue is proper in the County of Santa Clara because the obligations and liability arise in this county, and work performed by Plaintiff and Aggrieved Employees that form the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

///

1 **Defendants**

2 9. Plaintiff is informed and believes, and based thereon alleges that, LCI is a
3 California corporation. During the Relevant Time Period, Defendant employed Plaintiff and
4 similarly situated persons and failed to pay Plaintiff and Plaintiff Class for all hours worked as a
5 result of working off the clock before or after the start of their shifts, failing to pay minimum
6 and overtime wages, failing to provide meal periods or pay a meal period penalty in lieu of, failed
7 to provide rest periods or pay a rest period penalty in lieu of; failed to reimburse employees for
8 necessary business expenditures, failed to pay all wages upon end of employment, and failed to
9 provide accurate and itemized wage statements. On information and belief, and based thereon
10 alleges that Defendants are conducting business in good standing in California.

11 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
12 a corporation and partnership doing business throughout the State of California, including Santa
13 Clara county and are/were the employer of Plaintiff and similarly situated employees during the
14 Relevant Time Period. Plaintiff is informed and believes that Defendant is a full service structural
15 concrete contractor.

16 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
17 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
18 inclusive, but on information and belief alleges that said Defendants are legally responsible for
19 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
20 capacities of the DOE Defendant when ascertained.

21 12. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in
22 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
23 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
24 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
25 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
26 joint employers and conspire with one another to increase profits by engaging in the conduct
27 described in this complaint.

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

1 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
2 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
3 below was acting, at least in part, within the course and scope of that authority as such agent,
4 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
5 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
6 are legally attributable to the other Defendants.

7 **PAGA ADMINISTRATIVE PREREQUISITE**

8 13. By this complaint, Plaintiff brings this case as a representative action seeking
9 penalties for the State of California in a representative capacity, as provided by PAGA, labor
10 Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was
11 employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5.
12 Plaintiffs and other aggrieved employees are current and former employees of Defendant during
13 from three hundred sixty-five (365) days from the submission of the written notice to the LWDA
14 and Defendant to the resolution of this matter. Plaintiffs specifically alleged the following in their
15 notice to the Labor and Workforce Development Agency (“LWDA”) and the employer violations
16 of Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197,
17 1197.1, 1198, 1199, and 2802, as well as Wage Order Nos. 4 and 16.

18 14. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of
19 action under PAGA only after giving notice to the LWDA and the employer of the Labor Code
20 section alleged to have been violated, and after sixty-five (65) days have passed without notice.
21 Prior to filing this complaint, on December 23, 2020, Plaintiff gave written notice by certified
22 electronic mail to the LWDA and to Defendant of the specified provisions alleged to have been
23 violated, including the facts and theories to support the alleged violation as required by Labor
24 Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on
25 December 23, 2020, is attached hereto as “Exhibit A.”

26 15. More than sixty-five (65) days have passed since Plaintiff submitted his December
27 23, 2020, notice to the LWDA and Defendant of the specific alleged Labor Code violations and
28 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.

1 Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations.
2 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
3 to his December 23, 2020, PAGA notice.

4 **FACTUAL ALLEGATIONS**

5 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
6 employees the benefits due under California's wage and hour laws for work performed in
7 California. Defendant wrongfully refused to pay Plaintiff and Aggrieved Employees regular
8 wages, overtime compensation, business expense reimbursements, and other statutory benefits
9 mandated by California.

10 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and
11 Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly,
12 these positions remain non-exempt from California's wage and hour laws, yet Defendant failed
13 to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-
14 exempt employees as required by law.

15 18. During the Relevant Time Period, Defendant failed to compensate Plaintiff and
16 Aggrieved Employees legally mandated minimum wages and overtime rate for all work
17 performed during their shifts in violation of the Labor Code and the Labor Code and Industrial
18 Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with
19 Defendant, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per
20 day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees
21 primarily performed non-exempt work in excess of the maximum regular rate hours set by the
22 IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff
23 and Aggrieved Employees to overtime compensation at time and a half rate, and when
24 applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or
25 statutes. Further, Plaintiff and Aggrieved Employees regularly worked through meal and rest
26 breaks, and were not paid the legally mandated regular or overtime wages for the hours they
27 worked.

28 19. Furthermore, During the Relevant Time Period, Plaintiff and Aggrieved

1 Employees received non-discretionary pay. However, Defendant did not include in the regular
2 rate of pay the non-discretionary pay for purposes of calculating, Plaintiff and Aggrieved
3 Employees' overtime rate of pay. An employee's regular rate of pay is properly determined by
4 "dividing his total remuneration for employment (except statutory exclusions) in any work week
5 by the total number of hours actually worked by him in that workweek for which such
6 compensation was paid. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App.4th
7 893, 905.) thus, employees "who receive incentive bonuses in addition to their guaranteed base
8 pay clearly receive a greater regular rate than the minimum base rate." Id. Quoting *Walling v.*
9 *Hamischfeger Corp.*, 325 U.S. 427, 431 (1945). "Where an employee receives a higher wage or
10 rate of because of undesirable hours or disagreeable work, such wage represents a shift differential
11 or higher wage, because of the character of work done or the time at which he is required to
12 labor...Such payments enter into the determination of the regular rate of pay." *Huntington*. 131
13 Cal. App. 4th at 910: quoting *Bay Ridge operating Co. v. Aaron*, 334 U.S. 446, 468-469 (1948).
14 On the other hand, "if an employee is employed solely on the basis of a single hourly rate, that
15 hourly rate is his/her regular rate" See 29 C.F.R. §778.110 (2004).

16 20. Plaintiff believes and thereon alleges that, Defendant's failure to include both the
17 the non-discretionary pay also works to deprive Plaintiff and Aggrieved Employees for the on-
18 duty meal periods, and missed meal and rest period penalties, because Plaintiff and Aggrieved
19 Employees were not paid at the correct regular rate as is required by Labor Code §226.7.
20 Defendant failed to include all remuneration required when calculating the regular rate for
21 overtime and premium pay purposes for Plaintiff and Aggrieved Employees.

22 20. During the Relevant Time Period, Defendant, and each of them failed and/or
23 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
24 reasonably provide meal and/or rest breaks and/or shift relief for Plaintiff and Aggrieved
25 Employees, thereby causing members of the Aggrieved Employees to work without being given
26 paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and
27 without being given a thirty (30) minute meal period for shifts of at least five (5) hours and second
28 thirty (30) minute meal periods for shifts of at least ten (10) hours during which Aggrieved

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

9 20. As a result of Defendant's aforementioned failure to pay all wages to Plaintiff and
10 Aggrieved Employees, among other things, Defendant failed to maintain accurate payroll records
11 showing the accurate number of hours worked, accurate rate of pay for each hour worked,
12 premium wages earned, and accurate gross and net wages paid in violation of Labor Code sections
13 226, 1174, and 1174.5.

14 22. Plaintiff and Aggrieved Employees who ended their employment during the Relevant
15 Time Period, were not paid the above due compensation or premium compensation timely upon
16 the termination of their employment as required by Labor Code.

17 23. Defendant further failed to reimburse Plaintiff and Aggrieved Employees for any
18 necessary business expenses. Defendant had a policy and/or practice of failing to reimburse
19 Plaintiff and Aggrieved Employees for incurring necessary business expenditures as required by
20 Labor Code sections 2802. Specifically, Defendant required Plaintiff and Aggrieved Employees
21 to maintain uniforms including with Defendant's logo, that were required to be worn while
22 working for Defendant. Defendant required Plaintiff and Aggrieved Employees to maintain
23 Defendant's uniforms. Defendant failed to reimburse Plaintiff and Aggrieved Employees for the
24 cost or time spent washing and maintaining Defendant's uniforms in violation of the Labor Code
25 and the IWC Wage Orders. Moreover, Defendant required Plaintiff and Aggrieved Employees to
26 use their personal cellphones to carry out their work-related duties. However, despite the
27 foregoing, Defendant failed to reimburse Plaintiff and Aggrieved Employees with a reasonable
28 percentage of their cellular phone bills.

24. During the Relevant Time Period, Defendant and each of them, required Plaintiff and Aggrieved Employees to work without lawful compensation, in violation of the California Labor Code, applicable Wage Orders, regulations and statutes, and Defendant: (1) willfully ailed and refused, and continue to fail and refuse to pay compensation for all hours worked for the Plaintiff and Aggrieved Employees: and (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and Aggrieved Employees.

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY MINIMUM WAGE AND OVERTIME

(Labor Code Sections 226.7 and 512)

24. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

23. Plaintiffs and Aggrieved Employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiffs and Aggrieved Employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant. Defendant failed to pay Plaintiffs and Aggrieved Employees overtime premium for hours worked in excess of eight (8) hours per day and forty (40) hours per week for work performed for Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed Plaintiffs and Aggrieved Employees to be relieved of their shift immediately, thereby causing Plaintiffs and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40) hours per week. Furthermore, Defendant failed to include all remuneration for purposes of calculating Plaintiff and Aggrieved Employees' overtime.

24. Defendant willfully violated the Labor Code by failing to pay Plaintiffs and Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiffs and Aggrieved Employees were denied proper wages as a result of Defendant's policy of having Plaintiffs and Aggrieved Employees work after clocking out for their meal periods and failing to compensate Plaintiffs and Aggrieved Employees for all hours worked at the proper rate of pay

pursuant to Labor Code section 510.

25. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiffs, as representatives of the State of California, seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

26. Plaintiff is informed and believes that Defendant have violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

27. Plaintiff as a representative of the State of California, seeks 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 seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA.

28. Additionally, Plaintiffs and Aggrieved Employees are entitled to attorneys’ fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF (Labor Code Sections 226.7 and 512)

31. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

30. Labor Code sections 226.7 and 512 and IWC Wage Order 4-2001, as well as IWC Wage Order 16-2001, provide that no employer shall employ any person for a work period of

1 more than five (5) hours without providing a meal period uninterrupted by work duties of not less
2 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
3 without a second meal period of not less than thirty (30) minutes.

4 31. Labor Code section 226.7 provides that if an employer fails to provide an
5 employee a meal period in accordance with this section, the employer shall pay the employee one
6 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided in accordance with this section. Plaintiffs allege that Defendant failed to
8 provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or
9 not relieving employees from all work duties during meal periods thereby preventing employees
10 from taking legally compliant meal periods.

11 32. Industrial Welfare Commission (IWC) Wage Order No. 4-2001, as well as Wage
12 Order No. 16-2001, section 11(A) states, "Unless the employee is relieved of all duty during a
13 thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and
14 counted as time worked. An "on duty" meal period shall be permitted only when the nature of the
15 work prevents an employee from being relieved of all duty and when by written agreement
16 between the parties an on-the-job paid meal period is agreed to. The written agreement shall state
17 that the employee may, in writing, revoke the agreement at any time."

18 33. The burden to prove that a meal or rest period violation has occurred normally
19 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,
20 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
21 presumption of meal and rest period violations is created, shifting the burden to the employer to
22 prove that meal and rest period violations did not occur.

23 34. Defendant failed to schedule non-exempt employees in an adequately overlapping
24 manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take and/or receive
25 such meal periods within the statutory timeframe. Further, Defendant obligated Plaintiff and
26 Aggrieved Employees to work through meal periods while off-the-clock. Defendant denied
27 Plaintiff and Aggrieved Employees duty-free meal periods, as a result, Plaintiff and Aggrieved
28 Employees were often forced to forego meal periods and/or work during their meal periods. In so

1 doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Aggrieved
2 Employees in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

3 35. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
4 and Aggrieved Employees.

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

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

9 38. At all times relevant hereto, Defendant, failed offer or to schedule non-exempt
10 positions in a manner so as to reasonably provide meal and/or work free meal period as required
11 by Labor Code sections 226.7 and 512.

12 39. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
13 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
14 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
15 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
16 ascertained according to proof at trial.

17 40. Further, Defendant's failure to maintain accurate records of the meal periods taken
18 by Plaintiffs and Aggrieved Employees creates a presumption of the violations having occurred
19 and shifts the burden to Defendant to prove they did not occur.

20 41. Plaintiff individually, and the Aggrieved Employees, request recovery of any civil
21 penalties against Defendant, and each of them, in a sum as provided by the Labor Code.

22 42. Since the LWDA has not indicated that it will be investigating and sixty-five (65)
23 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action
24 to remedy the allegations set forth above, Plaintiff, as representatives of the people of the State of
25 California, seek any and all penalties otherwise capable of being collected by the Labor
26 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
27 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
28 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7

1 and 512.

2 43. Plaintiff are informed and believes that Defendant has violated and continues to
3 violate provisions of the Labor Code and applicable Wage orders related to the payment of
4 minimum wages, including overtime.

5 44. Plaintiff, as representatives of the State of California, seek to recover any and all
6 penalties for each and every violation shown to exist or to have occurred during the Relevant
7 Time Period, in an amount according to proof, as to those penalties that are otherwise only
8 available to public agency enforcement actions. Funds recovered will be distributed in accordance
9 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
10 reimbursed to the LWDA.

11 45. Additionally, Plaintiffs and Aggrieved Employees are entitled to attorneys' fees
12 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
15 **PREMIUM COMPENSATION IN LIEU THEREOF**
16 **(Labor Code Sections 226.7 and 512)**

17 48. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
18 preceding paragraphs of this complaint as if fully set forth herein.

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

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

25 49. Defendant, and each of them, failed and or refused to implement a relief system
26 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
27 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
28 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions,

1 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
2 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

3 50. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
4 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
5 together in violation of Labor Code section 226.7 and 512.

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

8 52. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
9 more than four (4) hours in a workday.

10 53. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
11 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
12 Aggrieved Employees have suffered, and will continue to suffer damages.

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

19 55. Plaintiff individually, and the Aggrieved Employees, as a representative of the
20 State of California, seek any and all penalties otherwise capable of being collected by the Labor
21 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
22 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
23 alleged violation of the following provisions: 226.7 and 512.

24 56. Plaintiff, as representative of the State of California, seek to recover any and all
25 penalties for each and every violation shown to exist or to have occurred during the Relevant
26 Time Period, in an amount according to proof, as to those penalties that are otherwise only
27 available to public agency enforcement actions. Funds recovered will be distributed in accordance
28 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being

1 reimbursed to the LWDA.

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

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF PAGA FOR FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
6 **AND TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

7 **(Labor Code Sections 1174 and 226, subdivision (A), (E))**

8 60. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
9 preceding paragraphs of this complaint as if fully set forth herein.

10 61. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
11 location in California or at the plant or establishment at which the employees are employed,
12 payroll records showing the hours worked daily, and the wages paid to each employee. Plaintiff
13 is informed and believes, based thereon alleges, that Defendant willfully failed to make or keep
14 accurate records for Plaintiff and similarly-aggrieved employees.

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

26 63. Defendant knowingly and intentionally failed to provide timely and accurate
27 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
28 section 226, subdivision (a), by failing to record the accurate number of hours worked, the

1 accurate rate of pay for each hour worked including overtime, the accurate amount of premiums
2 wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to
3 Plaintiff and Aggrieved Employees.

4 64. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
5 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
6 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
7 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

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

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

16 **FIFTH CAUSE OF ACTION**

17 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

18 **TERMINATION OF EMPLOYMENT**

19 **(Labor Code Sections 201 and 203)**

20 67. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
21 preceding paragraphs of this complaint as if fully set forth herein.

22 68. Plaintiff is informed and believes that certain members of the Aggrieved
23 Employees who ended their employment with Defendant during the Relevant Time Period, were
24 entitled to be promptly paid both minimum wage and lawful overtime compensation and other
25 premiums, as required by Labor Code sections 201 and 203.

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

1 necessary expenditures as a direct consequence of the discharge of their duties.

2 77. Defendant knowingly, willingly and intentionally attempted to offset the cost of
3 doing business on the Plaintiff and Aggrieved Employees.

4 78. Defendant had a policy and practice of requiring Plaintiff and Aggrieved
5 Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse
6 Plaintiff and Aggrieved Employees for necessary business expenditures. Specifically, Defendant
7 required Plaintiff and Aggrieved Employees to wear a uniform bearing Defendant's logos.
8 However, Defendant required Plaintiff and Aggrieved Employees to shoulder the burden of doing
9 business, specifically to maintain their uniforms. Furthermore, Defendant required Plaintiff and
10 Aggrieved Employees to use their personal cellphones to carry out their employment duties.
11 However, despite the foregoing, Defendant failed to reimburse Plaintiff and Aggrieved
12 Employees with a reasonable percentage of their cellular phone bills.

13 79. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
14 "necessary expenditures or losses" which shall include all reasonable costs, including, but not
15 limited to, attorney's fees and interest.

16 80. Plaintiff by virtue of his employment with Defendant and the Defendant's policy
17 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of
18 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
19 expenditures, is an aggrieved employee with standing to bring an action under the PAGA.
20 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce
21 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

22 81. Plaintiff, as a representative of the people of the State of California, will seek any
23 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
24 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
25 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
26 201-203, 226, 226.7, 510, 512, 1174, 1194 and 2802.

27 82. Plaintiff, as a personal representative of the general public, will and does seek to
28 recover any and all penalties for each and every violation shown to exist or to have occurred

1 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
2 otherwise only available to public agency enforcement actions. Funds recovered will be
3 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
4 recovered being reimbursed to the LWDA.

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

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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;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

WORK LAWYERS PC

[Signature]

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SAUCEDO**