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RAUL NUNEZ
11

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

13 RAUL NUNEZ, an individual, for the real
14 party in interest, the State of California,

15 Plaintiff,

16 vs.

17 JRE LOGISTICS LLC; and DOES 1
18 through 50; and DOES 1 through 50,

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20 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/04/2021 at 10:22:06 AM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Case No. 37-2021-00005381-CU-OE-CTL

REPRESENTATIVE ACTION

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

1 Plaintiff RAUL NUNEZ ("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 and
3 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 Defendant
7 JRE LOGISTICS LLC ("JRE"), and DOES 1 through 50 (all defendants are hereinafter
8 collectively referred to as "Defendants") for wage and hour violations of the California Labor
9 Code and the applicable Industrial Welfare Commission Wage Order (the "IWC Wage
10 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 himself and other aggrieved employees pursuant to the PAGA.

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

22 **JURISDICTION AND VENUE**

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

26 6. This Court has jurisdiction over Defendants because each is believed to be an
27 association, corporation, business entity, or individual that conducts substantial business in
28 the State of California, County of San Diego.

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

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

THE PARTIES

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

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

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

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

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

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

4 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

5 15. Defendants are the owner and operator of an express delivery service in
6 California.

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

9 17. Plaintiff brings this action under the PAGA on behalf of the state, who is the
10 real party in interest.

11 **PAGA REPRESENTATIVE ACTION CLAIMS**

12 18. On information and belief, current and former employees of Defendants were
13 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
14 Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.7, 227.3, 246,
15 248.5, 510, 512, 1194, 1197, 1197.1, 1198, 2698, and 2699 et seq.

16 19. California law provides that an aggrieved employee may file an action against
17 an employer for penalties in connection with violations of the Labor Code and Wage Order
18 provided the aggrieved employee file an action on behalf of himself or herself and other
19 current and former employees.

20 20. At all material times, Defendants were and/or are Represented Employees'
21 employers or persons acting on behalf of Represented Employees' employer, within the
22 meaning of California Labor Code sections 558 and 558.1 and thus are jointly and severally
23 liable for the violations alleged herein and any amounts awarded and/or recoverable as a result
24 of this action.

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 21. On December 1, 2020, Plaintiff, via counsel, sent the statutorily required notice
27 to the LWDA, indicating that Plaintiff intends to pursue claims against Defendants for
28 violations of the Labor Code.

1 22. On December 1, 2020, Plaintiff, via counsel, sent a copy of the December 1,
2 2020 notice to Defendant JRE.

3 23. The statutory period expired since Plaintiff sent the December 1, 2020 notice to
4 the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction
5 over the applicable penalty claims and did not provide notice as set forth in Labor Code section
6 2699.3(a)(2)(A).

7 24. Therefore, Plaintiff has exhausted the administrative requirements under the
8 PAGA.

9 25. The Causes of Action alleged in this Complaint are appropriately suited for a
10 Representative Action under the PAGA because:

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

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

- 22 a. failure to provide accurate sick pay in violation of Labor Code section 246;
- 23 b. failure to provide overtime wages in violation of Labor Code sections 510, 1194,
24 1198, and the IWC Wage Order;
- 25 c. failure to provide accurate itemized wage statements in violation of Labor Code
26 sections 226, and 226.3;
- 27 d. failure to provide accurate sick pay in violation of Labor Code sections 246,
28 1197, 1197.1;

- 1 e. denying employees the right to use sick days in violation of Labor Code sections
2 233, 234, and 246.5;
3 f. failure to pay earned wages in violation of Labor Code section 204; and
4 g. failure to pay earned wages in violation of Labor Code sections 201, 202, and
5 203.

6 **FIRST CAUSE OF ACTION**
7 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
8 **246 against all Defendants)**

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

10 28. Under Labor Code section 246, employers in California must provide
11 employees with paid sick leave.

12 29. Plaintiff was entitled to paid sick leave.

13 30. Upon information and belief, Defendants failed to properly provide Plaintiff and
14 the Represented Employees with paid sick leave, including paying sick at the correct rate, as
15 mandated by Labor Code section 246(l)(1)-(3).

16 31. By way of example, Defendants failed to compensate sick leave at the correct
17 rate of pay under Labor Code section 246(l) because it failed to account for all compensation
18 earned including, but not limited to, incentives, shift differentials, nondiscretionary bonuses,
19 billing program, benefit flex credit etc.

20 32. During his employment, Plaintiff earned additional nondiscretionary
21 compensation, such as, for example, incentive pay, shift differentials, and bonuses.

22 33. Upon information and belief, Defendants failed to properly provide Plaintiff and
23 the Represented Employees with paid sick leave.

24 34. PAGA imposes upon Defendants, and each of them, penalties for violating
25 Labor Code section 246.

26 35. Labor Code section 2699(f) imposes upon Defendants, and each of them,
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
28 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for

1 subsequent violations for all Labor Code provisions for which a civil penalty is not specifically
2 provided.

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

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

9 38. “An employer absence control policy that counts sick leave taken pursuant to
10 Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or
11 suspension is a per se violation of Section 233. An employee working under this policy is
12 entitled to appropriate legal and equitable relief pursuant to Section 233.”

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

16 40. Plaintiff is seeking penalties against Defendants under Labor Code sections
17 2699(f), 248.5, 1197.1, and/or any other applicable statute allowing recovery of penalties
18 under PAGA on behalf of himself and the Represented Employees as alleged herein in an
19 amount to be shown according to proof.

20 41. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney’s fees,
21 costs, and civil penalties on behalf of himself and the Represented Employees as alleged
22 herein in an amount to be shown according to proof.

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

SECOND CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code Sections 510 and 1194 against all Defendants)

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

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

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

46. Plaintiff and Represented Employees would regularly receive nondiscretionary bonuses, including incentives and shift differentials.

47. Plaintiff and Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to include all compensation earned during a given period when determining the regular rate of pay.

48. Plaintiff and Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to properly compute the regular rate of pay.

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

50. 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

1 subsequent violations for all Labor Code provisions for which a civil penalty is not specifically
2 provided.

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

10 52. Plaintiff is seeking penalties against Defendants under Labor Code sections
11 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing
12 recovery of civil penalties under the PAGA on behalf of himself and the Represented
13 Employees as alleged herein in an amount to be shown according to proof.

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

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

21 **THIRD CAUSE OF ACTION**
22 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
23 **226(a)(1) against all Defendants)**

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

26 56. Labor Code section 226(a)(1) requires that wage statements that an employer
27 issues to its employees accurately state the gross wages earned.

28 57. Defendants failed to accurately state the proper gross on the wage statements
in violation of Labor Code section 226(a)(1). By way of one example, the wage statements

1 failed to include the proper amounts of gross wages because it failed to include the proper
2 amount of sick pay and overtime wages. Other examples of such failures exist.

3 58. PAGA imposes upon Defendants, and each of them, penalties for violating
4 Labor Code section 226(a)(1).

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

10 60. With respect to violations of Labor Code section 226, Labor Code section
11 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for
12 each employee for each pay period, and one thousand dollars (\$1000) for each subsequent
13 violation for each employee for each pay period.

14 61. Plaintiff is seeking penalties against Defendants under Labor Code sections
15 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under PAGA
16 on behalf of himself and the Represented Employees as alleged herein in an amount to be
17 shown according to proof.

18 62. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
19 attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself
20 and the Represented Employees.

21 **FOURTH CAUSE OF ACTION**
22 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
23 **226(a)(5) against all Defendants)**

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

26 64. Labor Code section 226(a)(5) requires that wage statements that an employer
27 issues to its employees accurately state the net wages earned.

28 65. Defendants failed to accurately state the proper net on the wage statements
in violation of Labor Code section 226(a)(5). By way of one example, the wage statements

1 failed to include the proper amounts of net wages because it failed to include the proper
2 amount of sick pay and overtime wages. Other examples of such failures exist.

3 66. PAGA imposes upon Defendants, and each of them, penalties for violating
4 Labor Code section 226(a)(5).

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

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

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

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

20 71. 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.

24 **FIFTH CAUSE OF ACTION**
25 **(Representative Claim for Penalties Under PAGA for violations of Labor Code section**
26 **226(a)(2) against all Defendants)**

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

73. Labor Code section 226(a)(2) requires that wage statements that an employer

1 issues to its employees accurately state the total hours worked.

2 74. Defendants failed to accurately state the total hours worked on the wage
3 statements in violation of Labor Code section 226(a)(2).

4 75. All other claims alleged in this complaint have also resulted in a derivative
5 claim of an inaccurate itemized wage statement.

6 76. PAGA imposes upon Defendants, and each of them, penalties for violating
7 Labor Code section 226(a)(2).

8 77. Labor Code section 2699(f) imposes upon Defendants, and each of them,
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 specifically
12 provided.

13 78. 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 79. Plaintiff is seeking penalties against Defendants under Labor Code sections
18 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under PAGA
19 on behalf of himself and the Represented Employees as alleged herein.

20 80. 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.

24 **SIXTH CAUSE OF ACTION**
25 **(Representative Claim for Penalties Under PAGA for violations of Labor Code sections**
 226(a)(9) against all Defendants)

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

28 82. Labor Code section 226(a)(9) requires that the employer's wage statements

1 accurately state all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

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

6 84. By way of one example, the rate and hours for shift differentials is not
7 accurately itemized on the wage statement.

8 85. By way of one example, the rate and hours for shift differentials is not
9 accurately itemized on the wage statement.

10 86. By way of another example, the rates for sick pay and overtime are
11 inaccurately itemized.

12 87. By way of another example, the rate and hours for other applicable rates in
13 effect are absent and/or inaccurately itemized. Other examples of such failures exist.

14 88. Defendants failures to do so also resulted in violations of this counterpart to
15 226(a)(9).

16 89. All other claims alleged in this complaint have also resulted in a derivative
17 claim of an inaccurate itemized wage statement.

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

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

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

93. 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.

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

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

96. 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).

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

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

99. 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.

100. 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.

101. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or 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.

102. 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 Sections 512, 226.7 and the IWC Wage Order against all Defendants)

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

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

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

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

1 107. Upon information and belief, during all times relevant to this action,
2 Defendants failed to provide Plaintiffs and the Aggrieved Employees with proper meal periods
3 in violation of Labor Code sections 512 and the IWC Wage Order. By way of example,
4 Plaintiff would regularly be required to work shifts of five hours or more but was, on occasion,
5 not permitted nor relieved to take a 30-minute meal period before the end of the fifth hour of
6 work due to pressure stemming from meeting delivery and time quotas.

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

11 109. This conduct of failing to relieve employees for meal breaks became
12 standard practice, and the supervisors were aware of or should have known that they were
13 required to relieve their employees of all duty, relinquish control over their activities, permit
14 them a reasonable opportunity to take an uninterrupted, 30-minute break, and to not impede
15 or discourage them from taking their breaks before their fifth hour of work.

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

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

25 112. PAGA imposes upon Defendants, and each of them, penalties for violating
26 Labor Code sections 512, 226.7 and the IWC Wage Order.

27 113. Labor Code section 2699(f) imposes upon Defendants, and each of them,
28 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial

1 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
2 subsequent violations for all Labor Code provisions for which a civil penalty is not specifically
3 provided.

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

11 115. Plaintiff is seeking penalties against Defendants under Labor Code sections
12 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing
13 recovery of penalties under PAGA on behalf of himself and the Represented Employees as
14 alleged herein in an amount to be shown according to proof.

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

19 **NINTH CAUSE OF ACTION**
20 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
21 **226.7 and the IWC Wage Order against all Defendants)**

22 117. Plaintiffs re-allege and incorporate by reference the foregoing allegations as
23 though set forth herein.

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

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

1 120. Upon information and belief, during all times relevant to this action,
2 Defendants violated the IWC Wage Order.

3 121. Upon information and belief, during all times relevant to this action,
4 Defendants failed to provide Plaintiff and the Represented Employees with proper rest periods
5 in violation of the IWC Wage Order. By way of example, Plaintiff would regularly work
6 shifts of three and a half hours or more but was not always permitted nor relieved to take a
7 10-minute rest period due to pressure stemming from meeting delivery and time quotas.

8 122. Upon information and belief, Defendants would be understaffed, thereby
9 preventing Plaintiff from taking his proper rest periods.

10 123. This conduct of failing to relieve employees for rest breaks became standard
11 practice, and the supervisors were aware of or should have known that they were required to
12 relieve their employees of all duty, relinquish control over their activities, permit them a
13 reasonable opportunity to take an uninterrupted, 10-minute break, and to not impede or
14 discourage them from taking their breaks.

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

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

22 126. PAGA imposes upon Defendants, and each of them, penalties for violating
23 Labor Code section 226.7 and the IWC Wage Order.

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

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

8 129. Plaintiff is seeking penalties against Defendants under Labor Code sections
9 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing
10 recovery of penalties under PAGA on behalf of himself and the Represented Employees as
11 alleged herein in an amount to be shown according to proof.

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

15 **TENTH CAUSE OF ACTION**
16 **(Representative Claims for Penalties Under PAGA for violation of Labor Code section**
17 **204 against all Defendants)**

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

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

25 132. Defendants violated Labor Code section 204 because they failed to timely
26 pay Plaintiff and the Represented Employees all earned wages. By way of one example,
27 Plaintiff and Represented Employees were not paid proper wages because Defendants failed
28 to appropriately compensate Plaintiff and the Represented Employees for the use of their leave

1 pursuant to the correct rate mandated in Labor Code section 246. By way of another example,
2 Plaintiff was owed overtime wages, which Defendants failed to compensate Plaintiff at the
3 appropriate regular rate of pay due to its failure to incorporate all incentive compensation
4 earned during a given pay period. This resulted in the underpayment of wages.

5 133. Defendants have failed to pay Plaintiff and Represented Employees all
6 wages due and owed.

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

9 135. Labor Code section 2699(f) imposes upon Defendants, and each of them,
10 civil 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 specifically
13 provided.

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

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

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ELEVENTH CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for violation of Labor Code Sections 201, 202, and 203 against all Defendants)

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

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

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

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

142. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of example, Plaintiff was owed wages for sick leave. To this date, Defendants have not paid Plaintiff those wages. By way of another example, Plaintiff was owed overtime wages, which Defendants failed to compensate Plaintiff at the appropriate regular rate of pay due to its failure to incorporate all incentive compensation earned during a given pay period.

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

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

145. 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.

146. Plaintiff is seeking penalties against Defendants under Labor Code section 2699(f), and/or 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.

147. 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

1. An award of civil penalties pursuant to PAGA and/or other applicable laws;
2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant to California Labor Code section 2699(g) and/or other applicable law;
3. Post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

Dated: February 4, 2021

THE JAMI LAW FIRM P.C.

By: Tamim Jami
 Tamim Jami
 Attorney for Plaintiff