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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STANLEY MOSK COURTHOUSE

CESAR GATICA, as an individual and on behalf of all aggrieved employees,

Plaintiff,

v.

KOHL BUILDING MAINTENANCE, INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: **21STCV15149**
COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid 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 Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

1 Plaintiff CESAR GATICA (“Plaintiff” or “Mr. Gatica”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
4 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
5 Defendant KOHL BUILDING MAINTENANCE, INC. (“Defendant”). The term “RELEVANT
6 TIME PERIOD” or “TIME PERIOD” is defined as one (1) year prior to the filing of the
7 complaint. Plaintiff reserves the right to amend this complaint to reflect a different “Time Period”
8 as further discovery is conducted.

9 2. Plaintiff, individually and on behalf of all Aggrieved Employees, seeks relief
10 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
11 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
12 rest periods or premium compensation in lieu thereof; (4) failure to provide accurate itemized
13 wage statements; (5) failure to reimburse for necessary business expenses; and (6) failure to pay
14 wages due upon termination of employment.

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

- 17 (a) Willfully refusing to pay all hours worked, including both regular and overtime
18 wages;
- 19 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
20 lieu thereof;
- 21 (c) Willfully refusing to permit rest periods or providing compensation in lieu
22 thereof;
- 23 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
24 wages;
- 25 (e) Willingly refusing to reimburse necessary business expenses; and
- 26 (f) Willfully refusing to pay all wages due upon separation of employment;

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JURISDICTION AND VENUE

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

5. Venue is proper in the County of Los Angeles because Defendant, KOHL BUILDING MAINTENANCE, INC., transacts business in this county, the obligations and liability arise in this county, and work performed by Plaintiff that forms the subject of this action occurred in this county.

6. The California Superior Court has jurisdiction in the matter, because of the individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled in the County of Los Angeles, State of California. Defendant is a California corporation doing business in the State of California.

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.

THE PARTIES

Plaintiff

8. Mr. Gatica began his employment with Defendant on or about November 30, 2002, as a janitor, with duties including general cleaning and other various janitorial services. Mr. Gatica was terminated by Defendant on or about July 10, 2020. Throughout the Relevant Time Period, Plaintiff worked for Defendant within the County of Los Angeles. Plaintiff was always paid an hourly wage, and was deemed a non-exempt hourly employee by Defendant. Plaintiff is accordingly entitled to compensation for all hours worked, overtime compensation, premium pay, and penalties from Defendant.

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1 **Defendant**

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
3 California corporation which provides cleaning and janitorial services for various venues and
4 office buildings in Los Angeles County, and is and/or was the employer of Plaintiff and similarly
5 situated employees during the Relevant Time Period.

6 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
7 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
8 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
9 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
10 capacities of the DOE Defendants when ascertained.

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

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

25 **PAGA ADMINISTRATIVE PREREQUISITE**

26 13. Plaintiff brings this case as a representative action seeking penalties for the State
27 of California in a representative capacity, as provided by the Private Attorney General Act, Labor
28 Code section 2698 et seq. ("PAGA"), as an aggrieved employee that was employed by Defendant

1 and did not receive all wages due, was not paid minimum wages, was not paid overtime, was not
2 provided with accurate wage statements, was not reimbursed for necessary expenditures, and was
3 not able to take lawful meal and rest breaks or receive premium compensation in lieu thereof.

4 14. Prior to filing this complaint, on January 6, 2021, Plaintiff gave written notice by
5 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
6 Defendant of the specified provisions alleged to have been violated, including the facts and
7 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
8 correct copy of Plaintiff’s original letter sent to the LWDA is attached hereto as “Exhibit A.”

9 15. More than 65 days have passed since Plaintiff submitted his January 6, 2021,
10 notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA
11 has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff
12 further has received no notice of Defendant’s intent to cure any of the alleged violations.
13 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
14 to his January 6, 2021, PAGA notice.

15 **FACTUAL ALLEGATIONS**

16 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
17 employees the benefits due under California’s wage and hour laws for work performed in
18 California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
19 wages, overtime compensation, meal and rest break premiums, and other statutory benefits
20 mandated by California.

21 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and the
22 Aggrieved Employees in non-exempt positions throughout California. Plaintiff and Aggrieved
23 Employees were employed by Defendant in positions that are paid at an hourly rate less than
24 twice that of the state minimum wage and remain under the direct control and supervision of
25 Defendant. Accordingly, these positions remain non-exempt from California’s wage and hour
26 laws yet Defendant fails to pay overtime, provide meal and rest breaks and otherwise pay all
27 wages due to these non-exempt employees as required by law.

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1 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
2 policies and practices described herein are common within the State of California.

3 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
5 who were knowledgeable about California's wage and hour laws, employment and personnel
6 practices, and the requirements of California law.

7 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
8 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
9 all hours worked, including minimum, regular, and overtime wages, and that they were not
10 receiving all wages earned for work that was required to be performed. In violation of the Labor
11 Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned
12 wages by failing to compensate Plaintiff and Aggrieved Employees the mandatory minimum
13 wage. Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite overtime
14 and double time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours
15 per workday.

16 21. Mr. Gatica alleges that Defendant failed to compensate him and Aggrieved
17 Employees at the legally mandated wage rates for all hours worked. Mr. Gatica and Aggrieved
18 Employees performed work off-the-clock, during overtime periods and during meal periods and
19 regularly and frequently worked beyond the 8th hour of their shift. For example, Mr. Gatica and
20 Aggrieved Employees routinely worked shifts from 5:00 p.m. to 8:00 a.m., six (6) days per week.
21 As such, Plaintiff and Aggrieved Employees were entitled to a shift differential. On average,
22 Plaintiff and Aggrieved Employees worked approximately 90 hours per week. During the
23 Relevant Time Period, Defendant failed to utilize a time clock and required Plaintiff and
24 Aggrieved Employees to just show up at their scheduled start times. Defendant did not have a
25 way to track employees' hours.

26 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
27 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
28 times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day

1 were required to be compensated at a rate of two times the employee's base rate of pay.
2 Defendant's failure to provide Plaintiff and Aggrieved Employees any pay whatsoever for off-
3 the-clock hours worked therefore necessarily resulted in overtime violations as well.

4 23. In addition, Defendant implemented a policy and practice of paying Plaintiff and
5 Aggrieved Employees using different employee names. Specifically, Plaintiff was paid his regular
6 rate up to eight (8) hours in a day under his name. However, for hours worked in excess of eight
7 (8), Plaintiff was paid through a separate check under a different name. In fact, Defendant
8 informed Plaintiff and Aggrieved Employees that if they wanted to work overtime hours, they
9 were required to submit separate employment applications using different names for each
10 application. Defendant utilized this practice to specifically avoid its obligation in paying Plaintiff
11 and Aggrieved Employees at the proper overtime and double-time rates.

12 24. Defendant's failure to pay Plaintiff and Aggrieved Employees a shift differential
13 was a subterfuge to paying overtime and double-time pay. Defendant intentionally manipulated
14 employee time records to record hours worked under various employee names in order to avoid
15 paying proper overtime and double-time wages.

16 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
18 meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
19 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
20 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
21 of not providing proper meal periods. Plaintiff and Aggrieved Employees missed their meal
22 periods, took them late, or had them interrupted by Defendant. Defendant also had a pattern,
23 practice, and policy of not providing second meal periods. As a result of Defendant's daily work
24 requirements, demands, and unlawful policies, Plaintiff and Aggrieved Employees did not receive
25 all meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
26 Employees' regular rate of pay when they did not receive a timely, uninterrupted 30- minute off-
27 duty meal period.

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1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all paid
3 rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
4 regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the
5 Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing
6 paid rest periods. Mr. Gatica is informed and believes that Defendant did not have either written
7 or verbal policies regarding rest breaks. This resulted in employees taking rest breaks only
8 sporadically. Defendant maintained a policy requiring all work to be completed by Plaintiff and
9 Aggrieved Employees within an eight (8) hour workday. If they failed to do so, aggrieved
10 employees were subjected to discipline. Defendant failed to provide adequate coverage to relieve
11 aggrieved employees to take their breaks. In addition, Defendant subjected Plaintiff and
12 Aggrieved Employees to pressure to complete work on time, thus discouraging employees from
13 taking their lawful breaks. Due to Defendant's policy and practices which prioritized work tasks
14 over rest period compliance, Plaintiff and Aggrieved Employees missed rest periods, or received
15 them untimely.

16 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
18 wage statements that accurately showed their actual hours worked, total hours worked, number
19 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per
20 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
21 Aggrieved Employees were not provided with accurate itemized wage statements showing their
22 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
23 total hours work per pay period.

24 28. Defendant failed to keep accurate time records reflecting the time Mr. Gatica and
25 Aggrieved Employees started their shift, the time they began and ended their meal periods, and
26 the time they ended their shifts. Defendant did not utilize an electronic time clock to record
27 employee's work hours. However, insofar as Defendant required the employees to work before
28 and/or after signing in/out, and deducted meal periods even when no meal period was actually

1 taken, the timekeeping by Defendant was non-compliant as required under the Labor Code and
2 Code of Regulations.

3 29. By failing to include on Plaintiff and Aggrieved Employees' paystubs all owed
4 meal and rest premium pay, and all minimum wage and overtime and double-time owed,
5 Defendant failed to keep accurate payroll records and failed to provide Plaintiff and Aggrieved
6 Employees with complete and accurate wage statements.

7 30. Defendant willfully failed to reimburse Plaintiff and Aggrieved Employees for
8 necessary business expenses incurred during their employment with Defendant. Specifically,
9 Defendant required, and on information and belief continues to require, its employees to
10 communicate with one another through their personal cellular phones. Defendant required, and
11 on information and belief continues to require, its management to contact employees to convey
12 schedules, job duties, and other items to employees using their personal cellular phones.
13 Defendant also required Plaintiff and Aggrieved Employees to wear uniforms and to be personally
14 responsible for the maintenance of said uniforms. Defendant failed to reimburse employees for
15 the expense of using their personal cellular phones for business purposes and for the cost of
16 maintenance of their work uniforms all in violation of the Labor Code and the IWC Wage Orders.

17 31. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
19 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
20 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
21 time periods, upon separation of employment.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
24 **OVERTIME**

25 **(Plaintiff Against All Defendants)**

26 32. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
27 complaint as if fully set forth herein.

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1 33. Any work in excess of eight hours in any workday and any work in excess of forty
2 (40) hours in a workweek shall be compensated at a rate of no less than one and one-half times
3 the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 5-2001, Sect.
4 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of
5 twice the regular rate of pay for an employee. (*Ibid.*)

6 34. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
7 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
8 minimum wage for all hours worked and overtime premium for hours worked in excess of over
9 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
10 Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed
11 Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby causing
12 Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40)
13 hours per week.

14 35. Plaintiff and Aggrieved Employees routinely worked shifts in excess of twelve
15 (12) hours, but Defendant manipulated employees' time records and implemented a company
16 policy and practice to pay overtime and double-time hours worked by Plaintiff and Aggrieved
17 Employees under various names and at the employees' regular rate of pay in order to avoid its
18 obligation to pay the correct overtime and double-time wages as required by the law.

19 36. Plaintiff and Aggrieved Employees were also frequently required to work through
20 meal periods for which Defendant required at least thirty (30) minutes be deducted from the time
21 recorded, resulting in additional unpaid wages. Additional time was worked by Plaintiff and
22 Aggrieved Employees that they were not permitted to record on time records also resulting in
23 unpaid wages.

24 37. Since the LWDA has not indicated that it will be investigating more than 65 days
25 since Plaintiff provided notice, and because Defendant took no corrective action to remedy the
26 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
27 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
28 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each

1 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
2 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

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

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

12 40. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
13 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
14 interest.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
17 **PREMIUM COMPENSATION IN LIEU THEREOF**

18 **(Plaintiff against All Defendants)**

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

21 42. Labor Code sections 226.7 and 512 and IWC Wage Order 5-2001, Sect. 11
22 provides that no employer shall employ any person for a work period of more than five (5) hours
23 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
24 or employ any person for a work period of more than ten (10) hours without a second meal period
25 of not less than thirty (30) minutes.

26 43. Labor Code section 226.7 provides that if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
2 legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not
3 relieving employees from all work duties during meal periods thereby preventing employees from
4 taking legally compliant meal periods.

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

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

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

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

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

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

25 50. Pursuant to Labor Code section 226.7, Plaintiff and Aggrieved Employees are
26 entitled to damages equal to one (1) hour of wages at their regular rate of pay for each missed
27 meal break, in an amount according to proof.

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

4 52. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
5 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
6 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
7 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
8 ascertained according to proof at trial.

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

12 54. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
13 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
14 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
15 as the assessment of any civil penalties against Defendant, and each of them, in a sum as provided
16 by the Labor Code and/or other statutes.

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

24 56. Plaintiff, as a personal representative of the general public, will and does seek to
25 recover any and all penalties for each and every violation shown to exist or to have occurred
26 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
27 otherwise only available to public agency enforcement actions. Funds recovered will be
28 distributed in accordance with the PAGA, with at least 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 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
6 **PREMIUM COMPENSATION IN LIEU THEREOF**

7 **(Plaintiff against All Defendants)**

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

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

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

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

22 62. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
23 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
24 together in violation of Labor Code section 226.7 and 512.

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

27 64. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
28 more than four (4) hours in a workday.

1 65. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
2 and Aggrieved Employees as a result of their routes scheduled by Defendant, Plaintiff and
3 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
4 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
5 ascertained according to proof at trial.

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

12 67. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
13 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
14 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
15 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
16 by the Labor Code and/or other statutes. Plaintiff, as a representative of the people of the State of
17 California, will seek any and all penalties otherwise capable of being collected by the Labor
18 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
19 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
20 alleged violation of the following provisions: 226.7 and 512.

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

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

1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
3 **WAGE STATEMENTS**

4 **(Plaintiff against All Defendants)**

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

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

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

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

28 / / /

81. Accordingly, Plaintiff and similarly-aggrieved employees are entitled to civil penalties in accordance with PAGA, which shall also include all reasonable costs, including, but not limited to, attorneys' fees and interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON

TERMINATION OF EMPLOYMENT

(Plaintiff against All Defendants)

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

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

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

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

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

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/ / /

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

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

PRAYER FOR RELIEF

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

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code section 558;
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.

Dated: April 21, 2021

MAHONEY LAW GROUP, APC



By: _____

Kevin Mahoney, Esq.
Atoy H. Wilson, Esq.
Attorneys for Plaintiff CESAR GATICA

EXHIBIT A



Atoy H. Wilson, Esq.
(562) 590-5550 phone
(562) 590-8400 fax
awilson@mahoney-law.net

January 6, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

Via Certified Mail # 7019 2280 0002 0214 1711

Return Receipt Requested

Kohl Building Maintenance, Inc.
Attn: Jeffrey Kohl
9538 Topanga Canyon Blvd.
Chatsworth, CA 91311

Re: Cesar Gatica v. Kohl Building Maintenance, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency and Kohl Building Maintenance, Inc.

From: Cesar Gatica, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Cesar Gatica ("Mr. Gatica" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Kohl Building Maintenance, Inc. ("Kohl" or "Employer") is in the business of providing janitorial maintenance services. Mr. Gatica was an hourly-paid, non-exempt employee for Employer.

Mr. Gatica alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194 and 1197, by failing to provide Mr. Gatica and all other aggrieved employees with all wages for all hours worked, including, but not limited to, regular and minimum wage, overtime and double-time hours, meal and rest period premium pay, and reimbursement for necessary business expenditures. Mr. Gatica and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Kohl Failed to Provide Mr. Gatica and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Mr. Gatica alleges that he and other aggrieved employees were routinely not provided with timely, 30-minute off-duty meal periods, as required by the Labor Code. Mr. Gatica and other aggrieved employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) When employees failed to receive their meal break, they did not receive premium pay as compensation for the missed meal breaks.

Mr. Gatica further alleges that he and other aggrieved employees did not receive duty-free, uninterrupted rest periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Employer prevented Mr. Gatica and other aggrieved employees from taking rest breaks throughout their shifts. This was due in part to Employer's policy and practice of providing inadequate coverage to allow for breaks to be taken. Further, due to the pressure from Employer, Mr. Gatica and other aggrieved employees were not authorized and permitted to take a second rest period, on shifts exceeding six hours of work, and/or third rest breaks, on shifts exceeding ten hours of work. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest breaks. Employer's conduct, which is in violation of the Labor Code, is also actionable under PAGA.

B. Kohl Failed to Pay Mr. Gatica and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employer failed to pay Mr. Gatica and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Specifically, Mr. Gatica and other aggrieved employees regularly worked beyond the eighth (8th) hour of their shifts, but Employer only compensated Mr. Gatica and aggrieved employees for eight (8) hours at their regular rate of pay and did not compensate Mr. Gatica and similarly aggrieved employees for time worked beyond the eighth hour of their scheduled shifts. Employer did not properly calculate Mr. Gatica's and other aggrieved employees' overtime and double-time rates. In addition, Employer manipulated employee's time records to record the total number of hours worked by an employee under different names in an effort to subterfuge their obligation of properly paying overtime and double time wages. For instance, Mr. Gatica worked six (6) days per week from 5:00 p.m. to 8:00 a.m.

In order to avoid having to pay Mr. Gatica a shift differential, Employer partially paid his wages under Mr. Gatica's name and proceeded to pay the rest of Mr. Gatica's hours worked under the names of different individuals. This intentional manipulation of time records allowed Employer to avoid paying Mr. Gatica and other aggrieved employees at the proper overtime and double-time rates. As a result, Employer failed to compensate Mr. Gatica and those similarly situated for all time actually worked. Employer was obligated to pay Mr. Gatica and other aggrieved employees overtime compensation for all hours worked in excess of eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and double-time compensation for hours worked in excess of twelve (12) in one (1) day. Employer also failed to pay Mr. Gatica and other aggrieved employees, proper overtime and/or double-time rates for hours worked off-the-clock, as required by law. Employer's conduct is in violation of Labor Code sections 510, 1194 and 1197, and is actionable under PAGA.

C. Kohl Failed to Provide Mr. Gatica and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

Based on currently available information and records, Employer did not keep accurate time records in violation of the Labor Code, the applicable wage order, and actionable under PAGA. By failing to include on Mr. Gatica's and other aggrieved employees' pay stubs all rest and meal break premium wages and full compensation for all hours worked including proper overtime and double-time wages, Employer failed to keep accurate payroll records and failed to provide Mr. Gatica and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203, and 204 due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. Kohl Failed to Reimburse Mr. Gatica and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employer did not reimburse Mr. Gatica and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of maintenance for their work uniforms, as well as the required use of their personal cellular phones for work-related purposes, which is in violation of Labor Code section 2802, the applicable wage order, and actionable under PAGA.

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Gatica becomes aware of additional compensation owed or losses incurred by Mr. Gatica or by any other aggrieved employee of the Employer, Mr. Gatica expressly reserves the right to revise these facts and/or add

LABOR AND WORKFORCE DEVELOPMENT AGENCY

January 5, 2021

Page 4 of 4

any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney
Atoy H. Wilson
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: awilson@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read 'Atoy H. Wilson', with a large, stylized loop at the end.

Atoy H. Wilson, Esq.
MAHONEY LAW GROUP, APC