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all others similarly situated, and on behalf of the general public

ENDORSED
FILED
ALAMEDA COUNTY

MAY 21 2021

CLERK OF THE COURT

BY: Roni Gil
Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF ALAMEDA**

9 ASHTON HARDEN on behalf of
10 himself, all others similarly situated, and
on behalf of the general public,

11 Plaintiffs,

12 v.

13 STAFFING SOLUTIONS, INC.;
14 BALANCE STAFFING FRANCHISE
LLC; BALANCE STAFFING
SERVICES, LLC; BALANCE
15 STAFFING WORKFORCE, LLC;
PERSONNEL STAFFING GROUP,
16 LLC; and DOES 1-100,

17 Defendants.

Case No.

HG21103640

**PLAINTIFF ASHTON HARDEN'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

1. Violation of the PAGA for Failure to Pay Straight Time Wages;
2. Violation of the PAGA for Failure to Pay All Overtime Wages;
3. Violation of PAGA for Failure to Provide Meal Periods;
4. Violation of PAGA for Failure to Provide Rest Periods;
5. Violation of PAGA for Failure to Pay Wages Due at Termination of Employment;
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements;
7. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and
8. Violation of PAGA for Failure to Provide Suitable Resting Facilities.

DEMAND FOR JURY TRIAL

1 Plaintiff ASHTON HARDEN (hereinafter referred to as “Plaintiff”), on behalf himself and all
2 other non-exempt, hourly factory associates, production associates, assembly associates,
3 manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly
4 employees who were employed through Defendants at Tesla’s Fremont, California factory (hereinafter
5 referred to as the “Aggrieved Employees”), files this Complaint against Defendants STAFFING
6 SOLUTIONS, INC.; BALANCE STAFFING FRANCHISE LLC; BALANCE STAFFING
7 SERVICES, LLC; BALANCE STAFFING WORKFORCE, LLC; PERSONNEL STAFFING
8 GROUP, LLC (hereinafter referred to as “Defendants” or “BALANCE STAFFING”) and/or DOES
9 1-100.

10 **I. INTRODUCTION**

- 11 1. This is a representative action seeking recovery of penalties under the California Labor Code
12 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et.
13 seq., against Defendants and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
14 bring a lawsuit on behalf of himself and other current and former employees to address an
15 employer’s violations of the *California Labor Code*.
- 16 2. BALANCE STAFFING is a staffing company.
- 17 3. Plaintiff and the Aggrieved Employees were employed by BALANCE STAFFING to work at
18 Tesla’s Fremont, California factory.
- 19 4. BALANCE STAFFING has locations throughout California, including in Alameda County.
- 20 5. BALANCE STAFFING employs non-exempt, hourly factory associates, production
21 associates, assembly associates, manufacturing plant associates, laborers, operators, and all
22 other similar non-exempt hourly employees to work at Tesla’s Fremont, California factory.
- 23 6. Defendants have maintained uniform policies that violate the wage and hour rights of Plaintiff
24 and similarly situated non-exempt, hourly factory associates, production associates, assembly
25 associates, manufacturing plant associates, laborers, operators, and all other similar non-
26 exempt hourly employees in the manner complained of herein.
- 27 7. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendants
28 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;

1 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
2 break; were not provided accurate itemized wage statements; were not paid compensation for
3 all time worked at the straight or overtime rate; were not reimbursed for business expenses;
4 and, were not paid waiting time penalties. Plaintiff seeks penalties on behalf of himself and all
5 other Aggrieved Employees of Defendants and/or DOES as provided herein. This Complaint
6 also seeks attorneys' fees and costs under the PAGA, *California Labor Code* section
7 2699(g)(1).

8 8. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified
9 as "exempt" or primarily employed in an executive, professional, or administrative capacity.
10 Thus, under California law, Plaintiff and the Aggrieved Employees should be: provided meal
11 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
12 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
13 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
14 paid compensation for all time worked at the regular or overtime rate; reimbursed for business
15 expenses; and paid penalties for not being paid timely at the time of termination.

16 9. At all times mentioned herein, Defendants and/or DOES controlled the working conditions of
17 Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to
18 hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the
19 Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or
20 where to work. In addition, Defendants and/or DOES developed, wrote, dictated, approved
21 and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved
22 Employees labored under. These policies and/or practices included, but were not limited to,
23 policies and/or practices regarding meal periods, straight-time, rest periods, wage statements,
24 paying compensation at time of termination, and timing of payment. Further, Defendants
25 and/or DOES had the ability to prevent Plaintiff and the Aggrieved Employees from working.

26 **II. JURISDICTION AND VENUE**

27 10. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was
28 employed by Defendants and/or DOES in California. Plaintiff, and each of the Aggrieved

Employees, were employees of Defendants and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).

11. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operate industrial facilities, employ hourly employees, conduct business, and commit *California Labor Code* violations within Alameda County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Alameda County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Alameda County.

12. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendants and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives 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 one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, 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 (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

13. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

14. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendants and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Alameda, California.

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1 **III. THE PARTIES**

2 **A. Plaintiff**

3 1. Throughout the Statutory Period, Plaintiff is and was a resident of California. During the
4 Statutory Period, Plaintiff was employed by Defendants and/or DOES in California and
5 performed work in Alameda County. Plaintiff was employed by Defendants and/or DOES until
6 February 2020.

7 15. Plaintiff and the Aggrieved Employees were and are employed in the State of California by
8 the Defendants and/or DOES as hourly factory associates, production associates, assembly
9 associates, manufacturing plant associates, laborers, operators, and all other similar non-
10 exempt hourly employees. Plaintiff and the Aggrieved Employees are or were employed in a
11 non-exempt capacity.

12 16. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the
13 LWDA and Defendants on January 29, 2021. An amended notice showing compliance with
14 *Labor Code* Section 2699.3 was sent to the LWDA and Defendants on March 19, 2021. These
15 notices demonstrate that Plaintiff is an aggrieved employee and has standing to bring a
16 representative action on behalf of the LWDA and as a private attorney general. The violations
17 alleged in these notices also form the basis for the allegations herein. No notice of cure by
18 Defendants and/or DOES was provided and no notice of investigation was received from the
19 LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notices
20 of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized
21 by *Labor Code* section 2699.3(a)(2)(C).

22 **B. Defendants**

23 17. BALANCE STAFFING is a staffing company.

24 18. BALANCE STAFFING places employees to work at Tesla’s Fremont, California factory.

25 19. BALANCE STAFFING has locations throughout California, including in Alameda County.

26 20. BALANCE STAFFING employs non-exempt, hourly factory associates, production
27 associates, assembly associates, manufacturing plant associates, laborers, operators, and all
28 other similar non-exempt hourly employees to work at Tesla’s Fremont, California factory.

21. Defendant employs and employed Plaintiff and similarly situated non-exempt, hourly factory associates, production associates, assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees in California.

22. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

23. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

24. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

25. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendants and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt, hourly factory associates, production associates, assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees of Defendants and/or DOES, or any of its operating divisions and/or subsidiaries, who were placed to work at Tesla's Fremont, California factory.

26. At all times mentioned herein, Defendants and/or DOES have not paid Plaintiff and the Aggrieved Employees for all time they were performing work and/or are subject to

- Defendants' and/or DOES' control. Failing to pay for all hours worked while under Defendants' and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of straight time and/or overtime wages.
27. At all times mentioned herein, Defendants and/or DOES require Plaintiff and the Aggrieved Employees to work under alternative workweek schedules under which Plaintiff and the Aggrieved Employees work four shifts per week, ten hours per shift. Yet, Defendants and/or DOES failed to adopt a lawful alternative workweek schedule pursuant to California Labor Code Section 511. Therefore, Defendants and/or DOES owe Plaintiff and the aggrieved employees overtime wages for hours worked over eight and up to ten in a shift.
28. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
29. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, Defendants and/or DOES willfully violated the provisions of *Labor Code* section 226.7, IWC Wage Order No. 1-2001, and California Code of Regulations, Section 11010(11). In addition, Defendants and/or DOES failed to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.
30. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.
31. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide

1 compensation for these periods, Defendants and/or DOES willfully violated the provisions of
2 *Labor Code* section 226.7, IWC Wage Order No. 1-2001, and California Code of Regulations,
3 Section 11010(12).

4 32. At all times mentioned herein, Defendants and/or DOES failed to pay all wages owed to
5 Plaintiff and to other terminated or resigned Aggrieved Employees and failed to timely pay
6 wages during employment.

7 33. At all times mentioned herein, Defendants and/or DOES failed to reimburse Plaintiff and the
8 Aggrieved Employees for business expenses incurred.

9 34. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
10 Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay
11 statements in accordance with California law.

12 35. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
13 they were not providing complete and accurate pay statements in accordance with California
14 law to Plaintiff and the Aggrieved Employees.

15 36. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
16 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with
17 California law, and that Defendants and DOES had the ability to pay such compensation, but
18 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
19 Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the
20 Aggrieved Employees.

21 37. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
22 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.
23 Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal
24 period premiums, and/or rest period premiums owed at the time of termination.

25 38. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the
26 Aggrieved Employees a sum certain at the time of termination or within seventy-two (72) hours
27 of their resignation and have failed to pay those sums for thirty (30) days thereafter.

28 39. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all

Defendants' hourly, non-exempt, salaried Membership Representatives, Field Representatives, and/or similar job designations and other similar positions employed in California beginning one year prior to the date Plaintiff sent notice to the LWDA.

40. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).

41. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

42. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked.

43. It is fundamental that an employer must pay its employees for the time worked. *California Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

44. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

45. Plaintiff and those similarly situated Aggrieved Employees were employed by BALANCE STAFFING and/or DOES at all relevant times. BALANCE STAFFING and/or DOES were required to compensate Plaintiff for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

1 46. BALANCE STAFFING and/or DOES have a continuous policy of not paying Plaintiff and
2 those similarly situated Aggrieved Employees for all hours worked. Including, but not limited
3 to, time spent working through meal periods, and/or any other time in the day when the
4 employees were performing work tasks, subject to the control of their employer, and/or
5 otherwise had work duties. Plaintiff and the Aggrieved Employees are always subjected to
6 Defendants' and/or DOES' control throughout the workday, even during unpaid periods of the
7 workday. For example, Defendants and/or DOES only provide Plaintiff and the Aggrieved
8 Employees with thirty (30) minutes for meal periods. In only permitting thirty (30) minutes for
9 meal periods, employees are not being provided a full thirty (30) minute meal period free of
10 the employer's control. Because employees are required to eat on the premises, a suitable place
11 for that purpose shall be designated. But, Defendants and/or DOES failed to so designate a
12 suitable place to eat on the premises for Plaintiff and the Aggrieved Employees. And, with
13 only having thirty (30) minutes for meal periods employees necessarily receive less than the
14 allotted break time to even reach a suitable place to eat. Additionally, employees must wait in
15 a line of employees to clock in and out for their meal periods. This time is counted as part of
16 Plaintiff's and the Aggrieved Employees' meal period, even though they remain subject to the
17 control of the employer.

18 47. Failing to pay for all hours worked while under Defendants' and/or DOES' control and/or
19 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees
20 being deprived of straight time wages.

21 48. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
22 unpaid wages, and lost interest on such wages, and expenses.

23 49. Plaintiff and the Aggrieved Employees were employed by Defendants and/or DOES at all
24 relevant times. Defendants and/or DOES were required to compensate Plaintiff and the
25 Aggrieved Employees for all hours worked and were prohibited from making deductions that
26 had the effect of reducing the agreed upon wage.

27 50. Defendants and/or DOES committed the acts alleged herein knowingly and willfully, with the
28 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.

Defendants and/or DOES acted with malice or in conscious disregard of Plaintiff's and the Aggrieved Employees' rights.

51. These claims are on behalf of all non-exempt, hourly factory associates, production associates, assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees employed by Defendants and/or DOES and placed to work at Tesla's Fremont, California factory.

52. Plaintiff, as former "non-exempt" employee of Defendants and/or DOES who Defendants and/or DOES failed to pay all wages. Therefore, Plaintiff is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

53. 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 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

54. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

55. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the
PAGA for Failure to Pay All Overtime Wages Owed**

56. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

57. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

58. *California Labor Code* section 510 dictates that 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. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

59. Defendants and/or DOES failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week.

60. BALANCE STAFFING and/or DOES have a continuous policy of not paying Plaintiff and those similarly situated Aggrieved Employees for all overtime hours worked. Employees have been subject to Defendants' and/or DOES' control pre-shift, post-shift, and during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation.

61. Defendants and/or DOES have a continuous and consistent policy of clocking-out Plaintiff and those similarly situated for a thirty (30) minute meal period and/or otherwise recording a meal period, even though Plaintiff and all Aggrieved Employees work through their meal periods. Thus, BALANCE STAFFING and/or DOES do not pay Plaintiff and the Aggrieved Employees for all time worked each and every day they work without a meal period and have time deducted. This has led to Plaintiff and the Aggrieved Employees not receiving pay for hours worked at the overtime rate of pay.

62. BALANCE STAFFING and/or DOES were obligated to compensate Plaintiff and the

1 Aggrieved Employees at a rate of one and one-half times the regular rate of pay for all hours
2 over eight in one workday and over 40 in any one workweek. BALANCE STAFFING and/or
3 DOES also were obligated to compensate Plaintiff and the Aggrieved Employees at a rate of
4 twice the regular rate of pay for all hours over 12 in one workday. The regular rate of pay under
5 California law includes all remuneration for employment paid to, on behalf of, the employee.

6 63. BALANCE STAFFING and/or DOES failed to properly calculate Plaintiff's and the
7 Aggrieved Employees' overtime rate because BALANCE STAFFING and/or DOES failed to
8 factor non-discretionary bonuses and other remuneration into the regular rate of pay. As a
9 result, BALANCE STAFFING and/or DOES owe Plaintiff and the Aggrieved Employees
10 additional overtime wages.

11 64. Cal. Lab. Code § 511 requires that "[u]pon the proposal of an employer, the employees of an
12 employer may adopt a regularly scheduled alternative workweek that authorizes work by the
13 affected employees for no longer than 10 hours per day within a 40-hour workweek without
14 the payment to the affected employees of an overtime rate of compensation pursuant to this
15 section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only
16 if it receives approval in a secret ballot election by at least two-thirds of affected employees in
17 a readily identifiable work unit." The results of any election conducted pursuant to Cal. Lab.
18 Code § 511 shall be reported by an employer to the Division of Labor Standards Enforcement
19 within 30 days after the results are final.

20 65. Throughout the relevant time period, BALANCE STAFFING and/or DOES have not filed any
21 documents with the DLSE to show that BALANCE STAFFING and/or DOES can implement
22 alternative workweek schedules for their employees. In other words, for example, BALANCE
23 STAFFING and/or DOES did not follow the election procedures to adopt and repeal alternative
24 workweek schedules such as have a proposed agreement designating a regularly scheduled
25 alternative workweek in which the specified number of work days and work hours are regularly
26 recurring. BALANCE STAFFING and/or DOES did not have a proposed alternative
27 workweek schedule be adopted in a secret ballot election, before the performance of work, by
28 at least a two-thirds (2/3) vote of the affected employees in the work unit. There was not an

election held during regular working hours at the employees' work site. Also, BALANCE STAFFING and/or DOES did not, prior to a secret ballot vote, make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. And, BALANCE STAFFING and/or DOES have not had a disclosure including the meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. Balance has not provided a disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. BALANCE STAFFING and/or DOES have not mailed a written disclosure to employees. BALANCE STAFFING's and/or DOES' failure to fulfill any of its obligations has made any alternative workweek arrangement null and void.

66. BALANCE STAFFING and/or DOES require Plaintiff and the Aggrieved Employees to work under an alternative workweek schedule. Yet, as outlined above, BALANCE STAFFING and/or DOES failed to properly and lawfully implement an alternative workweek schedule. As such, BALANCE STAFFING and/or DOES owe Plaintiff and the Aggrieved Employees additional overtime wages for hours worked over eight and up to ten in a workday.

67. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

68. These claims are on behalf of all non-exempt, hourly factory associates, production associates, assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees employed by Defendants and/or DOES and placed to work at Tesla's Fremont, California factory.

69. 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 Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

70. Plaintiff, as a representative of the people of the State of California, will seek 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 *California Labor Code* section 2699.5, which provides

that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, 512 and 518.

71. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

72. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

73. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

74. Under *California Labor Code* section 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

75. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

1 76. Under *California Labor Code* section 226.7, if the employer does not provide an employee a
2 meal period in accordance with the above requirements, the employer shall pay the employee
3 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
4 meal period is not provided.

5 77. Defendants and/or DOES have a consistent policy and/or practice of not providing meal
6 periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu
7 thereof. Specifically, Defendants' and/or DOES' business model was such that Plaintiff and
8 the Aggrieved Employees were assigned too much work that could not be reasonably
9 completed in their assigned shift. The result is that Defendants' and/or DOES' employees
10 routinely and regularly are forced to eat their meals while working.

11 78. Defendants and/or DOES have a consistent policy and/or practice of not providing meal
12 periods to Plaintiff and all Aggrieved Employees and/or providing compensation in lieu
13 thereof. As a matter of policy and practice, Defendants and/or DOES do not provide employees
14 with full 30-minute meal periods for each day worked where they are free from Defendants'
15 and/or DOES' control. Plaintiff and Aggrieved Employees are always subjected to Defendants'
16 and/or DOES' control throughout the workday, even during mandated breaks and meal
17 periods. For example, Defendants and/or DOES only provide Plaintiff and the Aggrieved
18 Employees with thirty (30) minutes for meal periods. In only permitting thirty (30) minutes for
19 meal periods, employees are not being provided a full thirty (30) minute meal period free of
20 the employer's control. Because employees are required to eat on the premises, a suitable place
21 for that purpose shall be designated. But, Defendants and/or DOES have failed to so designate
22 a suitable place to eat on the premises for Plaintiff and the Aggrieved Employees. And, with
23 only having thirty (30) minutes for meal periods employees necessarily receive less than the
24 allotted break time to even reach a suitable place to eat. Additionally, employees must wait in
25 a line of employees to clock in and out for their meal periods. This time is counted as part of
26 the employees' meal period, even though they remain subject to the control of the employer.

27 79. Defendants and/or DOES have a consistent policy and/or practice of requiring Plaintiff and the
28 Aggrieved Employees to work at least five (5) hours without a meal period and failing to pay

such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period is not provided, or other compensation in lieu thereof, as required by California's state wage and hour laws.

80. Defendants and/or DOES have a consistent policy and/or practice of not providing second meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the Aggrieved Employees were not provided with second meal periods when they worked ten (10) to twelve (12) hours.

81. Due to the thrust of business, Defendants' and/or DOES' policies and practices encourage employees to stay working and/or under Defendants' and/or DOES' control, as opposed to encouraging the rest and nourishment meal periods are designed to provide. As a matter of policy and practice, Defendants and/or DOES fail to relinquish all control over employees to permit them with reasonable opportunities to take meal periods.

82. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendants and/or DOES willfully violated the provisions of the *California Labor Code* section 226.7 and 512.

83. These claims are on behalf of all non-exempt, hourly factory associates, production associates, assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees employed by Defendants and/or DOES and placed to work at Tesla's Fremont, California factory.

84. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* sections 226.7 and 512.

85. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendants and/or DOES willfully violated the provisions of *California Labor Code* sections 226.7 and 512, and IWC Wage Order No. 1-2001.

1 86. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Aggrieved
2 Employees have been deprived of premium wages and/or other compensation in amounts to
3 be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys'
4 fees, and costs.

5 87. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled
6 to work for a period of time in excess of six (6) hours were required to work for periods longer
7 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

8 88. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled
9 to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not
10 waive their legally-mandated meal periods by mutual consent were required to work in excess
11 of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal
12 period of not less than thirty (30) minutes.

13 89. During the relevant time period, Defendants and/or DOES failed to pay Plaintiff and the
14 Aggrieved Employees the full meal period premium due pursuant to *California Labor Code*
15 section 226.7.

16 90. Defendants' and/or DOES' conduct violates applicable IWC Wage Order 5-2001 and
17 *California Labor Code* sections 226.7 and 512(a).

18 91. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
19 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
20 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 *California Labor Code* section
22 2699.5.

23 92. Plaintiff, as a representative of the people of the State of California, will seek all penalties
24 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
25 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
26 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
27 226.7, 512 and 518.

28 93. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on

1 behalf of himself and the other aggrieved employees, seeks recovery of applicable civil
2 penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
3 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
4 (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per
5 *California Labor Code* section 2699(f)(2).

6 94. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
7 employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations
8 pursuant to this chapter or any provisions regulating hours and days of the week of the
9 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

10 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
11 **PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).**

12 95. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
13 as if fully plead.

14 96. Industrial Welfare Commission Order No. 1-2001 section 12(A) states “[e]very employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be
16 in the middle of each work week period. The authorized rest period time shall be based on the
17 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
18 fraction thereof.”

19 97. At all times mentioned herein, Defendants and/or DOES failed to authorize and/or permit rest
20 period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
21 per four (4) hours or major fraction thereof.

22 98. Defendants and/or DOES have a consistent policy and/or practice of not providing rest periods
23 to Plaintiff and all Aggrieved Employees and/or providing compensation in lieu thereof.

24 99. Defendants and/or DOES have a consistent policy and/or practice of requiring Plaintiff and the
25 Aggrieved Employees within the State of California, to work for over four (4) hours, or a major
26 fraction thereof, without a ten (10) minute rest period and failing to pay such employees one
27 (1) hour of pay at the employees’ regular rate of compensation for each workday that the rest
28 period is not provided, or other compensation, as required by California’s state wage and hour

- 1 laws.
- 2 100. In the alternative, Plaintiff and the Aggrieved Employees remain subject to the employer's
3 control throughout the rest period. This is required in order to complete the demanding duties
4 required by Defendants and/or DOES thereby denying Plaintiff and the Aggrieved Employees
5 of their right to be completely free from employer control under California law. As a result,
6 Defendants' and/or DOES' non-exempt employees routinely and regularly are forced to miss
7 their rest periods or take late rest periods.
- 8 101. As a matter of policy and practice, Defendants and/or DOES do not authorize and permit
9 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
10 Defendants' and/or DOES' policies and practices encourage production over breaks. Likewise,
11 Balance's policies and practices fail to relinquish all control over employees during breaks. In
12 sum, this time is counted as part of employees' rest period, even though they remain subject to
13 Defendants' and/or DOES' control, thereby denying Plaintiff and the Aggrieved Employees of
14 the right to be completely free from employer control under California law. For example,
15 Defendants and/or DOES only provide Plaintiff and the Aggrieved Employees with ten (10)
16 minutes for rest periods. In only permitting ten (10) minutes for rest periods, employees are
17 not being provided a net ten (10) minute rest period. This is because part of break time
18 necessarily includes time leaving and coming back to their workstation. Thus, with only having
19 ten (10) minutes for rest breaks, employees necessarily receive less than the allotted break
20 time, because employees commute time is part of the break. And, employees cannot even reach
21 a suitable rest facility during rest breaks.
- 22 102. Defendants and/or DOES have a continuous and consistent policy of requiring employees to
23 walk through the factory when leaving and returning to their work station. This time is counted
24 as part of the employees' rest period, even though they remain subject to the control of the
25 employer.
- 26 103. Alternatively, Defendants and/or DOES have a consistent policy and/or practice of not
27 providing net ten-minute rest breaks to Plaintiff and all Aggrieved Employees and/or providing
28 compensation in lieu thereof. Plaintiff and the Aggrieved Employees are required to work

1 through rest periods to complete the demanding duties required by Defendants and/or DOES,
2 thereby denying them their right to be completely free from employer control under California
3 law. As a matter of policy and practice, Defendants and/or DOES do not authorize and permit
4 employees to take duty-free rest breaks.

5 104. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
6 day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for
7 these unprovided rest periods, as alleged above, Defendants and/or DOES willfully violated
8 the provisions of *California Labor Code* section 226.7.

9 105. These claims are on behalf of all non-exempt, hourly factory associates, production associates,
10 assembly associates, manufacturing plant associates, laborers, operators, and all other similar
11 non-exempt hourly employees employed by Defendants and/or DOES and placed to work at
12 Tesla's Fremont, California factory.

13 106. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
14 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
15 has satisfied all prerequisites to serve as a representative of the general public to enforce
16 California's labor laws, and the penalty provisions identified in *California Labor Code* section
17 2699.5 for violations of *California Labor Code* section 226.7.

18 107. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest
19 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
20 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 *California Labor Code* section
22 2699.5.

23 108. Plaintiff, as a representative of the people of the State of California, will seek all penalties
24 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
25 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
26 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
27 226.7 and 518.

28 109. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on

1 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
2 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
3 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
4 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
5 *California Labor Code* section 2699(f)(2).

6 110. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
7 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
8 violations pursuant to this chapter or any provisions regulating hours and days of the week of
9 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
10 558(a)(2).

11 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
12 **PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor**
13 **Code §2698 et. seq.).**

14 111. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
15 as if fully plead.

16 112. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay,
17 in a timely manner, wages owed to the Aggrieved Employees who left Defendants' and/or
18 DOES' employ or who were terminated.

19 113. Aggrieved Employees who ended their employment with Defendants and/or DOES during the
20 last year were entitled to be promptly paid all lawful compensation, and other premiums, as
21 required by *California Labor Code* sections 201 through 203.

22 114. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer
23 discharges an employee, the wages earned and unpaid at the time of discharge are due and
24 payable immediately, and if an employee quits his or her employment, his or her wages shall
25 become due and payable no later than seventy-two (72) hours thereafter, unless the employee
26 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
27 employee is entitled to his or her wages at the time of quitting.

28 115. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to

- 1 pay the Aggrieved Employees who are no longer employed by Defendants and/or DOES their
2 wages, that were earned and unpaid, within seventy-two (72) hours of their leaving
3 Defendants' and/or DOES' employ.
- 4 116. Defendants' and/or DOES' failure to pay the Aggrieved Employees who are no longer
5 employed by Defendants and/or DOES their wages, that were earned and unpaid, within
6 seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in violation of
7 *California Labor Code* sections 201 and 202.
- 8 117. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages
9 owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the
10 employee shall continue as a penalty from the due date thereof at the same rate until paid or
11 until and action is commenced; but the wages shall not continue for more than thirty (30) days.
- 12 118. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to pay all wages,
13 failed to provide a minimum statutory first and/or second meal periods, and failed to provide
14 paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action
15 under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general
16 public to enforce California's labor laws, and the penalty provisions identified in *California*
17 *Labor Code* section 2699.5.
- 18 119. Plaintiff, as a representative of the people of the State of California, seeks all penalties
19 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
20 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
21 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
22 alleged violation of the following provisions: sections 201 through 203.
- 23 120. These claims are on behalf of all non-exempt, hourly factory associates, production associates,
24 assembly associates, manufacturing plant associates, laborers, operators, and all other similar
25 non-exempt hourly employees employed by Defendants and/or DOES and placed to work at
26 Tesla's Fremont, California factory.
- 27 121. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
28 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil

penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

122. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

123. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

124. *California Labor Code* section 226(a) requires Defendants and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendants and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period

- 1 and the corresponding number of hours worked at each hourly rate and the corresponding
2 number of hours worked at each hourly rate by the employee....”
- 3 125. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from
4 payment of wages shall be recorded in ink or other indelible form, properly dates, showing the
5 month, day and year, and a copy of the statement and the record of the deductions shall be kept
6 on file by the employer for at least three years at the place of employment or at a central
7 location within the State of California.”
- 8 126. Defendants and/or DOES have knowingly and intentionally failed to comply with *California*
9 *Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the
10 Aggrieved Employees.
- 11 127. Defendants and/or DOES knowingly and intentionally did not include the gross wages earned
12 and bonuses paid on wage statements. Defendants and/or DOES therefore knowingly and
13 intentionally failed to itemize the gross wages earned and bonuses paid on Plaintiff’s and the
14 Aggrieved Employees’ wage statements.
- 15 128. In every pay period during the period of the relevant statute of limitations, Defendants and/or
16 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
17 as Cal. Lab. Code § 226 (a), requires. In every pay period during the period of the relevant
18 statute of limitations, Defendants and/or DOES knowingly and intentionally did not include
19 the total hours worked on wage statements and failed to include this information accurately.
20 Defendants and/or DOES therefore knowingly and intentionally failed to itemize the total
21 hours worked on Plaintiff’s and the Aggrieved Employees’ wage statements.
- 22 129. The total regular and overtime hours listed in Defendants’ and/or DOES’ wage statements,
23 when added together, do not sum up to the total hours worked by the employee during the
24 pertinent time period. Without additional information regarding the wage statement, an
25 employee cannot simply ‘arrive at the sum of hours worked.’ Thus, Defendants’ and/or DOES’
26 wage statement do not comply with Cal. Lab. Code § 226(a)(2).
- 27 130. Defendants and/or DOES have knowingly and intentionally failed to comply with *California*
28 *Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the

- 1 Aggrieved Employees.
- 2 131. Additionally, BALANCE STAFFING and/or DOES have had a continuous policy of not
3 paying Plaintiff and the Aggrieved Employees for all hours worked in that BALANCE
4 STAFFING and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved
5 Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period,
6 even though Plaintiff and the Aggrieved Employees work through their meal periods and/or
7 were unable to take meal periods. Thus, BALANCE STAFFING and/or DOES shave/steal
8 earned wages from Plaintiff and the Aggrieved Employees every day they work without a meal
9 period and have time deducted.
- 10 132. In every pay period during the period of the relevant statute of limitations, Defendants and/or
11 DOES knowingly and intentionally did not include the net wages earned on wage statements.
- 12 133. Further, BALANCE STAFFING and/or DOES pay wages earned in the current pay period on
13 the wage statement for the following pay period. Yet, BALANCE STAFFING and/or DOES
14 fail include the inclusive dates of the pay period in which the wages were earned with these
15 corrections. Specifically, BALANCE STAFFING and/or DOES issue wage statements three
16 days prior to the end of the current pay period. BALANCE STAFFING and/or DOES then pay
17 any additional wages owed due to work performed in the current pay period in the wage
18 statement for the next pay period. BALANCE STAFFING and/or DOES fail, however, to state
19 “the inclusive dates of the pay period for which the employer is correcting its initial report of
20 hours worked.” Cal. Lab. Code § 204(b)(2). This is in violation of *Labor Code* section 226(a).
- 21 134. When BALANCE STAFFING and/or DOES pay overtime to Plaintiff and the Aggrieved
22 Employees, BALANCE STAFFING and/or DOES fail to include the rate(s) at which the
23 overtime is being paid.
- 24 135. Throughout the statutory period, because of the knowing and intentional failure by Defendants
25 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
26 Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours
27 worked and have, therefore, not received full compensation.
- 28 136. These claims are on behalf of all non-exempt, hourly factory associates, production associates,

- assembly associates, manufacturing plant associates, laborers, operators, and all other similar non-exempt hourly employees employed by Defendants and/or DOES and placed to work at Tesla's Fremont, California factory.
137. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.
138. Plaintiff, as a representative of the people of the State of California, will seek 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 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.
139. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).
140. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (California Labor Code §2698 et. seq.).

141. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

1 as if fully plead.

2 142. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1,
3 2015, works in California for the same employer for 30 or more days within a year from the
4 commencement of employment is entitled to paid sick days as specified in this section.”

5 143. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid
6 sick days beginning on the 90th day of employment, after which day the employee may use
7 paid sick days as they are accrued.”

8 144. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee
9 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
10 manner discriminate against an employee for using, or attempting to exercise the right to use,
11 sick leave to attend to an illness or the preventive care of a family member, or for any other
12 reason specified in subdivision (a) of Section 246.5.”

13 145. Section 233(d) of the California Labor Code provides relief for violations of this section,
14 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
15 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
16 equitable relief.”

17 146. Section 234 of the California Labor Code further forbids employers from adopting an “absence
18 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead
19 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
20 233. An employee working under this policy is entitled to appropriate legal and equitable relief
21 pursuant to Section 233.”

22 147. BALANCE STAFFING and/or DOES operate under an absence control policy that counts sick
23 leave taken pursuant to Section 233 as an unauthorized absence that may result in discipline,
24 discharge, demotion, or termination. Thus, BALANCE STAFFING and/or DOES’ sick pay
25 policy punishes Plaintiff and Aggrieved Employees by way of suspension and/or termination
26 for use of protected and appropriate sick leave.

27 148. Further, BALANCE STAFFING and/or DOES’ sick pay policy fails to pay sick pay for all
28 appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246, and

- 1 BALANCE STAFFING and/or DOES fail to itemize the amount of accrued/available sick
2 leave Plaintiff and Aggrieved Employees have on wage statements each pay period.
- 3 149. Section 246(i) of the California Labor Code states, “[a]n employer shall provide an employee
4 with written notice that sets forth the amount of sick leave available, or paid time off an
5 employer provides in lieu of sick leave, for use on either the employee’s itemized wage
6 statement described in Section 226 or in a separate writing provided on the designated pay date
7 with the employee’s payment of wages.”
- 8 150. BALANCE STAFFING and/or DOES fail to itemize sick leave available, or paid time off an
9 employer provides in lieu of sick leave, for us on Plaintiff’s and the Aggrieved Employees’
10 itemized wage statements or in a separate writing provided on the designated pay date with the
11 employee’s payment of wages.
- 12 151. Section 246(k) of the California Labor Code states, “[a]n employee may determine how much
13 paid sick leave they need to use, provided that an employer may set a reasonable minimum
14 increment, not to exceed two hours, for use of paid sick leave.”
- 15 152. BALANCE STAFFING and/or DOES failed to provide Plaintiff and the Aggrieved Employees
16 with paid sick days in compliance with Section 246 and Section 246.5. BALANCE STAFFING
17 and/or DOES have a policy and practice which denied Plaintiff and the Aggrieved Employees
18 from accruing paid sick days after having been employed by BALANCE STAFFING and/or
19 DOES for 30 or more days. BALANCE STAFFING and/or DOES have a policy and practice
20 which denied Plaintiff and the Aggrieved Employees of using their paid sick days after having
21 been employed by BALANCE STAFFING and/or DOES for 90 or more days.
- 22 153. BALANCE STAFFING and/or DOES have adopted a policy and practice that denies Plaintiff
23 and the Aggrieved Employees the ability to use their sick days in compliance with Labor Code
24 Sections 233 and 246.5. For example, BALANCE STAFFING and/or DOES threaten to
25 discipline or discharge its employees for failing to provide BALANCE STAFFING and/or
26 DOES with sufficient advanced notice of their intent to use their paid sick days in clear
27 violation of Labor Code Section 234. Plaintiff and the Aggrieved Employees were entitled to
28 actual damages or one day’s pay pursuant to Labor Code Section 233(d).

1 154. BALANCE STAFFING's and/or DOES' sick pay policy fails to pay sick pay for all
2 appropriate and protected purposes enumerated in Labor Code sections 233, 234, 246, and
3 246.5, and BALANCE STAFFING and/or DOES fail to itemize the amount of
4 accrued/available sick leave employees have on wage statements each pay period.

5 155. As a result of the unlawful acts of Defendants BALANCE STAFFING and/or DOES, Plaintiff
6 and the Aggrieved Employees he seeks to represent have been incurred damages, in amounts
7 to be determined at trial, and are entitled to recovery of such amounts, plus interest and
8 penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 233(e).

9 156. These claims are on behalf of all non-exempt, hourly factory associates, production associates,
10 assembly associates, manufacturing plant associates, laborers, operators, and all other similar
11 non-exempt hourly employees employed by Defendants and/or DOES and placed to work at
12 Tesla's Fremont, California factory.

13 157. Plaintiff, as a non-exempt employee who was subject to Defendants' and/or DOES' unlawful
14 sick pay/paid time off policy, is an aggrieved employee with standing to bring an action under
15 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
16 public to enforce California's labor laws, and the penalty provisions identified in *California*
17 *Labor Code* section 2699.5 for violations of the *California Labor Code* sections 233, 234, 246,
18 and 246.5.

19 158. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
20 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
21 violations pursuant to this chapter or any provisions regulating hours and days of the week of
22 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
23 558(a)(2).

24 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
25 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Suitable Resting Facilities**
26 **(*California Labor Code* §2698 et. seq.).**

27 159. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
28 as if fully plead.

1 160. Balance has a consistent policy and/or practice of not providing suitable resting facilities.
2 Industrial Welfare Commission Order No. 1-2001 section 13(B) states “Suitable resting
3 facilities shall be provided in an area separate from the toilet rooms and shall be available to
4 employees during work hours.”

5 161. By failing to provide suitable resting facilities, Balance willfully violated Industrial Welfare
6 Commission Order No. 1-2001 section 13(B).

7 162. These claims are on behalf of all non-exempt, hourly factory associates, production associates,
8 assembly associates, manufacturing plant associates, laborers, operators, and all other similar
9 non-exempt hourly employees employed by Defendants and/or DOES and placed to work at
10 Tesla’s Fremont, California factory.

11 163. Plaintiff, as a non-exempt employee who was unlawfully deprived of suitable resting facilities,
12 is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
13 satisfied all prerequisites to serve as a representative of the general public to enforce
14 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5
15 and Industrial Welfare Commission Order No. 1-2001 section 20 for violations of
16 Industrial Welfare Commission Order No. 1-2001 section 13(B).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays
19 for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- 20 A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
21 B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
22 2699, et. seq. for failure to provide compliant meal periods;
23 C. For all statutory penalties for each pay period during which an employee was underpaid due to
24 failure to provide compliant meal periods;
25 D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
26 2699, et. seq. for failure to provide all rest periods;
27 E. For all statutory penalties provided under *California Labor Code* for each pay period during
28 which an employee was underpaid due to failure to provide paid rest periods;

- 1 F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
2 2699, et. seq. for failure to timely pay wages at separation;
- 3 G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
4 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time
5 worked;
- 6 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
7 2699, et. seq. for failure to provide compensation at the minimum wage;
- 8 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
9 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 10 J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
11 2699, et. seq. for failure to adopt a lawful sick pay policy;
- 12 K. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
13 2699, et. seq. for failure to provide suitable resting facilities;
- 14 L. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
15 2699(g)(1).

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a jury trial as to liability.

18
19 **MARA LAW FIRM, PC**

20
21 Date: May 21, 2021

Signed: 

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff ASHTON HARDEN,
on behalf of himself and all others similarly
situated, and on behalf of the general public