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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KOREY CURLEY, on behalf of himself
and other similarly-situated and aggrieved
employees,

Plaintiff,

vs.

PAR ELECTRICAL CONTRACTORS,
INC., a Missouri Corporation; and DOES
1 through 10, inclusive,

Defendants.

CASE NO. 37-2021-00019761-CU-OE-CTL

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE RELIEF
AND PENALTIES**

- 1. FAILURE TO PAY MINIMUM,
REGULAR AND OVERTIME WAGES**
- 2. FAILURE TO PROVIDE MEAL
PERIODS**
- 3. FAILURE TO PROVIDE REST
PERIODS**
- 4. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. FAILURE TO PAY WAGES TIMELY
TO TERMINATED EMPLOYEES**
- 6. FAILURE TO MAINTAIN ACCURATE
RECORDS**
- 7. VIOLATIONS OF THE UNFAIR
COMPETITION LAW**

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8. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES
9. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MEAL PERIODS
10. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE REST PERIODS
11. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
12. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES TIMELY TO TERMINATED EMPLOYEES
13. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO MAINTAIN ACCURATE RECORDS

DEMAND FOR JURY TRIAL

1 Plaintiff KOREY CURLEY (“Plaintiff”), on behalf of himself and other similarly-
2 situated and aggrieved employees, and as a Representative of the State of California’s Labor
3 and Workforce Development Agency (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed class action against his former employer PAR
7 ELECTRICAL CONTRACTORS, INC., a Missouri Corporation, and DOES 1-10 (collectively
8 referred to as “Defendants”) for multiple wage and hour violations under the California Labor
9 Code to recover unpaid minimum, regular, and overtime wages. Specifically, during all or a
10 significant part of the applicable limitations period, or proposed “Class Period” (which is
11 defined at any time from four years prior to the commencement of this action until the
12 commencement of trial in the matter), Plaintiff alleges Defendants did not pay him or other
13 hourly non-exempt employees all wages for all hours worked, including time spent working
14 during purported meal periods. Plaintiff seeks to recover compensation for Defendants’ failure
15 to provide compliant meal and rest periods, as well as derivative claims for failure to provide
16 accurate itemized wage statements and timely pay all wages due at separation from
17 employment. Plaintiff also brings this action for unfair competition under Business and
18 Professions Code sections 17200, *et seq.*

19 2. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
20 current and former non-exempt employees of Defendants who suffered one or more of the
21 alleged violations (“aggrieved employees”) as described herein during the applicable limitations
22 period for the time period covered by the PAGA (which is defined as any time from one year
23 and 65 days prior to the commencement of this action until the commencement of trial in the
24 matter). The applicable limitations period is referred herein as “the PAGA Period.”

25 3. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff also seeks to recover
26 civil penalties and reasonable attorney’s fees and costs. Plaintiff, by operation of law, has
27 standing and capacity to sue as a representative of the State of California. Plaintiff mailed
28 written notice of the specific provisions of the Labor Code that Defendants violated, including

the facts and theories to support the alleged violations, to the LWDA and to Defendant PAR Electrical Contractors, Inc. pursuant to Labor Code section 2699.3 on February 4, 2021. A true and correct copy of the notice is attached as **Exhibit A** and incorporated by this reference. Defendants did not provide notice of cure and the LWDA did not provide notice of investigation in the 65 days after the February 4, 2021 mailing of the PAGA notice

II.

JURISDICTION AND VENUE

4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants conduct business throughout the County of San Diego, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other similarly-situated employees within the State of California and San Diego County. Defendants employ numerous employees in San Diego County and in California generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of Civil Procedure.

5. Plaintiff alleges, on information and belief, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action the federal court. Plaintiff is also informed and believes that based on his rate of pay, his individual claims, including those individual PAGA claims, do not arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

6. Plaintiff KOREY CURLEY is former employee of Defendants. At all relevant

1 times, he was employed by Defendants as a non-exempt electrical installer in the county of San
2 Diego. His employment ended on approximately December 11, 2020.

3 7. Plaintiff alleges that all other non-exempt hourly electrical installers in the State
4 of California worked under Defendants' policies and as a result, suffered the same violations
5 alleged herein.

6 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant
7 PAR ELECTRICAL CONTRACTORS, INC. is a Missouri corporation that provides electrical
8 services to its customers throughout California.

9 9. Pursuant to California Labor Code sections 558, 558.1, and 1197.1, Defendants
10 are employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
11 violated, or caused to be violated, any provision regulating minimum wages or hours and days
12 of work in the applicable order of the Industrial Welfare Commission, as well as California
13 Labor Code sections 203, 226, 226.7, 1193.6, and 1194, and as such, are liable as employers of
14 Plaintiff for such violations pursuant to California Labor Code sections 558, 558.1, and 1197.1.

15 10. At all times relevant, PAR Electrical Contractors, Inc. did, and does, transact and
16 conduct business in the state of California, including, but not limited to, within the jurisdiction
17 of the Court. At all times relevant, PAR Electrical Contractors, Inc. was Plaintiff's employer for
18 purposes of the California wage and hour laws at issue in this action.

19 11. Plaintiff is unaware of the true names, capacities, relationships, and extent of
20 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
21 and believes, and based on that alleges, that DOE Defendants are legally responsible for the
22 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
23 amend this complaint when their true names and capabilities are ascertained.

24 12. Plaintiff is informed and believes and, based thereon alleges, that each
25 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
26 other similarly-situated and aggrieved employees, and exercised control over their wages,
27 hours, and working conditions. Plaintiff is informed and believes, and based thereon alleges,
28 that each Defendant acted 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 is legally attributable to the other Defendants.

IV.

GENERAL ALLEGATIONS

13. During the Class and PAGA Periods, Plaintiff and similarly-situated and aggrieved employees were employed by Defendants and each of them, including Doe Defendants, within the state of California.

14. During the Class and PAGA Periods, Plaintiff and other similarly-situated and aggrieved employees of Defendants worked under the same policies, practices, and procedures relating to their employment, including those governing wage statements, recordkeeping, payment of wages, and provisions of meal and rest periods applicable to Defendants' business.

15. During the Class and PAGA Periods, Defendants maintained common policies and practices of failing to pay Plaintiff and other similarly-situated and aggrieved employees all minimum, regular, and overtime wages for all hours worked or under the Defendants' control.

16. During the Class and PAGA Periods, Defendants did not pay any wages to Plaintiff and other similarly-situated and aggrieved employees for time they worked or were under Defendants' control off-the-clock, including time spent attending briefings, filling out patients' charts, and working during meal periods. To the extent this time was overtime or double-time, Defendants failed to pay overtime and double-time wages.

17. During the Class and PAGA Periods, Defendants had a consistent policy which did not provide Plaintiff and other similarly-situated and aggrieved employees with duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and failed to pay such employees one (1) hour of pay at their regular rate of compensation for each workday a meal period was not authorized or permitted, as required by California wage and hour laws. Plaintiff and other similarly-situated and aggrieved employees regularly worked shifts of more than 10 hours per day and were not provided with a second off-duty meal period of 30 minutes for each shift of more than 10 hours, which began before the end of the tenth hour of work. When meal periods were provided, they

1 were often non-compliant because they were short, late, or required to be taken on the premises.
2 On information and belief, Plaintiff and other similarly-situated and aggrieved employees did
3 not waive their right to receive meal periods, including their right to a second meal period on
4 eligible workdays.

5 18. During the Class and PAGA Periods, Defendants had a consistent policy which
6 did not authorize or permit Plaintiff and other similarly-situated and aggrieved to receive duty-
7 free rest periods of at least ten (10) minutes per four (4) hours, or major fraction, worked, and
8 failed to pay such employees one (1) hour of pay at their regular rate of compensation for each
9 workday a rest period was not authorized or permitted, as required by California wage and hour
10 laws. Furthermore, Plaintiff and other similarly-situated and aggrieved employees regularly
11 worked shifts over 10 hours per day and were not provided with a third duty-free rest period of
12 10-minutes for each shift over 10 hours.

13 19. During the Class and PAGA Periods, Defendants consistently and knowingly
14 failed to provide accurate itemized wage statements to Plaintiff and other similarly-situated and
15 aggrieved employees. Wage statements issued by Defendants did not include, among other
16 things, the correct total hours worked, nor the correct number of hours worked at each hourly
17 rate. The total hours worked were incorrectly listed because off-the-clock time spent under
18 Defendants' control was not included. Further, Defendants added fabricated hours to Plaintiff's
19 and other similarly-situated and aggrieved employees' wage statements to make it appear as
20 though 30-minute duty-free meal periods were taken, when in fact they were not. And because
21 Plaintiff and other similarly-situated and aggrieved employees were not paid overtime and
22 double-time wages in compliance with California law, the number of hours listed at the
23 overtime rate and double-time rates were incorrect. Further, overtime and double-time rates
24 were improperly calculated and so improperly listed in the wage statements. As a result, the
25 wage statements that Defendants furnished to Plaintiff and other similarly-situated and
26 aggrieved employees were incomplete and inaccurate and failed to comply with the
27 requirements of Labor Code section 226(a).

20. During the Class and PAGA Periods, Defendants had a consistent policy of failing to pay Plaintiff and other similarly-situated and aggrieved employees all wages due upon separation, in violation of California state wage and hour laws. Because Defendants failed to pay all minimum and overtime wages and meal and rest period premiums owed during Plaintiff's and other similarly-situated and aggrieved employees' employment, final wages paid to Plaintiff and other similarly-situated and aggrieved employees were underpaid, as they did not include these amounts.

21. Defendants' violations of California law, described above, stem from Defendants' centrally devised and uniformly implemented unlawful and unfair policies and practices.

22. Plaintiff, on behalf of himself and other similarly-situated and aggrieved employees, seeks injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants as a result of the violations alleged. Business and Professions Code §§ 17200, *et seq.*

V.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of himself and all others similarly-situated as a class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff Class are defined as follows:

All individuals employed by Defendants in the State of California as non-exempt hourly electrical installation employees and/or any other similar job title or position at any time four years prior to the filing of this complaint until the time of trial in this action (the "Class" or "Plaintiff Class").

24. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass One ("Minimum Wage Subclass"): All members of the Plaintiff Class who performed work, were subject to Defendants' control, or were suffered or permitted to work, for any period of time while not clocked in.

25. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Two ("Overtime Subclass"): All members of the Plaintiff Class who worked over eight (8) hours of work in one day or

forty (40) hours in one week.

26. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Three (“First Meal Period Subclass”): All members of the Plaintiff Class who worked one or more periods in excess of five (5) hours.

27. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Four (“Second Meal Period Subclass”): All members of the Plaintiff Class who worked one or more periods in excess of ten (10) hours.

28. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Five (“Rest Period Subclass”): All members of the Plaintiff Class who worked one or more periods in excess of three and one-half (3.5) hours.

29. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Six (“Wage Statement Subclass”): All members of the Plaintiff Class who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

30. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Seven (“Waiting Time Subclass”): All members of the Plaintiff Class whose employment ended at any time during the three years preceding the filing of the Complaint.

31. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Eight (“Records Subclass”): All members of the Plaintiff Class whose total daily hours worked or start or end time of work periods or meal periods was not accurately recorded by Defendants.

32. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff Subclass Nine (“The UCL Subclass”): All members of the Plaintiff Class who were subject to Defendants’ unlawful or unfair business acts or practices and who may be owed restitution of unpaid wages.

33. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

34. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

35. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

36. **Numerosity**: The potential members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit the parties and this Court. The number of Class and Subclass members is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants' records.

37. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

38. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses, will fairly protect the interests of the Class and Subclass members and has no interests antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent, skilled, and experienced in litigating large employment law class actions.

39. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. A Class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this action that precludes its maintenance as a class action.

40. The predominating common questions of law and fact include:

- a. Whether Defendants have a policy and practice of failing to pay wages for time spent under the Defendants' control when not clocked-in;

- b. Whether Defendants have a policy or practice of failing to fully pay overtime compensation for hours worked in excess of eight per day or forty per week;
- c. Whether Defendants have a policy or practice of failing to pay overtime compensation at the correct overtime rate;
- d. Whether Defendants have a policy or practice of failing to provide compliant meal periods;
- e. Whether Defendants have a policy or practice of failing to authorize or permit compliant rest periods;
- f. Whether Defendants have a policy or practice of failing to provide accurate itemized wage statements;
- g. Whether the Plaintiff Class and Waiting Time Subclass Members are entitled to waiting time penalties under Section 203;
- h. Whether Defendants have a policy or practice of failing to maintain accurate records;
- i. Whether Defendants violated Sections 17200, *et seq.* of the Business and Professions Code; and
- k. Whether the Plaintiff Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Failure to Pay Minimum, Regular, and Overtime Wages
Labor Code §§ 510, 1194 and 1194.2; IWC Wage Order(s)
(By Plaintiff and each Member of the Minimum and Overtime Wages Subclass)**

41. Plaintiff incorporates the preceding paragraphs of this Complaint.

42. By failing to pay at least minimum wages for all hours worked, Defendants violated Labor Code section 1194 and the “Minimum Wages” section of the applicable IWC Wage Order(s).

43. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully unpaid minimum wages, with interest.

44. By failing to pay correctly calculated overtime wages for hours worked in excess of eight (8) in one day or forty (40) in one week and correctly calculated double-time wages for hours worked in excess of twelve (12) in one day, Defendants violated Labor Code sections 510 and 1194, and the “Hours and Days of Work” section of the applicable IWC Wage Order(s).

45. Defendants’ unlawful acts deprived Plaintiff, the Class, and the Minimum Wages and Overtime Wages Subclasses of minimum and overtime wages in amounts to be determined at trial, and they are entitled to recover these wages, liquidated damages, interest, attorneys’ fees, and costs.

SECOND CAUSE OF ACTION
Failure to Provide Required Meal Periods
Labor Code §§ 226.7 and 512; IWC Wage Order(s)
(By Plaintiff and each Member of the First and Second Meal Period Subclasses)

46. Plaintiff incorporates the preceding paragraphs of this Complaint.

47. By failing to: provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees’ regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512 and the “Meal Periods” section of the applicable IWC Wage Order(s).

48. Defendants’ unlawful acts deprived Plaintiff, the Class, and the First and Second Meal Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys’ fees, and costs.

THIRD CAUSE OF ACTION
Failure to Provide Required Rest Periods
Labor Code § 226.7 and IWC Wage Order(s)
(By Plaintiff and each Member of the Rest Period Subclass)

49. Plaintiff incorporates the preceding paragraphs of this Complaint.

1 50. By failing to authorize and permit Plaintiff and Class Members a paid rest period
2 of at least 10 minutes for every four hours or major fraction worked per day, and by failing to
3 provide premium wages at the regular rate of pay when not permitted or authorized, Defendants
4 willfully violated the provisions of Labor Code section 226.7 and the “Rest Periods” section of
5 the applicable IWC Wage Order(s).

6 51. Defendants’ unlawful acts deprived Plaintiff, the Class, and the Rest Period
7 Subclass of premium wages in amounts to be determined at trial, and they are entitled to recover
8 these amounts, along with interest, attorneys’ fees, and costs.

9 **FOURTH CAUSE OF ACTION**
10 **Failure to Provide Accurate Wage Statements**
11 **Labor Code § 226**
12 **(By Plaintiff and each Member of the Wage Statement Subclass)**

13 52. Plaintiff incorporates the preceding paragraphs of this Complaint.

14 53. All employers must provide employees with accurate, itemized wage statements
15 showing, among other things, total hours worked, and all applicable hourly rates in effect in a
16 pay period and the corresponding number of hours worked at each rate. Labor Code § 226.

17 54. Defendants knowingly failed to comply with these provisions by, among other
18 things, failing to provide accurate itemized wage statements showing all correct total hours
19 worked; all correct hourly rates and the corresponding number of hours worked at each rate; and
20 meal and rest period premiums earned.

21 55. As a consequence of Defendants’ knowing and intentional failure to comply with
22 Labor Code section 226(a), Plaintiff, the Class, and Wage Statement Subclass members are
23 entitled to recover the greater of actual damages or penalties not to exceed \$4,000 for each
24 employee with interest and attorneys’ fees and costs. Labor Code § 226(e).

25 **FIFTH CAUSE OF ACTION**
26 **Failure to Timely Pay Wages Due at Separation**
27 **Labor Code §§ 201-203**
28 **(By Plaintiff and each Member of the Waiting Time Subclass)**

56. Plaintiff incorporates the preceding paragraphs of this Complaint.

1 57. An employer who discharges an employee must pay all compensation due and to
2 that employee immediately upon discharge. Labor Code § 201. An employer must pay all
3 compensation due to an employee who quits within 72 hours. Labor Code § 201.

4 58. Because Defendants did not pay all earned wages during employment,
5 Defendants had a consistent policy of willfully failing to timely pay earned wages to former
6 employees. If an employer willfully fails to timely pay such wages the employer must, as a
7 penalty, continue to pay the subject employee's wages until paid or until an action is
8 commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

9 59. Waiting Time Subclass members are no longer employed by Defendants.

10 60. Defendants willfully failed to pay Waiting Time Subclass Members the sum due
11 at the time of their termination or within seventy-two (72) hours of their resignation, and failed
12 to pay those sums for thirty (30) days thereafter, entitling them to waiting time penalties.

13 **SIXTH CAUSE OF ACTION**
14 **Failure to Maintain Accurate Records**
15 **Labor Code § 1174; IWC Wage Order(s)**
 (By Plaintiff and each Member of the Records Subclass)

16 61. Plaintiff incorporates the preceding paragraphs of this Complaint.

17 62. Employers must maintain payroll records showing each employee's total daily
18 hours worked and wages paid for at least three years. Labor Code § 1174. The "Records"
19 section of the applicable IWC Wage Order(s) require employers to maintain accurate
20 information about each employee's time records, including when the employee begins and ends
21 each work period and meal period and the total daily hours worked.

22 63. Defendants knowingly failed to comply with these provisions by, among other
23 things, failing to accurately record employees' total daily hours worked and when they began
24 and ended their work and meal periods.

25 64. Defendants' unlawful acts damaged Plaintiff, the Class, and the Records
26 Subclass in amounts to be determined at trial, and they are entitled to recover these amounts,
27 along with interest, attorneys' fees, and costs.
28

SEVENTH CAUSE OF ACTION
Violation of the Unfair Competition Law
Bus. & Prof. Code §§ 17200 *et seq.*
(By Plaintiff and each Member of the UCL Subclass)

65. Plaintiff incorporates the preceding paragraphs of this Complaint.

66. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code sections 17200, *et seq.*, defines unfair competition to include any “unlawful,” “unfair,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code § 17200.

67. Defendants’ conduct constitutes unlawful business practices because Defendants violated the California Labor Code, including but not limited to sections 226.7 (meal and rest), 227.3 (vacation wages), and 510 and 1194 (minimum and overtime wages), and sections of the applicable Wage Order(s).

68. Defendants’ conduct constitutes unfair business practices because their denial of lawfully earned wages outweighs any utility of such practices.

69. As a result of Defendants’ unlawful and unfair conduct, Plaintiff and Class members suffered injury in fact.

70. Plaintiff and Class members seek declaratory and injunctive relief, restitution, and other appropriate equitable relief. Bus. & Prof. Code §§ 17203, 17204.

71. Plaintiff and the proposed Class are entitled to recover reasonable attorneys’ fees and costs incurred in bringing this action. Code of Civil Procedure § 1021.5.

72. This cause of action is brought as a cumulative remedy and is intended as an alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4) year period before the Complaint filing, and as the primary remedy during the fourth year before the Complaint filing. Business and Professions Code § 17205.

EIGHTH CAUSE OF ACTION
PAGA Penalties for Failure to Pay Minimum, Regular and Overtime Wages
(By Plaintiff and Aggrieved Employees)

73. Plaintiff incorporates the preceding paragraphs of this Complaint.

74. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to

the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Labor Code § 1194(a).

75. "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Labor Code § 2699(a).

76. "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Labor Code § 2699(f)(2).

77. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

78. Defendants failed to pay minimum, regular, and overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

79. Defendants' conduct violates Wage Order 4-2001, by failing to pay minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

NINTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Meal Periods
(By Plaintiff and Aggrieved Employees)

80. Plaintiff incorporates the preceding paragraphs of this Complaint.

81. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and a second meal

period at least 30 minutes for shifts of ten hours or more, which began before the end of the tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 5-2001.

82. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 5-2001.

83. During the PAGA Period, Defendants failed to provide compliant meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

TENTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Rest Periods
(By Plaintiff and Aggrieved)

84. Plaintiff incorporates the preceding paragraphs of this Complaint.

85. By failing to authorize and permit Plaintiff a rest period of at least 10 minutes for every four (4) hours or major fraction thereof worked per day, Defendants willfully violated provisions of Labor Code section 226.7 and Wage Order No. 5-2001.

86. By failing to provide one hour of pay at their regular rate of compensation when rest periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and Wage Order No. 5-2001.

87. During the applicable statutory period, Defendants failed to provide rest periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

ELEVENTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees)

88. Plaintiff incorporates the preceding paragraphs of this Complaint.

89. Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate

1 by the employee. Labor Code § 226(a).

2 90. Defendants intentionally and willfully violated Section 226 by failing to provide
3 wage statements which included information called for in Section 226(a)(1) (2), (5) and (9).

4 91. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
5 violations of Labor Code section 226. Labor Code § 2699.5.

6 92. Labor Code section 226.3 provides for civil penalties for violations of Section
7 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each
8 subsequent violation.

9 **TWELFTH CAUSE OF ACTION**
10 **PAGA Penalties for Failure to Pay Wages Due at Termination**
11 **(By Plaintiff and Aggrieved Employees)**

12 93. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 94. Labor Code sections 201-202 require employers to pay wages earned by
14 employees within certain times. Defendants had a consistent and uniform policy, practice, and
15 procedure of willfully failing to pay the earned wages of Defendants' former employees. An
16 employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an
17 employee's wages for 30 days, or until back wages are paid in full. Labor Code section 203.

18 95. Defendants failed to pay Plaintiff and other aggrieved employees all final wages
19 due at termination, as required by Labor Code sections 201-202.

20 96. Defendants failed to pay Plaintiff and other aggrieved employees penalties due
21 them based on Defendants' failure to pay all final wages in a timely manner as required by
22 Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an
23 employee was not reimbursed, and \$200 for each subsequent violation.

24 **THIRTEENTH CAUSE OF ACTION**
25 **PAGA Penalties for Failure to Maintain Accurate Records**
26 **(By Plaintiff and Aggrieved Employees)**

27 97. Plaintiff incorporates the preceding paragraphs of this Complaint.

28 98. Defendants violated Labor Code section 1174 and 1174.5 and the IWC Wage
Orders, for failure to maintain accurate wage statement records, including all hours worked and
wages paid at the appropriate rate to Plaintiff and aggrieved employees during the PAGA

1 Period.

2 99. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties
3 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to
4 under Labor Code section 2699(f), which provides a penalty for those provisions of the Labor
5 Code for which a civil penalty is not specifically provided

6 **PRAYER FOR RELIEF**

7 Plaintiff prays for the following relief on behalf of himself and similarly-situated and
8 aggrieved employees against Defendants:

9 1. Certification of this action as a class action and appointment of Plaintiff and
10 Plaintiff's counsel to represent the Plaintiff Class;

11 2. Provision of class notice to Class members as defined above;

12 3. A declaratory judgment that Defendants knowingly and intentionally violated:

13 a. California Labor Code sections 510 and 1194 by failing to pay
14 minimum, regular and overtime wages;

15 b. California Labor Code sections 226.7 and 512 by failing to provide
16 meal and rest periods;

17 c. California Labor Code section 226 by failing to provide accurate,
18 itemized wage statements;

19 d. California Labor Code section 203 by failing to pay waiting time
20 penalties;

21 f. California Labor Code section 1174 by failing to maintain accurate
22 records; and

23 g. California Business and Professions Code sections 17200, *et seq.*
24 by engaging in unlawful or unfair business practices.

25 4. That Defendants be permanently enjoined from engaging in the unlawful or
26 unfair acts and practices alleged;

27 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff
28 and Class members, in an amount according to proof, pursuant to California Business and

1 Professions Code section 17203;

2 6. Compensatory damages according to proof;

3 7. Statutory damages as provided under the Labor Code;

4 8. Liquidated damages as provided under the Labor Code;

5 9. Pre-judgment interest on all sums collected;

6 10. Reasonable attorneys' fees and costs, pursuant to California Code of Civil
7 Procedure section 1021.5, and the California Labor Code, or other applicable law;

8 11. This action be maintained as a PAGA Representative Action, and Plaintiff and
9 his counsel be provided with enforcement capability as if the action were brought by the DLSE;

10 12. For recovery of civil penalties under Labor Code section 2699 for failure to pay
11 all minimum, regular, and overtime wages owed pursuant to Sections 512, 1194, according to
12 proof;

13 13. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for
14 failing to pay overtime wages for all hours worked;

15 14. For recovery of civil penalties under Labor Code section 2699 for failure to
16 provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

17 15. For recovery of civil penalties under Labor Code section 2699 for failure to pay
18 all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

19 16. For recovery of civil penalties under Labor Code section 2699 for failure to
20 authorize and permit rest periods, pursuant to Labor Code section 226.7(a), according to proof;

21 17. For recovery of civil penalties under Labor Code section 2699 for failure to pay
22 all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;

23 18. For recovery of civil penalties under Labor Code section 2699 for failing to
24 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3,
25 according to proof;

26 19. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
27 timely pay all final wages (and waiting time penalties) on time each pay period or upon
28 termination of employment pursuant to Labor Code sections 201-203;

20. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

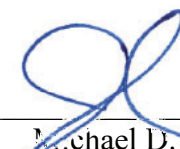
21. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i).

22. Costs of suit; and

23. Such other relief as the Court may deem appropriate.

**COHELAN KHOURY & SINGER
NAKASE LAW FIRM, INC.**

Dated: May 4, 2021

By: 

~~Michael D. Singer, Esq.~~

J. Jason Hill, Esq.

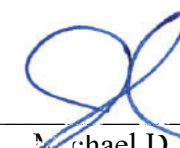
Attorneys for Plaintiff Corey Curley, on behalf of himself and other similarly-situated and aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

**COHELAN KHOURY & SINGER
NAKASE LAW FIRM, INC.**

Dated: May 4, 2021

By: 

~~Michael D. Singer, Esq.~~

J. Jason Hill, Esq.

Attorneys for Plaintiff Corey Curley, on behalf of himself and other similarly-situated and aggrieved employees

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

February 4, 2021

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

PAR Electrical Contractors, Inc.
2800 Post Oak Blvd., Suite 2600
Houston, TX 77056

PAR Electrical Contractors, Inc.
4770 North Belleview Avenue, Ste. 300
Kansas City, MO 64116

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), sent by Korey R. Curley on behalf of himself and all other aggrieved employees of PAR Electrical Contractors, Inc. in the State of California, as an individual and as proposed a Representative of the State of California

To PAGA Administrator and to PAR Electrical Contractors, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698, *et seq.*, Mr. Korey R. Curley (“Curley” or “Claimant”) gives notice of his intent to bring an action against his former employer, PAR Electrical Contractors, Inc. (“PAR Electrical” or “Employer”). Claimant submits this notice on behalf of himself individually, and on behalf of all current and former “aggrieved employees” employed by Employer as non-exempt hourly electrical installation employees or similar job title in California, to recover civil penalties for:

- 1) Violations of Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001 (as amended), section 11, for failure to provide compliant meal periods, or one hour of pay in lieu thereof;¹
- 2) Violations of Labor Code section 226.7 and IWC Wage Order 4-2001 (as amended), section 12, for failure to provide timely and compliant paid ten-minute rest periods for every four hours worked (or major fraction thereof), or one hour of pay in lieu thereof;²
- 3) Violations of Labor Code sections 226(a) and 226.3 for failure to provide accurate and itemized wage statements showing all hours worked and applicable rates of pay;

¹ Claimant contends that based on DLSE Guidance, IWC Wage Order 4-2001 applies to his position.

² Claimant contends that based on DLSE Guidance, IWC Wage Order 4-2001 applies to his position.

- 4) Violations of Labor Code sections 203, 210, and 256 for failure to timely pay all wages due to terminated/separated employees; and
- 5) Violations of IWC Wage Order 4-2001 and Labor Code sections 558(a)(1) for civil penalty assessments only.

This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(A)(1) providing the Labor and Workforce Development Agency ("LWDA") the opportunity to investigate the alleged claims contained herein. If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a civil action for PAGA penalties on behalf of himself and all other aggrieved employees working at locations within the State of California during the applicable limitations period ("the PAGA Period") which runs *at least* one year prior to the date of this Notice to the commencement of trial in any pending action.

FACTUAL STATEMENT

Claimant was employed by PAR Electrical Contractors, Inc. as an hourly non-exempt employee ("electrical installer") in various areas throughout California, including Escondido, Vista, Rancho Cucamonga, Fontana, Beaumont, Lake Arrowhead, Palmdale, and Orange, California during the applicable limitations period and ended his employment on approximately December 11, 2020. For all statements made herein, Claimant suffered actual harm by the Employer's failure to provide all wages due and failure to provide meal and rest periods or one-hour pay premiums in lieu thereof, as well as derivative claims for failure to provide Claimant accurate itemized wage statements and timely pay for meal and rest period premiums.

During Claimant's employment, he paid hourly as a non-exempt employee and had a general work schedule with handwritten time entries between 6:00 a.m. and 4:00 p.m., 5 to 6 days per week. In addition to hourly pay, some form of per diem compensation was provided but it is unclear from wage statements how that time was calculated or taxed.

During Claimant's employment, and as observed of other aggrieved employees, the Employer failed to authorize, permit, or provide compliant 30-minute unpaid duty-free meal periods to himself and all other hourly employees, and also did not pay one-hour premiums for non-compliant meal periods. Employees tracked their time worked manually on handwritten timesheets. Claimant generally worked from 6:00 a.m. to 4:00 p.m. Claimant and other employees generally worked through meal periods, but as a matter of company pattern and practice were instructed to write that they took 30-minute lunch periods when in fact they had not. Rather, at supervisor and management direction, the employees were directed to leave early without any meal period but to write in that they left at 4:00 p.m. on workdays. Frequently, last-minute work demands simply resulted in zero minutes taken for a meal period, with 30 minutes deducted from work time, and the employees still leaving at or after 4:00 p.m.

Ten-minute rest periods were non-existent and for any breaks attempted, the employees generally were not relieved of all duties and were subject to recall by the Employer, or simply were not unable to take timely and compliant rest periods for every 4 hours worked. In all, PAR

Electrical is in violation of the requirements set forth in Labor Code sections 226.7, 510, 512, and 1194, and IWC Wage Order 4-2001 (as amended), sections 4, 11, and 12. Additionally, premium pay was never provided for any non-compliant meal or rest period. The employees were essentially instructed by PAR Electrical managers and supervisors to falsify timecard entries, to their detriment and wage loss.

Claimant alleges that records will show the Employer's policy was to never pay premiums for non-compliant meal or rest periods, whether under Labor Code sections 226.7(b), 512(a), or Wage Order 4-2001, sections 11 or 12. That was the Employer's uniform policy, without regard to legal requirements. There was nothing about the nature of the work that would hinder the requirement to provide off-duty meal or rest periods in a timely fashion.

By not paying meal or rest period premiums, the Employer failed to provide critical and legally required data on wage statements and/or pay stubs to Claimant and other aggrieved employees, as those premiums should have been itemized as pay on the wage statements. This violated Labor Code section 226(a) provisions throughout the relevant time period and subjects PAR Electrical to civil penalties pursuant to Labor Code section 226.3 as well as Labor Code section 2699(f)(2) for each pay period.

Finally, for current and separated employees who were not paid proper premiums for non-compliant break periods, PAR Electrical violated Labor Code sections 201-204 by failing to timely pay wages and Labor Code section 203. This results in liability for the Employer for civil penalties pursuant to Labor Code section 2699(f)(2) and Labor Code section 210 for each pay period during the applicable PAGA limitations period.

Claimant alleges that the Employer acted with direct, substantial, and supervisory control over all aspects of his employment and that of other aggrieved employees, such that each was a joint Employer of all aggrieved employees and, that at a minimum, was acting in accordance with all policies and directives of PAR Electrical.

Alternatively, pursuant to Labor Code section 558.1, all managing agents, officers, and directors, who are unknown at this point, are liable for civil penalties pursuant to Labor Code section 558.1 and applicable Industrial Welfare Commission ("IWC") Wage Orders.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and IWC Wage Order 4-2001 § 4)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 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. 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."

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or 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 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order by failing to pay Claimant and other aggrieved employees all wages. The Employer also failed to pay overtime wages in instances in the employees’ shift lengths would result in a shift length exceeding eight (8) hours.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE TIMELY AND COMPLIANT MEAL AND REST PERIODS
(Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, §§ 11-12)

Because Claimant and other aggrieved employees were hourly-paid, non-exempt employees, the Employer was required to comply with Labor Code sections 226.7 and 512, and Wage Order 4-2001, sections 11 and 12.

Labor Code section 226.7(b) provides:

“An Employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Labor Code section 226.7(c) provides:

“If an Employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the Employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code section 512(a) provides:

“(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

IWC Wage Order 4-2001, section 11(A) provides:

“No Employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the Employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

IWC Wage Order 4-2001, section 11(B) provides:

“If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

During all of Claimant’s employment, neither he nor any aggrieved employees were provided or authorized to take 30-minute duty-free meal periods. The policy and practice was to require employees to work through their meal period but still indicate on their timesheet that a meal period was taken. In addition, and aggravating, Employer failed to pay employees one-hour pay premiums at their regular rate of pay for any missed meal period even though the Employer knew it was depriving aggrieved employees of lawfully necessary lunch breaks.

Similarly, IWC Wage Order, section 12, requires that non-exempt employees are to be provided duty-free paid ten-minute rest periods for every four hours worked (or major fraction thereof). As indicated above, rest breaks were not provided or discouraged as a matter of pattern and practice, and when employees did seek to take ten-minute breaks, they were not relieved of all duty and subject to recall, and had no means of documenting the violation and request one hour of premium pay. As far as Claimant is aware, non-exempt employees working at job sites

were never provided premium pay for non-compliance with the applicable statutes and wage order concerning breaks.

Labor Code sections 226.7 and 512 are statutes specifically listed by Labor Code section 2699.5 as statutes for which violations of have been established to be subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

Violation of IWC Wage Order 4-2001, sections 11 and 12 is governed by the civil penalty provisions of Labor Code section 558(a):

(a) Any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period...

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

Accordingly, the Employer is subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according to proof. Claimant does not seek “underpaid wages” under Labor Code section 558, but only the \$50 and \$100 respective civil penalties for violations of the applicable Wage Order.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, and IWC Wage Order 4-2001 § 7)

Labor Code section 226(a) provides in pertinent part: “(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if 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, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

Labor Code section 226.3 provides in pertinent part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law...”

IWC Wage Order 4-2001, section 7 provides in pertinent part:

“(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request....

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.”

Here, the Employer failed entirely to maintain accurate records all pay and rates applied by failing systematically failing to pay meal and rest period one-hour pay premiums and list those wages on the aggrieved employee wage statements and pay stubs. Claimant is informed and believes that the Employer’s recordkeeping will show each and every violation electronically. Accordingly, the Employer’s policies and procedures resulted in inaccurate pay records which failed to account for all “hours worked” in violation of Labor Code section 226(a), subsections (1), (2), and (5) It also violated the applicable Wage Order, section 7, on required recordkeeping.

The practices described herein violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above.

Labor Code section 226.3 provides an additional recoverable penalty “in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The civil penalty assessments under Section 226.3 “**are in addition to any other penalty provided by law.**” [Emphasis added.]

Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations for each pay period that aggrieved employees were provided inaccurate wage statements.

**FAILURE TO TIMELY PAY ALL WAGES DUE TO TERMINATED/SEPARATED
EMPLOYEES**

(Labor Code §§ 203, 210, and 256)

Labor Code section 203 provides: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee, and (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

Labor Code section 203 is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above. Labor Code sections 210 and 256 provide an independent and non-cumulative basis to collect further civil penalties for the violations claimed herein.

Here, Claimant and other aggrieved employees who were subject to the above policies and practices of the Employer and who separated or were terminated from their employment within the applicable limitations period, were not paid all wages due in a timely manner as a result of Employer's failure to pay meal and rest period premiums for systematic non-compliance with Labor Code sections 512 and 226.7, and Wage Order Wage Order 4-2001, sections 11 and 12. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations.

**FAILURE TO MAINTAIN ACCURATE RECORDS AND UNDERPAYMENT OF
WAGES**

(IWC Wage Order 4-2001 and Labor Code § 558(a)(1))

As indicated above, IWC Wage Order 4-2001, section 7 requires payment of minimum, regular, and overtime wages, and requires the Employer to track and maintain accurate records of all hours worked. Based on the allegations above, the Employer's policies and practices led to the failure to pay all wages due, either at minimum wage, regular wages, and/or meal or rest period "premium" wages at the aggrieved employees' regular rate of pay for failure to provide compliant meal and rest periods during work shifts. Employer's policies and practices also violated the Wage Order's record keeping requirements.

Labor Code section 558(a) provides:

“(a) Any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid ...
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid....

As applied here, for each violation of the applicable IWC Wage Order provisions, Claimant is entitled to recover \$50 for the first violation and \$100 for each subsequent violation for all aggrieved employees in California impacted by the Employer's policies and practices. Based on recent authority of the California Supreme Court, Claimant **does not** seek underpaid wages, but solely seeks the civil penalty remedy as permitted by Labor Code 558(a).

CONCLUSION

Mr. Curley requests the LWDA initiate investigation of the violations described above. If the LWDA does not pursue enforcement within the time proscribed by law, Claimant will pursue claims for statutory and civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order, including all

California Labor and Workforce Development Agency
PAR Electrical Contractors, Inc.
Re: Korey R. Curley
February 4, 2021
Page | 11

available civil penalties set forth in Labor Code section 2699(f)(2) and Labor Code sections 558(a)(1)-(3).

Very truly yours,
COHELAN KHOURY & SINGER



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