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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

9
10 MIGUEL ATENCIO, on behalf of the
State of California, as a private attorney
11 general,

12 Plaintiffs,

13 vs.

14 STACHS LLC, a Limited Liability
Company; EAZE TECHNOLOGIES, INC.,
15 a Corporation; and DOES 1 through 50,
16 inclusive,

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18 Defendants.
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Case No. CGC-21-594467

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 233, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

10/09/2023

Clerk of the Court

BY: WILLIAM TRUPEK

Deputy Clerk

1 Plaintiff Miguel Atencio (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Stachs LLC, and Eaze Technologies,
8 Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
9 himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor
14 Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA –
20 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.
21 Nothing in this complaint should be construed as attempting to obtain any relief that would
22 not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Stachs LLC (“DEFENDANT”) is a limited liability company that at
25 all relevant times mentioned herein conducted and continues to conduct substantial business in
26 the state of California.

27 5. Defendant Eaze Technologies, Inc. is a corporation that at all relevant times
28

1 mentioned herein conducted and continues to conduct substantial business in the state of
2 California.

3 6. Stachs, LLC and Eaze Technologies, Inc. were the joint employers of
4 PLAINTIFFS as evidenced by company documents and pay stubs and are, therefore, jointly
5 responsible as employers for the conduct alleged herein, and are collectively referred to herein
6 as "DEFENDANT."

7 7. DEFENDANT is a cannabis marketplace and company that provides safe, legal
8 access via delivery to adults across California.

9 8. Plaintiff Atencio was employed by DEFENDANT from October of 2020 to
10 January 29, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
11 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
12 of minimum and overtime wages due for all time worked.

13 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General
15 Act, brings this Representative Action on behalf of the State of California with respect to
16 himself and all individuals who are or previously were employed by Stachs, LLC and/or Eaze
17 Technologies, Inc. in California and who were classified as non-exempt employees
18 ("AGGRIEVED EMPLOYEES") during the time period of March 18, 2020 until a date as
19 determined by the Court (the "PAGA PERIOD").

20 10. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
21 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
22 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
23 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
24 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
25 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
26 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
27 employees within the meaning of Labor Code § 2699, *et seq.*

28 11. The true names and capacities, whether individual, corporate, subsidiary,

1 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
2 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
3 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
4 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
5 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
6 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
7 responsible in some manner for one or more of the events and happenings that proximately
8 caused the injuries and damages hereinafter alleged.

9 12. The agents, servants and/or employees of the Defendants and each of them acting
10 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
11 agent, servant and/or employee of the Defendants, and personally participated in the conduct
12 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
13 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
14 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
16 agents, servants and/or employees.

17 THE CONDUCT

18
19 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
20 required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time
21 worked, meaning the time during which an employee is subject to the control of an employer,
22 including all the time the employee is suffered or permitted to work. DEFENDANT required
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES to work from time to time while they
24 were clocked out for what was supposed to be their off duty meal break. DEFENDANT
25 required PLAINTIFF and the AGGRIEVED EMPLOYEES to work off the clock without
26 paying them for all the time they performed duties while on their meal break, specifically by
27 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
28 expected PLAINTIFF and AGGRIEVED EMPLOYEES to complete on a daily and/or weekly

1 basis. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect
2 to time spent undergoing mandatory drug testing or any other testing and/or examination
3 required as a condition of employment. Further, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
5 wages, such that in the aggregate employees were underpaid wages as a result of
6 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As
7 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
8 overtime compensation by from time to time working without their time being accurately
9 recorded and without compensation at the applicable minimum wage and overtime rates.
10 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
11 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

12 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
14 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were from time to time required to perform work as ordered by DEFENDANT for more than
16 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
17 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal
18 period from time to time in which these employees were required by DEFENDANT to work ten
19 (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED EMPLOYEES
20 therefore forfeited meal breaks without additional compensation and in accordance with
21 DEFENDANT's corporate policy and practice.

22 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
23 were also required from time to time to work in excess of four (4) hours without being provided
24 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
25 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
26 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
27 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
28 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
2 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
5 Order requires employers to provide employees with off-duty rest periods, which the California
6 Supreme Court defined as time during which an employee is relieved from all work related
7 duties and free from employer control. In so doing, the Court held that the requirement under
8 California law that employers authorize and permit all employees to take rest period means that
9 employers must relieve employees of all duties and relinquish control over how employees
10 spend their time which includes control over the locations where employees may take their rest
11 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
12 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
13 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
14 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
15 not leave the work premises during their rest period. As a result of PLAINTIFF being required
16 to be present on the premises he was from time to time required by DEFENDANT to work
17 during what should of been his off duty rest period.

18 16. State law provides that employees must be paid overtime and meal and rest break
19 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
21 tied to specific elements of an employee's performance.

22 17. The second component of PLAINTIFF' and other AGGRIEVED EMPLOYEES'
23 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
24 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
25 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
26 hourly basis with incentive compensation when the employees met the various performance
27 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
28 overtime and premiums for meal and rest break violations to PLAINTIFF and other

1 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
2 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
3 premium pay for meal and rest break violations. Management and supervisors described the
4 incentive program to potential and new employees as part of the compensation package. As a
5 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
6 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
7 in an underpayment of overtime compensation and meal and rest break premium pay to
8 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

9 18. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES with complete and accurate wage statements which failed to show, among other
11 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
12 employer shall furnish each of his or her employees with an accurate itemized wage statement
13 in writing showing, among other things, gross wages earned and all applicable hourly rates in
14 effect during the pay period and the corresponding amount of time worked at each hourly rate.
15 Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(8) by failing to correctly
16 list the legal entity that was the employer of PLAINTIFF and other AGGRIEVED
17 EMPLOYEES. Aside, from the violations listed above, DEFENDANT failed to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

21 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . .earned by any person in any
22 employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
24 requires employers to pay employees all wages owed within seven (7) days of the close of the
25 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
26 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
27 payroll period.

28 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer

1 to collect or receive from an employee any part of wages theretofore paid by said employer to
2 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
3 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
4 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
5 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
6 and thereby failed to pay these employees all wages due at each applicable pay period and upon
7 termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek recovery of all illegal
8 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

9 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
10 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
11 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
12 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES at their base rates of pay.

14 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
15 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
16 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
17 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
18 2802, employers are required to indemnify employees for all expenses incurred in the course
19 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
21 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
22 directions of the employer, even though unlawful, unless the employee, at the time of obeying
23 the directions, believed them to be unlawful."

24 23. In the course of their employment PLAINTIFF and other AGGRIEVED
25 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
27 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
28 the cost associated with the use of their personal cellular phones and personal vehicles for

1 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
2 were required by DEFENDANT to use their personal cellular phones to respond to managers
3 while off the clock (which also results in minimum wage and overtime violations). As a result,
4 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
6 to, costs related to the use of their personal cellular phones and personal vehicles all on behalf
7 of and for the benefit of DEFENDANT.

8 24. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
10 a matter of company policy, practice and procedure, intentionally and knowingly failed to
11 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
12 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
13 payment for all time worked as required by California law which allows DEFENDANT to
14 illegally profit and gain an unfair advantage over competitors who complied with the law. To
15 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
16 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

17 25. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
18 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
19 to accurately calculate and record all missed meal and rest periods and failed to pay all
20 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
21 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
22 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
23 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
24 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
25 regulations promulgated thereunder as herein alleged.

26 26. All of the conduct and violations alleged herein occurred during the PAGA
27 AGGRIEVED EMPLOYEES. To the extent that any of the conduct and violations alleged
28 herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for

1 those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
2 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **JURISDICTION AND VENUE**

5 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10.

7 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
8 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
9 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
10 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
11 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
12 AGGRIEVED EMPLOYEES.

13
14 **FIRST CAUSE OF ACTION**

15 **For Violation of the Private Attorneys General Act**

16 **[Cal. Lab. Code §§ 2698, *et seq.*]**

17 **(By PLAINTIFF and Against All Defendants)**

18 29. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
19 herein, the prior paragraphs of this Complaint.

20 30. PAGA is a mechanism by which the State of California itself can enforce state
21 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
22 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
23 fundamentally a law enforcement action designed to protect the public and not to benefit private
24 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
25 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
26 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
27 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
28 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be

1 subject to arbitration.

2 31. PLAINTIFF, and such persons that may be added from time to time who satisfy
3 the requirements and exhaust the administrative procedures under the Private Attorney General
4 Act, brings this Representative Action on behalf of the State of California with respect to
5 himself and all individuals who are or previously were employed by Stachs, LLC and/or Eaze
6 Technologies, Inc. in California and who were classified as non-exempt employees
7 (“AGGRIEVED EMPLOYEES”) during the time period of March 18, 2020 until a date as
8 determined by the Court (the "PAGA PERIOD").

9 32. On March 18, 2021, PLAINTIFF gave written notice by electronic mail to the
10 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
11 employer of the specific provisions of this code alleged to have been violated as to Defendant
12 Stachs LLC as required by Labor Code § 2699.3. *See Exhibit #1*, attached hereto and
13 incorporated by this reference herein (PAGA Notice only without draft complaint). On June 1,
14 2023, PLAINTIFF gave amended written notice, adding Defendant Eaze Technologies, Inc.,
15 by electronic mail to the Agency and by certified mail to the employer of the specific provisions
16 of this code alleged to have been violated as required by Labor Code § 2699.3. *See Exhibit #2*,
17 attached hereto and incorporated by this reference herein. The statutory waiting period for
18 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
19 Section 2699.3, PLAINTIFF may pursue a representative civil action under PAGA pursuant to
20 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
21 EMPLOYEES as herein defined.

22 33. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
25 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
26 to pay overtime and sick pay wages, (e) failed to reimburse employees for required expenses,
27 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
28 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510,

1 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
2 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise
3 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
4 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
5 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:

13 A) Recovery of civil penalties as prescribed by the Labor Code Private
14 Attorneys General Act of 2004; and,

15 B) An award of attorneys' fees and cost of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code §2699.

17 Dated: October 9, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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21 By: /s/Norman B. Blumenthal
22 Norman B. Blumenthal
23 Attorneys for Plaintiff
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25
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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).