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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
13 Plaintiffs,

14 vs.

15 STACHS LLC, a Limited Liability Company;
and DOES 1 through 50, inclusive,

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17 Defendants.
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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

08/11/2021

Clerk of the Court

BY: ANGELICA SUNGA

Deputy Clerk

Case No. CGC-21-594467

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)

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

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

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

22 **THE PARTIES**

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

26 5. DEFENDANT is a cannabis marketplace and company that provides safe, legal
27 access via delivery to adults across California.
28

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

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

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
16 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
17 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
18 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
19 employees within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the other AGGRIEVED EMPLOYEES to work from time to time while they were clocked out for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by from time to time working without their time being accurately

1 recorded and without compensation at the applicable minimum wage and overtime rates.
2 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
3 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

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

14 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were also required from time to time to work in excess of four (4) hours without being provided
16 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
17 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
20 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
22 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
23 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
24 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
25 Order requires employers to provide employees with off-duty rest periods, which the California
26 Supreme Court defined as time during which an employee is relieved from all work related
27 duties and free from employer control. In so doing, the Court held that the requirement under
28 California law that employers authorize and permit all employees to take rest period means that

1 employers must relieve employees of all duties and relinquish control over how employees
2 spend their time which includes control over the locations where employees may take their rest
3 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
4 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
5 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
6 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
7 not leave the work premises during their rest period. As a result of PLAINTIFF being required
8 to be present on the premises he was from time to time required by DEFENDANT to work
9 during what should of been his off duty rest period.

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

14 15. The second component of PLAINTIFF' and other AGGRIEVED EMPLOYEES'
15 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
16 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
17 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
18 hourly basis with incentive compensation when the employees met the various performance
19 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
20 overtime and premiums for meal and rest break violations to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
22 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
23 premium pay for meal and rest break violations. Management and supervisors described the
24 incentive program to potential and new employees as part of the compensation package. As a
25 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
26 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
27 in an underpayment of overtime compensation and meal and rest break premium pay to
28 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

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

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

20 18. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
21 to collect or receive from an employee any part of wages theretofore paid by said employer to
22 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
23 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
24 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
25 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
26 and thereby failed to pay these employees all wages due at each applicable pay period and upon
27 termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek recovery of all illegal
28 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

1 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
2 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
3 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
4 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
5 AGGRIEVED EMPLOYEES at their base rates of pay.

6 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
7 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
8 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
9 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
10 2802, employers are required to indemnify employees for all expenses incurred in the course
11 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
12 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
13 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
14 directions of the employer, even though unlawful, unless the employee, at the time of obeying
15 the directions, believed them to be unlawful."

16 21. In the course of their employment PLAINTIFF and other AGGRIEVED
17 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
18 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
19 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
20 cost associated with the use of their personal cellular phones and personal vehicles for
21 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
22 were required by DEFENDANT to use their personal cellular phones to respond to managers
23 while off the clock (which also results in minimum wage and overtime violations). As a result,
24 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
26 to, costs related to the use of their personal cellular phones and personal vehicles all on behalf
27 of and for the benefit of DEFENDANT.

28 22. In violation of the applicable sections of the California Labor Code and the

1 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
2 a matter of company policy, practice and procedure, intentionally and knowingly failed to
3 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
4 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
5 payment for all time worked as required by California law which allows DEFENDANT to
6 illegally profit and gain an unfair advantage over competitors who complied with the law. To
7 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
8 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

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

18 24. All of the conduct and violations alleged herein occurred during the PAGA
19 AGGRIEVED EMPLOYEES. To the extent that any of the conduct and violations alleged
20 herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for
21 those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
22 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

23 24 **JURISDICTION AND VENUE**

25 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10.

27 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides

1 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
2 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
3 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
4 AGGRIEVED EMPLOYEES.

5 **FIRST CAUSE OF ACTION**

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

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

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

9 27. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

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

21 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
22 the requirements and exhaust the administrative procedures under the Private Attorney General
23 Act, brings this Representative Action on behalf of the State of California with respect to
24 himself and all individuals who are or previously were employed by DEFENDANT in
25 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
26 during the time period of March 18, 2020 until a date as determined by the Court (the "PAGA
27 PERIOD").

28 30. On March 18, 2021, PLAINTIFF gave written notice by electronic mail to the

1 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
4 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
5 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
6 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

7 31. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
10 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
11 to pay overtime and sick pay wages, (e) failed to reimburse employees for required expenses,
12 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
13 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510,
14 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
15 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise
16 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
17 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
18 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
19 the other AGGRIEVED EMPLOYEES.

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 **PRAYER FOR RELIEF**

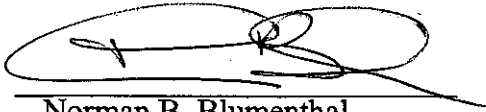
2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

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

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

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

10 Dated: August 2, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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13
14 By: 

15 Norman B. Blumenthal
16 Attorneys for Plaintiff
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