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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 20 2021

BY 
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herself and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JAHVENA ANN LANIER, on behalf of
herself and all other aggrieved employees,

Plaintiff,

vs.

AEROTEK, INC.; MONSTER BEVERAGE
CORPORATION; MONSTER ENERGY
COMPANY; and DOES 1-10, inclusive,

Defendants.

CASE NO.: CIVSB2114735

**FIRST AMENDED COMPLAINT
FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

(1) PAGA Civil Penalties for
Violations of Labor Code §§ 1194,
1197.1 and the Applicable Wage Order
for Failure to Pay All Minimum Wages;

(2) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order for
Failure to Pay All Overtime Wages;

(3) PAGA Civil Penalties for
Violations of Labor Code §§ 204, 210
and the Applicable Wage Order for
Failure to Timely Pay All Wages;

(4) PAGA Civil Penalties for
Violations of Labor Code §§ 226.7, 512
and the Applicable Wage Order for
Failure to Provide Timely and Compliant
Meal Periods;

(5) PAGA Civil Penalties for
Violations of Labor Code § 226.7, and
the Applicable Wage Order for Failure to
Provide Timely and Compliant Rest
Periods;

(6) PAGA Civil Penalties for Violations of Labor Code §§ 226(a), 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements;

(7) PAGA Civil Penalties for Violations of Labor Code §§ 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees;

(8) PAGA Civil Penalties for Violations of Labor Code §§ 2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses; and

(9) PAGA Civil Penalties for Violations of Labor Code §§ 6401 and 6403 for Failure to Furnish All Necessary Safety Devices and Safeguards.

Plaintiff JahVena Ann Lanier (“Plaintiff”), on behalf of herself and all others similarly aggrieved alleges as follows:

INTRODUCTION

1. Plaintiff is an individual who worked as a temporary worker for Defendants Aerotek, Inc., Monster Beverage Corporation Inc., Monster Energy Company, and Does 1 through 10, inclusive ("Defendants"). Plaintiff seeks to recover civil penalties for all California-based “aggrieved employees” during the “Relevant Time Period” (defined as from September 19, 2019 to the present per Emergency Rule No. 9 of the California Rules Of Court) who incurred wage and hour violations and losses as hereinafter described.

2. On March 2, 2021, and through an amended notice on September 10, 2021, Plaintiff gave notice of these claims to the (“LWDA”) and to the agent for service of process for each Defendant. Plaintiff has not received any response from the LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements under the PAGA.

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3. The relief sought by Plaintiff on behalf of herself and the aggrieved employees exceeds the minimal jurisdictional limits of the Superior Court and will be established by a preponderance of the evidence and will not require Plaintiff to prove by clear and convincing evidence or to prove beyond a reasonable doubt. Plaintiff is not required to prove by clear and convincing evidence or to prove beyond a reasonable doubt that the relief sought is in the public interest. The Court has personal jurisdiction over each of the parties because each of them is either citizens of this State, doing business in this State or otherwise have minimum contacts with this State.

4. Based on information and belief, Plaintiff alleges that this entire action arises solely under the laws of the State of California and applicable regulations of the health, safety and wages of employees residing in the State of California. Plaintiff alleges, on information and belief, that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal jurisdiction.

5. Venue is proper in this Court because, upon information and belief, Plaintiff
for Defendants in this county, Defendants transact business or have offices in this county,
acts and omissions alleged herein took place in this county.

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Plaintiff

6. Plaintiff JahVena Ann Lanier is a citizen of California who worked for Defendants the past year. Details regarding Plaintiff's precise hours, pay, and revenue generated for Plaintiff are available by reference to Defendant's records. Throughout Plaintiff's employment, Plaintiff and her co-workers were subjected to wage theft.

Defendants

7. Defendant Aerotek Inc. is a Maryland corporation doing business in the state of Virginia that supplies employees/workers to Monster Beverage Company and other entities.

8. Defendant Monster Beverage Corporation manufactures beverages in various locations in the United States and California.

9. Defendant Monster Energy Company manufactures beverages in various locations United States and California.

10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein

1 under the fictitious names DOES 1 through 10 but will seek leave of this Court to amend this
2 Complaint and serve such fictitiously named Defendants once their names and capacities become
3 known.

4 11. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted
5 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
6 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
7 attributable to the other defendant. Furthermore, Defendants in all respects acted as the employer
8 and/or joint employer of Plaintiff and the aggrieved employees.

9 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
10 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
11 1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
12 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
13 policy of Defendants.

14 13. At all relevant times, Defendants, and each of them, acted within the scope of such
15 agency or employment, or ratified each and every act or omission complained of herein. At all
16 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
17 and all the other Defendants in proximately causing the damages herein alleged.

18 14. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
19 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
20 occurrences and transactions alleged herein.

21 **GENERAL ALLEGATIONS**

22 15. At all relevant times mentioned herein, Defendants jointly employed Plaintiff and
23 other persons as non-exempt employees.

24 16. Defendants each jointly employed Plaintiff during the relevant time period.

25 17. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
26 herein, Defendants were advised by skilled lawyers, employees, and other professionals who were
27 knowledgeable about California's wage and hour laws, employment and personnel practices, and
28 the requirements of California law.

1 18. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
2 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

3 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
5 for all time worked (including minimum wages and overtime wages) and that they were not
6 receiving all wages earned for work that was required to be performed. For example, Defendants
7 required Plaintiff and aggrieved employees to work off-the-clock while donning and doffing
8 personal protective equipment when Plaintiff and aggrieved employees were under Defendants'
9 control. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved
10 employees were not paid all wages (including minimum wages and overtime wages) for all hours
11 worked.

12 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other aggrieved employees were entitled to receive all
14 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
15 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal
16 period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved
17 employees did not receive all meal periods or payment of one (1) additional hour of pay at
18 Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive a timely,
19 uninterrupted meal period. For example, on Friday, April 24, 2020, Plaintiff worked a shift longer
20 than five (5) hours and received a purported meal period after the end of her fifth hour of work.
21 Furthermore, Plaintiff did not receive meal break premium wages to compensate for Defendant's
22 failure to provide a timely meal period. Moreover, Defendants required Plaintiff and, on
23 information and belief, other aggrieved employees to sign purported meal period waivers at the
24 beginning of their employment. These waivers, however, are invalid because Defendants did not
25 sign said waivers, they were not signed voluntarily, and signing was a condition of employment.
26 See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal. App. 4th 220, 234.

27 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest

1 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
2 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage
3 Orders, Plaintiff and other aggrieved employees did not receive all rest breaks or payment of one
4 (1) additional hour of pay at Plaintiff's and other aggrieved employees' regular rate of pay when
5 a rest break was missed, interrupted, or on-duty.

6 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and members of the Class were entitled to receive itemized wage
8 statements that accurately showed the following information pursuant to the Labor Code: (1) gross
9 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned
10 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
11 provided that all deductions made on written orders of the employee may be aggregated and shown
12 as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
13 paid; (7) the name of the employee and only the last four digits of his or her social security number
14 or an employee identification number other than a social security number; (8) the name and address
15 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate by the employee. In
17 violation of the Labor Code, Plaintiff and other aggrieved employees were not provided with
18 accurate itemized wage statements because, amongst other reasons, such wage statements failed
19 to include all hours worked due to Defendants' off-the-clock donning and doffing policy as
20 described above.

21 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
23 wages during their employment, including for all wages earned. In violation of the California
24 Labor Code, Plaintiff and aggrieved employees did not receive payment of all wages within
25 permissible time periods.

26 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and aggrieved employees who separated from Defendants were
28 entitled to timely payment of wages upon separation of employment. In violation of the California

1 Labor Code, Plaintiff and these aggrieved employees did not receive payment of all wages
2 including, but not limited to, unpaid minimum and overtime wages, meal periods premiums, and
3 rest break premiums within permissible time periods. Further, as a separate and a non-derivative
4 claim, and upon information and belief, Defendants failed to pay final wages upon termination.
5 For example, Plaintiff's termination effective date according to Defendants' record was April 28,
6 2020; however, her last wage statement is dated April 30, 2020 and her wages were not received
7 by her until days later.

8 25. Finally, Plaintiff is informed and believes, and thereon alleges that Defendants
9 knew or should have known that Plaintiff and other aggrieved employees were entitled to
10 reimbursement for necessary expenditures, or otherwise should have been furnished necessary
11 safety devices and safeguards, incurred in connection with the performance and execution of their
12 job duties. In violation of the California Labor Code, Plaintiff and aggrieved employees were not
13 furnished or otherwise adequately reimbursed for necessary business expenses and safety devices,
14 including but not limited to masks, gloves, steel-toed boots, and any other Personal Protective
15 Equipment ("PPE") required to perform work for Defendants.

16 **FIRST CAUSE OF ACTION**

17 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
18 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
19 **FAILURE TO PAY ALL MINIMUM WAGES**

20 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

21 26. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
22 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
23 dated March 2, 2021 and September 10, 2021.

24 27. The Labor Code and the Wage Order provide that in the State of California an
25 employer must pay a minimum wage to an employee, which is eight dollars (\$8.00) per hour for
26 all hours worked effective January 1, 2008, nine dollars (\$9.00) per hour for all hours worked
27 effective July 1, 2014, ten dollars (\$10.00) per hour for all hours worked effective January 1, 2016,
28 ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017, eleven

1 dollars (\$11.00) per hour for all hours worked effective January 1, 2018, twelve dollars (\$12.00)
2 per hour for all hours worked effective January 1, 2019, and thirteen dollars (\$13.00) per hour for
3 all hours worked effective January 1, 2020.

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

9 29. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
10 employees of their rightfully earned minimum wage compensation, including overtime
11 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
12 to pay said compensation. During the relevant time period, Defendants paid Plaintiff and the
13 aggrieved employees less than minimum wages when, for example, Defendants required Plaintiff
14 and aggrieved employees to work off-the-clock while donning and doffing personal protective
15 equipment when Plaintiff and aggrieved employees were under Defendants’ control. To the extent
16 these hours do not qualify for the payment of overtime or doubletime, Plaintiff and aggrieved
17 employees were not being paid at least minimum wage for their work. Consequently, Plaintiff, on
18 behalf of herself and other aggrieved employees, intends to seek civil penalties pursuant to the
19 PAGA for the alleged violations.

20 30. Labor Code section 1197.1(a)(1) provides that: “For any initial violation that is
21 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
22 period for which the employee is underpaid. This amount shall be in addition to an amount
23 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
24 applicable penalties imposed pursuant to Section 203.”

25 31. Labor Code section 1191.1(a)(2) provides that: “For each subsequent violation for
26 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
27 pay period for which the employee is underpaid regardless of whether the initial violation is
28 intentionally committed. This amount shall be in addition to an amount sufficient to recover

1 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
2 imposed pursuant to Section 203.

3 32. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
4 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
5 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
6 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
7 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
8 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
9 dollars (\$100) for each underpaid employee for each pay period for which the employee was
10 underpaid.”

11 33. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
12 to Labor Code section 1197.1(a) for violations of statutes and subject to civil penalties for
13 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
14 according to proof.

15 34. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
16 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
17 labor laws and applicable regulations is determined to be in the public interest and consistent with
18 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
19 subject to Court approval.

20 **SECOND CAUSE OF ACTION**

21 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,**
22 **1194, 1198 AND THE APPLICABLE WAGE ORDER FOR**
23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 35. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
25 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
26 dated March 2, 2021 and September 10, 2021.

27 36. Labor Code section 510(a) states in pertinent part that: “Eight hours of labor
28 constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess

1 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
2 any one workweek shall be compensated at the rate of no less than one and one-half times the
3 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
4 compensated at the rate of no less than twice the regular rate of pay for an employee.”

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

10 38. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
11 violation of has been established to be subject to the default civil penalty provisions in Labor Code
12 section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for
13 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
14 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
15 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
16 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
17 per pay period for each subsequent violation.”

18 39. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
19 employees of their rightfully earned overtime compensation as a direct and proximate result of
20 Defendants’ failure to pay said compensation. Consequently, Plaintiff, on behalf of herself and
21 other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
22 violations.

23 40. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
24 Code section 558: “(a) Any employers or other person acting on behalf of an employer who
25 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
26 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
27 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
28 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid.”

3 41. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
4 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
5 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
6 to proof.

7 42. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
8 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
9 labor laws and applicable regulations is determined to be in the public interest and consistent with
10 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
11 subject to Court approval.

12 **THIRD CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE**
14 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

15 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

16 43. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
17 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
18 dated March 2, 2021 and September 10, 2021.

19 44. Labor Code section 204(a) provides: “All wages, other than those mentioned in
20 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
21 payable twice during each calendar month, on days designated in advance by the Employers as the
22 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
23 shall be paid for between the 16th and the 26th day of the month during which the labor was
24 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
25 month, shall be paid for between the 1st and 10th day of the following month.”

26 45. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
27 **independent and apart from, any other penalty provided in this article**, every person who fails
28 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,

1 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
2 hundred dollars (\$100) for each failure to pay each employee.... (2) For each subsequent violation,
3 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
4 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

5 46. This statute is listed in Labor Code section 2699.5 as a statute for which violation
6 of has been established to be subject to the default civil penalty provisions in Labor Code section
7 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil
8 penalty is specifically provided, there is established a civil penalty for a violation of these
9 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
10 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
11 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
12 per pay period for each subsequent violation.”

13 47. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
14 employees of their rightfully earned compensation, including overtime compensation and hours at
15 the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay said
16 compensation.

17 48. Consequently, Plaintiff, on behalf of herself and other aggrieved employees,
18 intends to seek civil penalties pursuant to the PAGA for the alleged violations.

19 49. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
20 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
21 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
22 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
23 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
24 pay period for which the employee was underpaid....; (2) For each subsequent violation, one
25 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
26 was underpaid.”

27 50. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
28 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations

1 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
2 to proof.

3 51. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section
4 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
5 labor laws and applicable regulations is determined to be in the public interest and consistent with
6 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
7 subject to Court approval.

8 **FOURTH CAUSE OF ACTION**

9 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512**

10 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**

11 **TIMELY AND COMPLIANT MEAL PERIODS**

12 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

13 52. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
14 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
15 dated March 2, 2021 and September 10, 2021.

16 53. Defendants were required to comply with Labor Code sections 226.7 and 512, and
17 the applicable Wage Order.

18 54. Labor Code section 226.7(b) provides: "An employer shall not require an employee
19 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
20 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
21 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

22 55. Labor Code section 226.7(c) provides: "If an employer fails to provide an employee
23 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an
24 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
25 Commission, the Occupational Safety and Health Standards Board, or the Division of
26 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
27 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
28 period is not provided."

1 56. Labor Code section 512(a) provides: “(a) An Employers shall not employ an
2 employee for a work period of more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total work period per day of the
4 employee is no more than six hours, the meal period may be waived by mutual consent of both the
5 Employers and employee. An Employers shall not employ an employee for a work period of more
6 than 10 hours per day without providing the employee with a second meal period of not less than
7 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
8 may be waived by mutual consent of the Employers and the employee only if the first meal period
9 was not waived.”

10 57. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
11 employees for work periods of more than five hours without a timely, uninterrupted, off-the-clock
12 meal period of not less than thirty minutes for each five-hour period worked, where they were free
13 from employer control, and failed to compensate them for such missed meal periods as required
14 by Labor Code § 226.7 and the applicable Wage Order. Further, Defendants required Plaintiff
15 and, on information and belief, other aggrieved employees to sign purported meal period waivers
16 at the beginning of their employment. These waivers, however, are invalid because Defendants
17 did not sign said waivers, they were not signed voluntarily, and signing was a condition of
18 employment. See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal. App. 4th 220, 234.
19 These policies, among others, have resulted in a denial of these employees’ rights to 30-minute
20 meal periods in violation of California law.

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

59. Violations of the Wage Orders are governed by the civil penalty provisions of Labor Code section 558: “(a) Any Employers or other person acting on behalf of an Employers 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.”

60. Accordingly, the Defendants are 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.

61. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

FIFTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7 AND THE
APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY
AND COMPLIANT REST PERIODS**

(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)

62. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated March 2, 2021 and September 10, 2021.

63. Labor Code section 226.7(b) provides: “No 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

1 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

2 64. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee
3 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an
4 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
5 Commission, the Occupational Safety and Health Standards Board, or the Division of
6 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
7 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
8 period is not provided.”

9 65. Here, based on the foregoing, Defendants employed aggrieved employees for work
10 periods of four hours or major fraction thereof without timely, uninterrupted, on-the-clock rest
11 periods of ten minutes where they were free of employer control, and failed to compensate them
12 for such missed rest periods, as required by Labor Code section 226.7 and the applicable Wage
13 Order.

14 66. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
15 2699.5 as statutes for which violations of have been established to be subject to the default civil
16 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
17 of this code except those for which a civil penalty is specifically provided, there is established a
18 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
19 violation, the person employs one or more employees, the civil penalty is one hundred dollars
20 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
21 (\$200) for each aggrieved employee per pay period for each subsequent violation.”

22 67. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
23 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
24 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
25 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
26 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
28 dollars (\$100) for each underpaid employee for each pay period for which the employee was

1 underpaid....”

2 68. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
3 Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations
4 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
5 to proof.

6 69. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
7 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
8 labor laws and applicable regulations is determined to be in the public interest and consistent with
9 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
10 subject to Court approval.

11 **SIXTH CAUSE OF ACTION**

12 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3 AND**
13 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
14 **ITEMIZED WAGE STATEMENTS**

15 **(By Plaintiff on behalf of all similarly aggrieved employees and against each Defendant)**

16 70. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
17 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
18 dated March 2, 2021 and September 10, 2021.

19 71. Labor Code section 226(a) provides in pertinent part: “(a) An employer,
20 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
21 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
22 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
23 gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units
24 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
25 provided that all deductions made on written orders of the employee may be aggregated and shown
26 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
27 paid, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate by the employee...”

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

9 73. Here, during Plaintiff and aggrieved employees’ employment with Defendants,
10 Defendants intentionally and knowingly failed to provide Plaintiff and aggrieved employees with
11 timely and accurate wage and hour statements showing, among other things, gross and net wages
12 earned.

13 74. Defendants systemically failed to provide such wage statements with accurate
14 information and engaged in a policy of failing to pay for all hours actually worked.

15 75. The aforementioned conduct violated Labor Code section 226(a). It also violated
16 the applicable Wage Order on required recordkeeping. Finally, the practices described herein
17 violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement
18 actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

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

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

27 78. Consequently, Plaintiff, on behalf of herself and other aggrieved employees, seeks
28 to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according

1 to proof and subject to Court approval.

2 79. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
3 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
4 enforcement of California labor laws and applicable regulations is determined to be in the public
5 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
6 according to proof and subject to Court approval.

7 **SEVENTH CAUSE OF ACTION**

8 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203**

9 **FOR FAILURE TO TIMELY PAY ALL WAGES DUE TO**

10 **TERMINATED/SEPARATED EMPLOYEES**

11 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

12 80. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
13 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
14 dated March 2, 2021 and September 10, 2021.

15 81. Labor Code section 201 provides in part: "If an employer discharges an employee,
16 the wages earned and unpaid at the time of discharge are due and payable immediately."

17 82. Labor Code section 202 provides in part: " If an employee not having a written
18 contract for a definite period quits his or her employment, his or her wages shall become due and
19 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
20 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
21 of quitting.

22 83. Labor Code section 203 provides: "If an employer willfully fails to pay, without
23 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
24 wages of an employee who is discharged or who quits, the wages of the employee shall continue
25 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
26 commenced; but the wages shall not continue for more than 30 days. An employee who secretes
27 or absents themselves or themselves to avoid payment to him or her, or who refuses to receive the
28 payment when fully tendered to him or her, including any penalty then accrued under this section,

1 is not entitled to any benefit under this section for the time during which he or she so avoids
2 payment.”

3 84. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for
4 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
5 Code section 2699(f)(2), cited above.

6 85. Here, Plaintiff and other aggrieved employees who were separated or were
7 terminated from their employment within the applicable limitations period were not paid all wages,
8 including meal and rest period premiums, and regular, minimum and overtime wages, due in a
9 timely manner including as detailed above.

10 86. Further, as a separate and a non-derivative claim, and upon information and belief,
11 Defendants failed to pay final wages upon termination. For example, Plaintiff’s termination
12 effective date according to Defendants’ record was April 28, 2020; however, her last wage
13 statement is dated April 30, 2020 and her wages were not received by her until days later.

14 87. Consequently, Plaintiff, on behalf of herself and other aggrieved employees, seeks
15 to recover civil penalties pursuant to the PAGA for the alleged violations per pay period in an
16 amount according to proof and subject to Court approval.

17 88. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
18 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
19 enforcement of California labor laws and applicable regulations is determined to be in the public
20 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
21 according to proof and subject to Court approval.

22 **EIGHTH CAUSE OF ACTION**

23 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 2800, 2802 AND**
24 **THE APPLICABLE WAGE ORDER FOR FAILURE TO REIMBURSE ALL**
25 **REASONABLE AND NECESSARY BUSINESS EXPENSES**

26 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

27 89. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
28 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA

1 dated March 2, 2021 and September 10, 2021.

2 90. California Labor Code section 2802(a) provides: “An employer shall indemnify his
3 or her employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
5 employer, even though unlawful, unless the employee, at the time of obeying the directions,
6 believed them to be unlawful.”

7 91. California Labor Code section 2802(b) provides: “All awards made by a court or
8 by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
9 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall
10 accrue from the date on which the employee incurred the necessary expenditure or loss.”

11 92. California Labor Code section 2802(c) provides: “For purposes of this section, the
12 term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited
13 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

14 93. California Labor Code section 2802(d) provides: “In addition to recovery of
15 penalties under this section in a court action or proceedings pursuant to Section 98, the
16 commissioner may issue a citation against an employer or other person acting on behalf of the
17 employer who violates reimbursement obligations for an amount determined to be due to an
18 employee under this section. The procedures for issuing, contesting, and enforcing judgments for
19 citations or civil penalties issued by the commissioner shall be the same as those set forth in Section
20 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.”

21 94. Violations of the Wage Orders are governed by the civil penalty provisions of
22 Labor Code section 558: “(a) Any Employers or other person acting on behalf of an Employers
23 who violates, or causes to be violated, a section of this chapter or any provision regulating hours
24 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
25 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
26 for each pay period for which the employee was underpaid (2) For each subsequent violation, one
27 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
28 was underpaid in addition to an amount sufficient to recover underpaid wages.”

1 95. California Labor Code section 1197.1 provides: “(1) For any initial violation that
2 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
5 applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the
6 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
7 period for which the employee is underpaid regardless of whether the initial violation is
8 intentionally committed. This amount shall be in addition to liquidated damages pursuant to
9 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

10 96. Business expenses incurred by employees for work are not waivable, and
11 Defendants are liable if the expenses were required in order to perform work. Here, Plaintiff and
12 other aggrieved employees did not receive adequate reimbursement for necessary business
13 expenses, including but not limited to reimbursement for masks, gloves, and any other PPE.

14 97. As a result of Defendants’ conduct, Plaintiff, on behalf of herself and other
15 aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged failure
16 to pay business-related expenses, in an amount according to proof and subject to Court approval.

17 98. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
18 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
19 enforcement of California labor laws and applicable regulations is determined to be in the public
20 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
21 according to proof and subject to Court approval.

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1 **NINTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 6401 AND 6403**

3 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO FURNISH ALL**

4 **NECESSARY SAFETY DEVICES AND SAFEGUARDS**

5 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

6 99. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated March 2, 2021 and September 10, 2021.

9 100. Labor Code Section 6401 provides in pertinent part that, “Every employer shall
10 furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods,
11 operations, and processes which are reasonably adequate to render such employment and place of
12 employment safe and healthful.”

13 101. Labor Code Section 6403 provides in pertinent part that, “No employer shall fail or
14 neglect to do any of the following: (a) To provide and use safety devices and safeguards reasonably
15 adequate to render the employment and place of employment safe.”

16 102. Violations of the Wage Orders are governed by the civil penalty provisions of
17 Labor Code section 558: “(a) Any Employers or other person acting on behalf of an Employers
18 who violates, or causes to be violated, a section of this chapter or any provision regulating hours
19 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
20 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
21 for each pay period for which the employee was underpaid (2) For each subsequent violation, one
22 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
23 was underpaid in addition to an amount sufficient to recover underpaid wages. ”

24 103. Here, Plaintiff was required to make use of steel-toed boots, masks, gloves, and
25 other PPE in order to safely perform their job duties, however, such safety devices and safeguards
26 were not furnished by Defendants. Rather Plaintiff, and on information and belief, other aggrieved
27 employees were required to purchase such safety devices and safeguards without reimbursement
28 by Defendants.

104. Accordingly, Defendants are 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.

105. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For civil penalties pursuant to PAGA, 75% of which will be paid to the Labor Workforce Development Agency and 25% of which will be distributed to the aggrieved employees;
2. For reasonable attorneys' fees under the California Labor Code and any other statutes, including California Labor Code of Civil Procedure § 1021.5 and/or California Labor Code § 2699(g);
3. For costs of the suit incurred herein;
4. For pre- and post-judgment interest at the prevailing statutory rate;
5. For such equitable relief as the Court may deem just and proper; and
6. For such other relief as the Court may deem proper.

DATED: September 17, 2021

LEBE LAW, APLC

By: _____

Jonathan M. Lebe

Attorney for Plaintiff JahVena Ann Lanier,
individually and on behalf of all others similarly
situated

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within entitled action; my business address is 777 S. Alameda Street, Los Angeles, CA 90021.

On September 17, 2021 I served the foregoing **"First Amended Complaint For Penalties Pursuant to Private Attorney General Act"** on the interested parties, by the method of service indicated specific below:

Marc. P. Miles
mmiles@shb.com

Laura M. Booth
lbooth@shb.com

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P.C.

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Los Angeles, CA 90067
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Facsimile: 310.553.2165

☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: September 17, 2021


Zachary Gershman