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Superior Court of California

County of Fresno

By: C. York, Deputy

Attorneys for Plaintiff JOSEPH GOMEZ, an individual on his own behalf,
and on behalf of all similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JOSEPH GOMEZ, an individual on his own
behalf, and on behalf of all others similarly
situated,

Plaintiff,

v.

LITTLE ROCK MANAGEMENT, INC. DBA
ARBY'S, a California corporation;
KOOROSH ZAGHI, an individual; and DOES
1 through 25, inclusive,

Defendant.

CASE NO.: 22CECG00013

REPRESENTATIVE ACTION

COMPLAINT FOR

**1) PAGA PENALTIES PURSUANT
TO LABOR CODE 2698-2699 *et. seq.***

**2) FAILURE TO PRODUCE
EMPLOYEE RECORDS UPON
REQUEST LABOR CODE
SECTION § 1198.5(k)**

Plaintiff, JOSEPH GOMEZ, an individual on his own behalf, on behalf of the people of
the State of California and as an “aggrieved employee” acting as private attorney general under
the Labor Code Private Attorneys General Act of 2004 §2699, et sea. (the “PAGA”) only, alleges
on information and belief, except upon his own personal knowledge, the following:

1 **INTRODUCTION**

2 1. Plaintiff brings this action against Defendant, Little Rock Management, Inc. dba
3 Arby' ("Little Rock"), Koorosh Zaghi ("Zaghi"), DOES 1 to 25 (collectively hereinafter
4 "Defendants"), and any subsidiaries or affiliated companies on behalf of herself and on behalf of
5 all current and former similarly situated aggrieved employees who work or worked for
6 Defendant. Plaintiff does not seek to recover anything other than penalties as permitted by
7 California Labor Code §2699.

8 2. California has enacted the PAGA to permit individuals to bring an action on
9 behalf of themselves and on behalf of others similarly situated "(Aggrieved Employees)" for
10 PAGA penalties only, which is the precise and sole nature of this action.

11 3. Accordingly, Plaintiff seeks to obtain all applicable relief for Defendant's
12 violations under the PAGA and solely for relief as permitted by PAGA – that is penalties and
13 any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should
14 be construed as attempting to obtain any relief that would not be available in a PAGA only action.

15 **JURISDICTION AND VENUE**

16 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure
17 sections 395 and 410.10. Plaintiff is a resident of California and worked for Defendant in the
18 state of California, in the County of Fresno. Defendant conducts business in the State of
19 California including in Fresno County, CA and the unlawful acts alleged herein have a direct
20 effect on Plaintiff and similarly situated Aggrieved. Employees Aggrieved are, and/or was,
21 employed within the State of California and within the County of Fresno.

22 **THE PARTIES**

23 5. Plaintiff, JOSEPH GOMEZ ("Gomez" or "Plaintiff"), is a resident of Fresno,
24 California and at all relevant times worked for Defendant in Fresno, California in the County of
25 Fresno. During the relevant statutory period, he was employed by Defendant as a non-exempt
26 manager from on or about May 1, 2019 to on or about March 25, 2021.

27 6. At all times relevant to this Complaint, Defendant LITTLE ROCK is and was a
28 California corporation, conducting regular business throughout California, operating restaurants

1 where it employed Plaintiff and the Aggrieved Employees.

2 7. At all times relevant to this Complaint, Defendant KOOROSH ZAGHI (“ZAGHI”)
3 is an adult male individual who, based on information and belief, owns and manages several
4 restaurants under corporation LITTLE ROCK.

5 8. Plaintiff is informed and believes and alleges thereon, that ZAGHI currently resides
6 in the State of California.

7 9. Plaintiff is currently unaware of the true names or capacities of all the Defendants
8 sued herein under the fictitious names DOES 1–25, inclusive, but prays for leave to amend and
9 serve such fictitiously-named Defendant pursuant to California Code of Civil Procedure section
10 474 once their names and capacities become known.

11 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1–25, inclusive,
12 are the partners, agents, owners, shareholders, managers, principals or employees of Defendant
13 and/or and were acting on behalf of Defendant.

14 **GENERAL ALLEGATIONS**

15 11. Upon information and belief, Defendant employs and have employed Plaintiff and
16 similarly situated individuals who worked as hourly compensated, non-exempt managers, cooks,
17 servers, and other similar positions (the “Aggrieved Employees”) at their restaurants throughout
18 the State of California.

19 12. During the relevant statutory period, Plaintiff and the Aggrieved Employees were
20 frequently unable to take timely and compliant meal breaks due to a heavy workload and lack of
21 adequate staffing. Oftentimes Plaintiff would clock out for a meal break but continue to
22 work. When Plaintiff did receive a 30-minute meal break, he was pressured to not leave the
23 premises in case other employees needed coverage. It was common for Plaintiff and the
24 Aggrieved Employees to be interrupted during their meal breaks and rest breaks, oftentimes
25 returning to work to assist when there were influxes in customers.

26 13. Accordingly, during the relevant statutory period, the Plaintiff and Aggrieved
27 Employees were not provided with one hour’s wages in lieu of missed meal breaks in one or
28 more of the following manners.

- 1 a) They were not provided timely, uninterrupted, full thirty-minute meal periods
2 after every five hours of labor performed and were not compensated one hour's
3 wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512,
4 and applicable IWC Wage Order No. 4-2001; and/or
5 b) They were required to work through their daily meal period(s), or to work an
6 unlawful "on-duty meal period;" and/or
7 c) They were impeded in their ability to take a meal period.

8 14. In addition, during the relevant statutory period, Plaintiff and the Aggrieved
9 Employees were not provided lawful rest periods, and were not provided with one hour's wages
10 in lieu thereof, in one or more of the following manners:

- 11 a) Plaintiff and the Aggrieved Employees were required to work without a
12 minimum ten-minute, uninterrupted, duty free rest period for every four hours
13 or major fraction thereof worked and were not being compensated one hour of
14 pay at their regular rate of compensation for each workday that a rest period
15 was not provided; and/or
16 b) They were either impeded or prevented from taking or unable to take lawful
17 rest break periods.

18 15. At no time did Plaintiff ever validly waive his meal breaks.

19 16. Upon information and belief, and thereon, Plaintiff also alleges that the Aggrieved
20 Employees did not validly waive their meal breaks.

21 17. The time during these short and non-duty free rest and meal breaks when Plaintiff
22 and the Aggrieved Employees were working while "off the clock" was also not recorded or
23 compensated by Defendant as part of the actual hours worked by Plaintiff and the Aggrieved
24 Employees. Thus, Defendant has failed to maintain accurate records of hours worked and wages
25 earned in violation of California Labor Code Section 1174(d).

26 18. Due to Defendant's many interruptions of the Plaintiff and Aggrieved Employees'
27 rest and meal break periods, plus the unrecorded and uncompensated ten to fifteen (10-15)
28 minutes of labor performed prior to clocking in each day, caused their shifts to exceed more than

1 eight hours in a single day and more than forty hours in a workweek and constituted overtime
2 hours for which they were not properly compensated in violation of California Labor Code
3 Section 510.

4 19. In addition, Plaintiff and certain of the Aggrieved Employees were required to
5 work off the clock several hours per week. Defendants failed to provide adequate staffing and
6 yet placed a limit of 5 hours of overtime per week that employees could record. In reality,
7 Plaintiff and certain of the Aggrieved Employees worked an additional 4 hours of unrecorded
8 overtime on average per week to adequately staff the restaurant and perform managerial
9 tasks. Plaintiff and certain of the Aggrieved Employees were not compensated for the time spent
10 working off the clock.

11 20. Because of the foregoing alleged practices, the Plaintiff and Aggrieved
12 Employees did not receive accurately itemized wage statements during the relevant statutory
13 period.

14 21. Further on information and belief, in addition to Defendant' willful failure to pay
15 overtime and failure to pay all wages for every hour of labor worked, and failure to pay premium
16 pay wages for missed and non-compliant rest breaks and meal breaks, Defendant also willfully
17 failed to pay all such legally due wages when Plaintiff and formerly employed Aggrieved
18 Employees ceased their employment with Defendant in violation of California Labor Code §§
19 201-202. During the relevant statutory period, Plaintiff and the Aggrieved Employees had to
20 utilize their personal cell phones for work related duties and functions. Plaintiff and the
21 Aggrieved Employees utilized their personal cell phones to call and text coworkers and
22 supervisors regarding work related tasks such as discussing scheduling or requesting shift
23 coverage. Plaintiff utilized his personal computer and internet while working from home to
24 create weekly schedules for employees, as requested by Defendants. At no point have Defendants
25 ever provided Plaintiff and the Aggrieved Employees a reimbursement for the costs incurred in
26 the utilization of their personal cell phone, internet, and computers in violation of California
27 Labor Code Section 2802.

28 22. Furthermore, when Plaintiff and certain of the Aggrieved Employees'

1 employment relationships with Defendants terminated, Defendants failed to pay them all of their
2 earned wages and unused vacation time immediately upon their discharge or within 72 hours
3 thereafter as applicable. To date, Plaintiff has still not been compensated by Defendants for all
4 accrued, unused vacation time.

5 23. Defendant engaged in, ratified and enforced the following unlawful practices and
6 policies against Plaintiff and the Aggrieved Employees seeks to represent:

- 7 a) Failing to pay former employee Aggrieved Employees who were discharged, laid
8 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
9 and 203.
- 10 b) Failing to pay non-exempt employees overtime for all hours worked in excess of
11 an eight-hour day or in excess of a forty-hour workweek in violation of Labor
12 Code Section 510, 1194 and IWC Wage Order No. 4-2001.
- 13 c) Failing to maintain accurate records of all hours worked and earned wages in
14 violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 4-2001.
- 15 d) Failing to provide non-exempt employees, timely, duty free, uninterrupted full 30-
16 minute meal periods under Labor Code Section 226.7 and IWC Wage Order No.
17 4-2001 after every five hours of labor performed;
- 18 e) Failing to provide timely, duty free, uninterrupted full ten-minutes rest periods
19 after every fourth hour of labor performed or major fraction thereof, in violation
20 of Labor Code Section 226.7 and IWC Wage Order No. 4-2001, Section 12
21 (A&B).
- 22 f) Failing to pay premium pay penalties for each missed rest and meal break
23 violation in violation of Labor Code § 226.7 (b) and IWC Wage Order No. 4-
24 2001;
- 25 g) Failing to furnish accurately itemized wage statements in violation of Labor Code
26 Section 226(a);
- 27 h) Failing to pay employees all wages due, each and every pay period under Labor
28 Code Section 204.

1 i) Failing to reimburse employees for personal cell phone expenses necessarily
2 incurred in the discharge of their duties in violation of Labor Code Section 2802;

3 24. On information and belief, Plaintiff alleges that Defendant's actions as described
4 throughout this Complaint were willful and occurred during the PAGA period. To the extent
5 equitable tolling operate to toll claims by Aggrieved Employees against Defendant, the PAGA
6 Period should be adjusted accordingly. To the extent that any of the alleged conduct and
7 violations did not affect Plaintiff during the PAGA period, Plaintiff seeks penalties for those
8 violations that affected other Aggrieved Employees pursuant to *Carrington v. Starbucks Corp.*
9 2018 AJDAR 12157 (Certified for publication 12/19/18).

10 25. Plaintiff brings this case as a representative action seeking penalties for the State
11 of California in a representative capacity, as provided by the Private Attorneys General Act
12 ("PAGA") to the extent permitted by law, and as aggrieved employee who held the position
13 identified herein and who was subject to Defendant's violations of the Labor Code as alleged
14 herein. A true and correct copy of the April 23, 2021 written notice showing compliance with
15 Labor Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the Plaintiff is an
16 aggrieved employee who has standing to bring a representative action on behalf of the State of
17 California and Labor and Workforce Development Agency (the "LWDA") as a private attorney
18 general.

19 26. No notice of cure by Defendant was provided and no notice of investigation was
20 received from the LWDA in the statutorily proscribed 65-day period since the April 23, 2021
21 written notice. Accordingly, Plaintiff files this as representative action as specifically permitted
22 and authorized by Labor Code § 2699.3(a)(2)(A).

23 **FIRST CAUSE OF ACTION**

24 **For Violation of the Private Attorneys General Act of 2004**

25 **California Labor Code §2698, et seq.**

26 **(Against Defendant and Does 1-25, Inclusive)**

27 27. Plaintiff re-alleges and incorporates by reference all of the foregoing paragraphs,
28 as though fully set forth herein.

1 28. The PAGA expressly establishes that any provision of the California Labor Code
2 which provides for a civil penalty to be assessed and collected by the Labor and Workforce
3 Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards,
4 agencies or employees for a violation of the California Labor Code may be recovered through a
5 civil action brought by an aggrieved employee on behalf of himself or herself, and other current
6 or former employees.

7 29. Plaintiff, by his employment with Defendant and Defendant’s violations of the
8 Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under
9 the PAGA.

10 30. Plaintiff, by virtue of **Exhibit A** has satisfied all prerequisites to serve as a
11 representative of the general public to enforce California’s labor laws including, without
12 limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no
13 steps within the time period required to intervene and because Defendant took no corrective
14 action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the
15 State of California, will seek any and all penalties otherwise capable of being collected by the
16 Labor Commission and/or the DLSE. This includes each of the following, as is set forth in Labor
17 Code § 2699.5, which states:

18 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the
19 following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
20 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5,
21 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222,
22 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3,
23 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
24 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,
25 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,
26 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852,
27 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and
28 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1,
1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,
1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision
(a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696,
1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and
1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of
Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10,

1 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673,
2 subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and
3 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and
4 6399.7.”

5 31. Plaintiff is informed and believes that Defendant has violated and continues to
6 violate the provisions of the Labor Code and applicable Wage Order No. 4-2001.

7 32. Pursuant to Labor Code section 2699, any provision of the Labor Code that
8 already provides a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency, or any of its departments, divisions, commissions, boards, agencies or
10 employees for violation of the code or does not provide a civil penalty may be recovered through
11 a civil action brought by an aggrieved employee on behalf of himself or herself, and other current
12 or former employees pursuant to the procedures set forth in Labor Code, section 2699.3.

13 33. Plaintiff, on his own behalf, and on behalf of the other similarly situated
14 Aggrieved Employees is an “aggrieved employees” because he was employed by the violators
15 (the named Defendant herein and its related Doe affiliates and subsidiaries), during the one-year
16 statutory time period and during such time period, was subjected to one or more violations,
17 including Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and
18 IWC No. 4, and are therefore properly suited to represent the interests of a PAGA person.

19 34. Plaintiff is informed and believes that Defendant have violated and continue to
20 violate provisions of the Labor Code and applicable Wage Order No. 7. Despite mailing of
21 **Exhibit A** at least 65-days prior to the filing of the filing of this First Amended Complaint, the
22 LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations
23 identified in **Exhibit A**, such that, by operation of law Plaintiff are entitled to commence this
24 cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A).*

25 **Failure to Pay Wages**

26 35. Labor Code §200(a) defines “wages” as “all amounts for labor performed by
27 employees of every description, whether the amount is fixed or ascertained by the standard of
28 time, task, piece, commission basis or other method of calculation.”

1 36. Plaintiff and the Aggrieved Employees were at all times subject to California's
2 laws and regulations protecting employees' entitlement to be paid and presumption to be paid all
3 wages earned for labor performed, including an hourly wage for each and every hour worked.

4 37. Labor Code § 1194 provides that employees are entitled to wages and
5 compensation for work performed, at the legal rate, including straight time, overtime, and double
6 time.

7 38. Furthermore, under Labor Code §1194, employees must be separately paid an
8 hourly wage for each and every hour worked.

9 39. At all relevant times herein, Defendant was required to compensate Plaintiff and
10 the Aggrieved Employees wages for all hours worked pursuant to Labor Code §1194.

11 40. By uniformly and systemically failing to track and record all of the hours worked
12 by Plaintiff and the Aggrieved Employees, including time for labor performed prior to logging
13 in at the beginning of each shift and work performed while off the clock during the non-duty free
14 rest and meal break periods, Defendant was able to skim wages from the Plaintiff and the
15 Aggrieved Employees by not paying them a separate hourly wage for each and every hour
16 worked.

17 41. Through their unlawful and illegal policies and practices, Defendant failed to pay
18 Plaintiff and the Aggrieved Employees all wages owed to them at the proper corresponding legal
19 rates during the relevant time period.

20 **Failure to Pay Overtime Wages**

21 42. At all times relevant herein, Defendant were required to compensate their non-
22 exempt employees minimum wages for all hours worked and overtime wages for all hours
23 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
24 mandates of Labor Code §§ 510, 1194, and 1198.

25 43. As a pattern and practice, Defendant routinely failed to pay Plaintiff and the
26 Aggrieved Employees for hours worked off the clock, including the 10-15 minutes of labor
27 performed each workday prior to clocking in and for labor performed during rest and meal break
28

1 periods. Such off-the-clock work performed caused Plaintiff and the Aggrieved Employees to
2 work overtime hours for which they were not paid by Defendant.

3 44. Thus during the relevant statutory period, Defendant failed to compensate
4 Plaintiff and the Aggrieved Employees for all hours worked, resulting in a failure to pay all
5 overtime wages they were due in amounts to be proven at trial.

6 **Failure to Provide Keep Accurate Records**

7 45. At all times relevant herein, Defendant were required to keep accurate records
8 showing the names and addresses of all employees employed and showing the hours worked
9 daily and wages earned and paid, pursuant to the mandates of Labor Code §1174.

10 46. As a result of and in addition to Defendant's various Labor Code violations,
11 including Defendant's failure to records all hours worked, including hours for pre-clock in hours
12 worked and time worked during rest and meal break periods, Defendant failed in their affirmative
13 obligation to maintain accurate records regarding Plaintiff and the Aggrieved Employees
14 including accurate records of all hours actually worked and wages paid at their applicable
15 respective corresponding rates of pay in violation of Labor Code §1174.

16 **Failure to Provide Meal Periods and Rest Periods**

17 47. In accordance with the mandates of Labor Code §226.7 and 512, Defendant was
18 required to authorize and relinquish control to permit their non-exempt employees to take a ten-
19 minute, uninterrupted, duty free rest break for every four (4) hours worked or a major fraction
20 thereof and were further required to provide their non-exempt employees with a full,
21 uninterrupted 30-minute meal period for every five (5) hours of labor performed.

22 48. As alleged, as a pattern and practice, Defendant failed to provide Plaintiff and the
23 Aggrieved Employees with legally mandated rest break period and meal break periods and failed
24 to pay proper premium pay compensation for such failures in violation of Labor Code §§ 226.7,
25 512 and IWC No. 4.

26 **Failure to Provide Complete and Accurate Wage Statements**

27 49. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the time
28 of each payment of wages, furnish each of his or her employees, either as a detachable part of

1 the check, draft, or voucher paying the employees' wages or separately when wages are paid by
2 personal check or cash, an accurate itemized statement in writing showing (1) gross wages
3 earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates
4 of the period for which the employee is paid..., and (9) all applicable hourly rates in effect during
5 the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee..."

7 50. As a result of the alleged and various Labor Code violations, Defendant failed to
8 keep maintain accurate records of all hours actually worked/wages earned and thus, consequently
9 failed in their affirmative obligation to provide Plaintiff and the Aggrieved employees with
10 accurately itemized wage statements regarding the true total number of hours each of them
11 actually worked during each and every pay period, their gross wages earned, all deductions, and
12 net wages earned, along with their applicable corresponding hourly rates, including premium pay
13 for missed rest and/or meal breaks and including overtime rates for each respective hourly rate
14 of overtime worked. The inaccurate wage statements were not caused by inadvertent and
15 occasional clerical mistakes, but rather were the result of a pre-determined, deliberate and
16 uniform deliberate operational policies and practices of Defendant.

17 **Failure to Timely Pay Wages**

18 51. Pursuant to Labor Code §204, all wages earned by Plaintiff and the Aggrieved
19 Employees were and/or are "due and payable twice during each calendar month, on days
20 designated in advance by the employer as regular paydays." For [l]abor performed between the
21 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th day of
22 the month. "... for labor performed between the 16th and the last day, inclusive, of any calendar
23 month, payment is due no later than the 10th day of the following month..." By failing to pay
24 Plaintiff and the Aggrieved Employees properly for all hours worked at the proper corresponding
25 rates of pay, including overtime hour and overtime rates of pay, Defendant deprived them of
26 timely payment of all wages earned, when due and owing at these regularly scheduled intervals
27 throughout the relevant time period in violation of Labor Code §204.

28 //

1 **Failure to Pay Wages Due Upon Termination or Separation of Employment**

2 52. Labor Code §§ 201 and 202 require employers such as Defendant to pay their
3 employees all wages due within the strict time frames set forth therein. California Labor Code §
4 203 provides that if any employer willfully fails to timely pay such wages, the employer must
5 continue to pay the employee's subject wages until the back wages are paid in full or an action
6 is commenced, up to a maximum of 30 calendar days of wages.

7 53. As alleged supra, Plaintiff and certain of the Aggrieved Employees ceased
8 employment with Defendant during the statutory PAGA period. At the time of separation, each
9 of these individuals was entitled to be paid all wages each was due for all the hours each of them
10 respectively worked, but to date, the Plaintiff, nor the formerly employed Aggrieved Employees
11 have received such compensation.

12 54. Defendant violated Labor Code § 201-203 by failing to pay all accrued wages due
13 to Plaintiff and the Aggrieved employees who were discharged or who have quit during the
14 relevant period.

15 **Failure to Reimburse Expenses**

16 55. California Labor Code § 2802 provides than an employer shall indemnify his or
17 her employees for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties.

19 56. As alleged supra, Defendant required or requires as a condition of employment
20 that Plaintiff and the Aggrieved Employees utilize their personal cell phones in the daily and
21 routine discharge of their duties to communicate with Defendant managers, supervisors, and
22 colleagues. Defendant does not and has not reimbursed Plaintiff and the Aggrieved Employees
23 for expenses they incurred in the routine and daily use of their personal cell phone for work
24 related duties and communications.

25 57. As a direct result of Defendant's failure to reimburse Plaintiff and the Aggrieved
26 Employees for their personal cell phone expenses they necessarily incurred in the discharge of
27 their work-related duties, Defendant has violated Labor Code Section 2802.

28 //

1 **Damages**

2 58. Defendant's actions constitute continuing and ongoing unlawful activity
3 prohibited by the California Labor Code, as alleged and therefore these acts constitute violations
4 of the PAGA.

5 59. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to
6 recover from Defendant civil penalties in the amount of a hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
8 each aggrieved employee per pay period for each subsequent violation; and

9 60. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other
10 applicable statute.

11 61. As alleged supra, notice of these violations was provided pursuant to Labor Code
12 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
13 have passed since notice was provided and Plaintiff has not received any notification from the
14 LWDA that it intends to investigate the alleged violations. Therefore, the representative Plaintiff
15 is entitled to prosecute his PAGA claims under Labor Code §2699, et seq.

16 62. The proper measure of damages and penalties under the PAGA is as to all
17 Aggrieved Employees, whether a part of this action or not. Further this claim needs no
18 certification to proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-
19 975.

20 63. Accordingly, Plaintiff respectfully requests that the Court award judgment and
21 relief in his favor including an award of civil penalties under California Labor Code §2699 in the
22 amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
23 violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
24 subsequent violation during the relevant period, according to proof.

25 64. Plaintiff as the personal representative of the Aggrieved Employees, will and does
26 seek to recover any and all penalties for each and every violation shown to exist or to have
27 occurred during the liability period, in an amount according to proof, as to those penalties that
28 are otherwise only available to public agencies. Said funds recovered will be distributed in

1 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
2 to the State of California and the LWDA.

3 **SECOND CAUSE OF ACTION**

4 **Failure To Produce Employee Records**

5 **In Violation of Labor Code Section 1198.5**

6 **(Against All Defendants and Does 1-25, Inclusive)**

7 65. Plaintiff on his individual behalf, hereby realleges each and every allegation
8 contained in this Complaint and incorporates the same as though set forth in full herein.

9 66. Labor Code Section 1198.5 was in full force and effect at all relevant times herein
10 and provides in pertinent part, “Every current and former employee, or his or her representative,
11 has the right to inspect and receive a copy of the personnel records that the employer maintains
12 relating to the employee’s performance or to any grievance concerning the employee. (b) (1) The
13 employer shall make the contents of those personnel records available for inspection to the
14 current or former employee, or his or her representative, at reasonable intervals and at reasonable
15 times, but not later than 30 calendar days from the date the employer receives a written request,
16 Upon a written request from a current or former employee, or his or her representative, the
17 employer shall also provide a copy of the personnel records, at a charge not to exceed the actual
18 cost of reproduction, not later than 30 calendar days from the date the employer receives the
19 request...”

20 67. On or around April 9, 2021, Plaintiff by and through his counsel of record in
21 writing requested copies of Plaintiff’s personnel and payroll records from Defendant, pursuant
22 to Labor Code Section 432 and 1198.5.

23 68. Plaintiff’s counsel in good faith provided Defendant, an extensive period of time
24 to produce payroll and personnel records.

25 69. It has been over eight (8) months since the original written request was sent to
26 Defendant, for Plaintiff’s payroll and personnel records. Defendant has failed to produce copies
27 of Plaintiff’s payroll and personnel records. To date, Plaintiff’s counsel has still not heard back
28 from Defendant, and has not received any of the requested pay roll and personnel records.

70. On or around April 9, 2021, Plaintiff, by and through his counsel of record, sent Defendant, a letter of representation, requesting Plaintiff's payroll and personnel records pursuant to Labor Code Section 432 and 1198.5.

71. To date, Plaintiff's counsel has still not heard back from Defendant and has not received any pay roll and personnel records.

72. Accordingly, Defendants have violated Labor Code Section 1198.5. Pursuant to 1198.5(k) Plaintiff is entitled to and does seek to recover penalties in the amount of \$750.00 from each of the Defendants, plus his reasonable attorney's fees and costs incurred in bringing this action.

PRAYER FOR RELIEF

73. WHEREFORE, the representative Plaintiff pursuant to PAGA prays for judgment as follows:

74. Upon the PAGA Cause of Action, for civil penalties and wages pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, 2802 and applicable Wage Order No. 4.

75. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and

76. For such other and further relief the Court may deem just and proper.

DATED: December 16, 2021

SW EMPLOYMENT LAW, APC

BY:

Jacob N. Whitehead
Maria Burciaga
Attorneys for Plaintiff