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County of Sonoma
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Arlene D. Junior, Clerk of the Court
By: Branden Rasmussen, Deputy Clerk

Attorneys for Plaintiff Ryan Accurso, on behalf of
himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

RYAN ACCURSO, on behalf of himself and
all other aggrieved employees,

Plaintiff,

vs.

IN-N-OUT BURGERS; and DOES 1-10,
inclusive,

Defendants.

CASE NO.: SCV-268956

**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 § 246 for Failure to Provide Sick Pay;

(9) PAGA Civil Penalties for Violations of Section 5 of the Applicable Wage Order for Failure to Pay Reporting Time Pay;

(10) PAGA Civil Penalties for Violations of Labor Code §§ 201, 202, 203, 204, and 227.3 for Failure to Pay All Accrued but Unused Vacation Wages Upon Cessation of Employment; and

(11) PAGA Civil Penalties for Violations of Labor Code §§ 226, 432, and 1198.5 for Failure to Timely Produce Personnel Records.

DEMAND FOR JURY TRIAL

Plaintiff Ryan Accurso (“Plaintiff”), on behalf of himself and all others similarly aggrieved alleges as follows:

INTRODUCTION

1. Plaintiff is an individual who worked as a store associate for Defendants In-N-Out Burgers 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 one year and 179 days before Plaintiff gave notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) up to and including the date of commencement of trial) who incurred wage and hour violations and losses as hereinafter described.

2. On May 26, 2021, Plaintiff gave notice of these claims to the (“LWDA”) and to the

1 agent for service of process for each Defendant. Plaintiff has not received any response from the
2 LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all
3 notice requirements under the PAGA.

4 **JURISDICTION AND VENUE**

5 3. The relief sought by Plaintiff on behalf of himself and the aggrieved employees
6 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
7 according to proof at trial. The Court has personal jurisdiction over each of the parties because
8 they are either citizens of this State, doing business in this State or otherwise have minimum
9 contacts with this State.

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

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

18 **PARTIES**

19 **Plaintiff**

20 6. Plaintiff Ryan Accurso is a citizen of California who worked for Defendants within
21 the past year. Details regarding Plaintiff's precise hours, pay, and revenue generated for Defendant
22 are available by reference to Defendant's records. Throughout Plaintiff's employment, he and his
23 co-workers were subjected to wage theft.

24 **Defendants**

25 7. Defendant In-N-Out is a fast-food restaurant chain doing business in the state of
26 California.

27 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
28 under the fictitious names DOES 1 through 10 but will seek leave of this Court to amend this

1 Complaint and serve such fictitiously named Defendants once their names and capacities become
2 known.

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

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
22 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
23 **FAILURE TO PAY ALL MINIMUM WAGES**

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

25 13. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
26 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
27 dated May 26, 2021.

28 14. The Labor Code and the Wage Order provide that in the State of California an

1 employer must pay a minimum wage to an employee, which is twelve dollars (\$12.00) per hour
2 for all hours worked effective January 1, 2019, thirteen dollars (\$13.00) per hour for all hours
3 worked effective January 1, 2020; and fourteen dollars (\$14.00) per hour for all hours worked
4 effective January 1, 2021.

5 15. 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 16. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
11 employees of their rightfully earned minimum wage compensation, including overtime
12 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
13 to pay said compensation. During the relevant time period, Defendants paid Plaintiff and the
14 aggrieved employees less than minimum wages when, for example, Defendants required Plaintiff
15 and aggrieved employees to work off-the-clock while conducting property inspections, disarming
16 the alarm system, and other pre- and post-shift activities. To the extent these hours do not qualify
17 for the payment of overtime or doubletime, Plaintiff and aggrieved employees were not being paid
18 at least minimum wage for their work. Consequently, Plaintiff, on behalf of himself and other
19 aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
20 violations.

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

26 18. Labor Code section 1191.1(a)(2) provides that: “For each subsequent violation for
27 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
28 pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

19. 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.”

20. Accordingly, Defendants are subject to assessment of civil penalties pursuant to Labor Code section 1197.1(a) 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.

21. 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.

SECOND CAUSE OF ACTION

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

22. 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 May 26, 2021.

23. Labor Code section 510(a) states in pertinent part that: “Eight hours of labor

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

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

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

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

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

1 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
2 dollars (\$100) for each underpaid employee for each pay period for which the employee was
3 underpaid.”

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

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

13 **THIRD CAUSE OF ACTION**

14 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE** 15 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

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

17 30. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
18 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
19 dated May 26, 2021.

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

27 32. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
28 **independent and apart from, any other penalty provided in this article**, every person who fails

1 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
2 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
3 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
4 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
5 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

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

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

18 35. Consequently, Plaintiff, on behalf of himself and other aggrieved employees,
19 intends to seek civil penalties pursuant to the PAGA for the alleged violations.

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

28 37. Accordingly, Defendants are subject to assessment of civil penalties pursuant to

1 Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations of
2 the applicable Wage Order as provided by Labor Code section 558(a) in an amount according to
3 proof.

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

9 **FOURTH CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512**
11 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**
12 **TIMELY AND COMPLIANT MEAL PERIODS**

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

14 39. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
15 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
16 dated May 26, 2021.

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

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

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

1 period is not provided.”

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

11 44. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
12 employees for work periods of more than five hours without a timely, uninterrupted, off-the-clock
13 meal period of not less than thirty minutes for each five-hour period worked, where they were free
14 from employer control, and failed to compensate them for such missed meal periods as required
15 by Labor Code § 226.7 and the applicable Wage Order. Defendants failed to provide a second
16 meal period on shifts of more than 10 hours, as required under California law. Moreover, on shifts
17 of no more than six hours, Plaintiff and other aggrieved employees did not voluntarily waive their
18 right to a meal period.

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

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

1 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
2 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
3 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
4 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
5 dollars (\$100) for each underpaid employee for each pay period for which the employee was
6 underpaid.”

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

11 48. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
12 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
13 labor laws and applicable regulations is determined to be in the public interest and consistent with
14 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
15 subject to Court approval.

16 **FIFTH CAUSE OF ACTION**

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

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

21 49. 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 May 26, 2021.

24 50. Labor Code section 226.7(b) provides: “No employer shall not require an employee
25 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
26 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
27 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

28 51. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee

1 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an
2 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
3 Commission, the Occupational Safety and Health Standards Board, or the Division of
4 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
5 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
6 period is not provided."

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

12 53. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
13 2699.5 as statutes for which violations of have been established to be subject to the default civil
14 penalty provisions in Labor Code section 2699(f)(2). That section provides: "(f) For all provisions
15 of this code except those for which a civil penalty is specifically provided, there is established a
16 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
17 violation, the person employs one or more employees, the civil penalty is one hundred dollars
18 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
19 (\$200) for each aggrieved employee per pay period for each subsequent violation."

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

28 55. Accordingly, Defendants are subject to assessment of civil penalties pursuant to

1 Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations
2 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
3 to proof.

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

9 **SIXTH CAUSE OF ACTION**

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

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

14 57. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
15 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
16 dated May 26, 2021.

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

28 59. Labor Code section 226.3 provides in pertinent part: "Any employer who violates

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

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

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

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

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

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

25 65. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks
26 to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according
27 to proof and subject to Court approval.

28 66. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant

1 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
2 enforcement of California labor laws and applicable regulations is determined to be in the public
3 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
4 according to proof and subject to Court approval.

5 **SEVENTH CAUSE OF ACTION**

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

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

8 **TERMINATED/SEPARATED EMPLOYEES**

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

10 67. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
11 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
12 dated May 26, 2021.

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

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

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

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

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

73. Further, as a separate and a non-derivative claim, and upon information and belief, Defendants failed to pay final wages upon termination. For example, Plaintiff's termination effective date according to Defendants' record was March 5, 2020; however, his last wage statement is dated March 9, 2020 and his wages were not received by him until days later.

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

75. 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.

EIGHTH CAUSE OF ACTION

PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 246

FOR FAILURE TO PROVIDE SICK PAY

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

76. 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 May 26, 2021.

77. Labor Code section 246 provides that employers must provide to employees who work for 30 or more days within a year from the commencement of employment 1 hour of paid

1 sick leave for every 30 hours worked paid at the regular rate of pay, including non-discretionary
2 bonuses, commissions, and wages.

3 78. Here, Defendants have violated Labor Code Section 246 by willfully failing to
4 provide all mandatory paid sick leave to Plaintiff and other aggrieved employees at the regular rate
5 of pay including non-discretionary bonuses, commissions and wages. As a result, Defendants have
6 failed to comply with Labor Code Section 246.

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

12 **NINTH CAUSE OF ACTION**

13 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF SECTION 5 OF THE APPLICABLE**

14 **IWC WAGE ORDER FOR FAILURE TO PAY REPORTING TIME PAY**

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

16 80. 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 May 26, 2021.

19 81. Section 5 of the applicable IWC Wage Order provides: "[e]ach workday an
20 employee is required to report for work and does report, but is not put to work or is furnished less
21 than half said employee's usual or scheduled day's work, the employee shall be paid for half the
22 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
23 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

24 82. Section 5 of the applicable IWC Wage Order provides: "[i]f an employee is required
25 to report for work a second time in any one workday and is furnished less than two hours of work
26 on the second reporting, said employee shall be paid for two hours at the employee's regular rate
27 of pay, which shall not be less than the minimum wage."
28

83. Here, Defendants failed to pay all Reporting Time Pay at the employees' regular rate of pay, including all non-discretionary bonuses and wages. Specifically, Defendants failed to pay all Reporting Time Pay when the aggrieved employees would report to work on the day of their scheduled shift, and Defendants failed to put those aggrieved employees to work or furnished less than half of their usual day's work. As a result, Defendants failed to pay all Reporting Time Pay.

84. 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.

TENTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE 201, 202, 203, 204,
AND 227.3 FOR FAILURE TO PAY ALL ACCRUED BUT UNUSED VACATION
WAGES UPON CESSATION OF EMPLOYMENT**

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

85. 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 May 26, 2021.

86. Labor Code section 227.3 provides in part: “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

87. Here, Plaintiff and other aggrieved employees accrued unused vacation time during their employment with Defendants. However, at the time of their separation or termination of employment, Defendants failed to pay all accrued, but unused paid time off at the final rate of

1 employment, including, for example, all non-discretionary bonuses and wages. As a result,
2 Defendants failed to pay all vacation wages upon cessation of employment.

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

8 **ELEVENTH CAUSE OF ACTION**

9 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE 226, 432, AND 1198.5**

10 **FOR FAILURE TO TIMELY PRODUCE ALL PERSONNEL RECORDS**

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

12 89. 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 May 26, 2021.

15 90. Defendants employs a pattern and practice of ignoring and refusing to produce
16 employee records when requested in direct violation of California Labor Code §§ 226(b), (c), (f),
17 (h), 432, and 1198.5.

18 91. Upon making valid requests for the inspection and production of records by
19 Plaintiff and other aggrieved employees, Defendants, as a matter of pattern and practice, ignored
20 and refused to produce these records or make them available to Plaintiff and other aggrieved
21 employees within the timeframe required by statute.

22 92. As a result of these violations, Defendants are liable for *civil* penalties pursuant to
23 California Labor Code §§ 1198.5(k), 226(f), and 2698, et seq.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of all others similarly situated, pray for judgment
3 against Defendants as follows:

- 4 1. For civil penalties against Defendants on behalf of all aggrieved employees.
5 2. For reasonable attorney's fees and costs of suit to the extent permitted by law,
6 including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure
7 § 1021.5; and
8 3. For such other relief as the Court deems just and proper.

9 DATED: August 2, 2021

LEBE LAW, APLC

11 By: 
12 Jonathan M. Lebe
13 Zachary T. Gershman

14 Attorney for Plaintiff Ryan Accurso, individually
15 and on behalf of all others similarly situated

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a trial by jury on all claims so triable.

18 DATED: August 2, 2021

LEBE LAW, APLC

19 By: 
20 Jonathan M. Lebe
21 Zachary T. Gershman

22 Attorney for Plaintiff Ryan Accurso, individually
23 and on behalf of all others similarly situated
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