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on behalf of himself and all others aggrieved

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 31 2021

K. Thomsen

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ANTHONY GARCIA, on behalf of himself and
all others aggrieved,

Plaintiff,

v.

SYSCO CORPORATION, a Delaware
corporation; SYSCO RIVERSIDE, INC., a
California Foreign Corporation; and DOES 1
through 100,

Defendants.

CASE NO.: **CVRI 2103935**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR:**

1. CIVIL PENALTIES UNDER LABOR
CODE § 226.3;
2. CIVIL PENALTIES UNDER LABOR
CODE § 558;
3. CIVIL PENALTIES UNDER LABOR
CODE § 1197.1;
4. CIVIL PENALTIES UNDER LABOR
CODE §§ 6300 *et seq.*; and
5. CIVIL PENALTIES UNDER LABOR
CODE § 2699.

DEMAND FOR JURY TRIAL

COMES NOW plaintiff ANTHONY GARCIA (“Plaintiff”), on behalf of himself and all other aggrieved employees, and alleges as follows:

INTRODUCTION

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), on behalf of Plaintiff and all other aggrieved current and former employees of SYSCO CORPORATION, a Delaware Corporation (“Sysco Corp.”) and SYSCO RIVERSIDE, INC., a California Foreign Corporation and a Delaware corporation and any of its respective subsidiaries or affiliated companies within the State of Delaware and California (collectively “Sysco”), and collectively with Sysco, and DOES 1 through 100, inclusive, as further defined below, “Defendants”).

2. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a result of, among other things, failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by auto-deducting meal periods not taken; failing to pay overtime hours at the proper overtime rate of pay, including, without limitation, by paying straight pay instead of overtime pay, failing to pay prevailing wages, and/or failing to include prevailing wages in the overtime rate of pay; and by detrimentally rounding, manipulating and/or shaving time from employees’ time records to the

1 detriment of Plaintiff and other aggrieved employees.

2 3. At all relevant times mentioned herein, Defendants had and have a policy or practice
3 of failing to pay minimum wages to Plaintiff and other non-exempt employees in the State of
4 California in violation of California state wage and hour laws as a result of, among other things,
5 failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or
6 permitting employees to work off the clock, including, without limitation, by auto-deducting meal
7 periods not taken; failing to pay prevailing wages; and by detrimentally rounding, manipulating
8 and/or shaving time from employees' time records to the detriment of Plaintiff and other aggrieved
9 employees.
10

11 4. At all relevant times mentioned herein, Defendants had and have a policy or practice of
12 failing to provide Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted, timely,
13 and complete meal period for days on which the employee worked in excess of five (5) hours in a
14 workday; a second thirty (30) minute uninterrupted, timely, and complete meal period for days on
15 which the employee worked in excess of ten (10) hours in a workday; or compensation in lieu
16 thereof, as required by California wage and hour laws.
17

18 5. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely, and
20 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
21 thereof, or compensation in lieu thereof, as required by California wage and hour laws.
22

23 6. At all relevant times mentioned herein, Defendants had and have a policy or practice of
24 failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Plaintiff other aggrieved employees with itemized wage statements that accurately reflect gross
26 wages earned; total hours worked; net wages earned; the name and address of each direct employer
27 with whom they have been placed to work; all applicable hourly rates in effect during the pay period
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1 and the corresponding number of hours worked at each hourly rate; and other such information as
2 required by Labor Code section 226, subdivision (a).

3 7. At all relevant times mentioned herein, Defendants had and have a policy or practice of
4 failing to reimburse Plaintiff and other aggrieved employees for their costs incurred in using their
5 cellular telephones in furtherance of their work duties (all the time to communicate with the office
6 and to clock in), as required by Labor Code section 2802.

8 8. At all relevant times mentioned herein, Defendants had and have a policy or practice of
9 failing to timely pay Plaintiff and other aggrieved employees, among other wages, overtime wages,
10 minimum wages, and/or premium wages, as required by Labor Code sections 201 and 202.

11 9. At all relevant times mentioned herein, Defendants have had a policy or practice of
12 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
13 records pertaining to their employment, including wage statements and similar payroll documents
14 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
15 section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code
16 section 1174, to the detriment of Plaintiff and all other aggrieved employees.

17
18 10. At all relevant times mentioned herein, Defendants have had a policy or practice of
19 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave
20 required to be provided pursuant to Riverside and California law, including, without limitation Labor
21 Code section 246, *et seq.* and the Healthy Workplace Healthy Family Act of 2014 (AB 1522), and
22 also did not permit its use upon request as contemplated under both Riverside and California laws, to
23 the detriment of Plaintiff and all other aggrieved employees.

24
25 11. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
27 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved
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1 employees with the rates of pay and overtime rates of pay applicable to their employment;
2 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
3 name, address, and telephone number of the workers' compensation insurance carrier; information
4 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
5 under Labor Code section 2810.5.
6

7 12. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code
8 sections 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the California
9 Labor Code as described above, including on behalf of himself and other aggrieved employees
10 pursuant to PAGA.

11 **PARTIES**

12 **A. Plaintiff**

13 13. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
14 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
15 exempt employee, with duties that included, without limitation, driving, loading, and unloading
16 merchandise, performing warehouse work, and transportation of materials, from on or around 2003
17 through June 2, 2020.
18

19 **B. Defendants**

20 14. Plaintiff is informed and believes, and based thereon alleges, that defendant Sysco
21 Corp. is, and at all times relevant hereto was, a corporation organized and existing under and by
22 virtue of the laws of the State of Delaware and is doing business in the State of California.
23

24 15. Plaintiff is informed and believes, and based thereon alleges, that defendant Sysco is,
25 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
26 laws of the State of California and doing business in the County of Riverside, State of California. At
27 all relevant times herein, defendant Sysco employed Plaintiff and all other similarly situated
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employees within the State of California.

16. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.

Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertaining to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to the other defendants.

JURISDICTION

17. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

18. Venue is proper in the County of Riverside, State of California pursuant to Code of Civil Procedure section 392, *et seq.* because the County of Riverside is the place in which the employment relationship began, where Plaintiff was contracted to perform his duties and where Plaintiff did perform his duties. It is also the location where Defendants, or some of them, have their principal place of business. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved employees within the County of Riverside and the State of California.

19. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other

1 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus
2 reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB N.A. v. Superior*
3 *Court* (2019) 8 Cal.5th 175.

4 20. Plaintiff seeks to recover the PAGA civil penalties through a representative action
5 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
6 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
7 allegations described herein is not required.
8

9 21. During the period beginning one (1) year preceding the provision of notice to the
10 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
11 Defendants violated, inter alia, Labor Code sections 200, 201, 202, 203, 226, 226.3, 432, 510, 512,
12 558, 1174, 1194, 1197, 1198.5, 2802, 2810.5, and 6300 among others.
13

14 22. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
15 such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within
16 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
17 specified in Labor Code section 2699.3.

18 23. On or around June 22, 2021, Plaintiff provided written notice under Labor Code
19 section 2699.3 online, with return receipt requested, of Defendants' violation of various, including
20 the herein-described, provisions of the Labor Code, to the Labor and Workforce Development
21 Agency ("LWDA"), as well as by certified mail, with return receipt requested to Defendants, and
22 each of them. See attached **Exhibit A**.
23

24 24. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
25 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
26 calendar days of June 22, 2021, postmarked date of the herein-described notice sent by Plaintiff to
27 the LWDA and Defendants.
28

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 25. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
3 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
4 including overtime wages, as a result of, without limitation, Defendants failing to pay overtime
5 wages to Plaintiff and other non-exempt employees in the State of California in violation of
6 California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
7 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over
8 twelve (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without
9 being properly compensated for all hours worked in excess of eight (8) hours in a workday or forty
10 (40) hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for
11 all hours worked on the seventh consecutive workday in a workweek, as a result of, among other
12 things, failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or
13 permitting employees to work off the clock, including, without limitation, by auto-deducting meal
14 periods not taken; failing to pay overtime hours at the proper overtime rate of pay, including, without
15 limitation, by paying straight pay instead of overtime pay, failing to pay prevailing wages, and/or
16 failing to include prevailing wages in the overtime rate of pay; and by detrimentally rounding,
17 manipulating and/or shaving time from employees' time records. As such, Plaintiff is informed and
18 believes, and based thereon alleges, that Defendants violated Labor Code sections 510 and 1194,
19 and applicable Wage Orders based on their practice of providing total compensation that is less than
20 the required legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief
21 under, without limitation, these sections. In addition, Defendants would also be liable for civil
22 penalties pursuant to Labor Code sections 558 and 2699.
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24
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26 26. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
27 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
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1 including minimum wages, as a result of, without limitation, Defendants failing to pay minimum
2 wages to Plaintiff and other non-exempt employees in the State of California in violation of
3 California state wage and hour laws as a result of, among other things, failing to accurately track
4 and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off
5 the clock, including, without limitation, by auto-deducting meal periods not taken; failing to pay
6 prevailing wages; and by detrimentally rounding, manipulating and/or shaving time from employees'
7 time records to the detriment of Plaintiff and other aggrieved employees. As such, Plaintiff is
8 informed and believes, and based thereon alleges, that Defendants violated, without limitation,
9 Labor Code section 1197 and applicable Wage Orders, based on their continued failure to pay
10 minimum wages, entitling Plaintiff and other aggrieved employees to relief under, without
11 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties
12 pursuant to Labor Code sections 558, 1197.1, and 2699.
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14

15 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
16 have policy or practice of failing to provide Plaintiff and other aggrieved employees a thirty (30)
17 minute uninterrupted, timely, and complete meal period for days on which the employee worked in
18 excess of five (5) hours in a workday; a second thirty (30) minute uninterrupted, timely, and
19 complete meal period for days on which the employee worked in excess of ten (10) hours in a
20 workday; or compensation in lieu thereof, including, without limitation, by interrupting meal
21 periods, not providing timely meal periods, failing to provide first and second meal periods
22 altogether, providing short meal periods, and/or auto-deducting meal periods even when they were
23 not taken. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 violated Labor Code section 512, entitling Plaintiff and other aggrieved employees to premium
25 payments under Labor Code section 226.7. Defendants would also be liable for civil penalties
26 pursuant to Labor Code sections 558 and 2699.
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1 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
2 have a policy or practice of failing to provide Plaintiff and other aggrieved employees paid,
3 uninterrupted, timely, and complete rest periods of at least ten (10) minutes per four (4) hours
4 worked or major fractions thereof, or compensation in lieu thereof as required under (the) applicable
5 Wage Order(s). As such, Plaintiff is informed and believes, and based thereon alleges, that he and
6 other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7.
7 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

9 29. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant
10 hereto, Defendants have had a policy or practice of failing to provide Plaintiff and other aggrieved
11 employees with or permit them inspection of, records pertaining to their employment, including
12 wage statements and similar payroll documents under Labor Code section 226, documents signed to
13 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
14 section 1198.5, and time records under Labor Code section 1174. As such, Plaintiff is informed and
15 believes, and based thereon alleges, that Defendants violated these Labor Code sections, entitling
16 Plaintiff and all other aggrieved employees to civil penalties pursuant to Labor Code sections 558
17 and 2699.

19 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
20 have a policy or practice of failing to furnish Plaintiff other aggrieved employees with itemized wage
21 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the
22 name and address of each direct employer with whom they have been placed to work; all
23 applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate; and other such information as required by Labor Code section 226,
25 subdivision (a). Consequently, since Defendants would have failed to comply with Labor Code
26 section 226, subdivision (a), Plaintiff and other aggrieved employees would be entitled to recover
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1 penalties under, without limitation, Labor Code section 226, subdivision (e). Defendants would also
2 be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

3 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
4 and have a policy or practice of failing or refusing to timely pay compensation to Plaintiff and other
5 terminated or resigned employees within the State of California, among other wages, overtime
6 wages, minimum wages, and/or premium wages. As such, Defendants would be liable for waiting
7 time penalties for having violated California Labor Code sections 201, 202, and 203. Defendants
8 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

9
10 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
11 have a policy or practice of failing to reimburse Plaintiff and other aggrieved employees for their
12 costs incurred in using their cellular telephones in furtherance of their work duties (including to
13 communicate with supervisors, and for scheduling); and for purchasing mandatory steel-toe boots
14 approximately every four (4) months, as required by Labor Code section 2802. Defendants would be
15 liable to reimburse said expenses with interest under Labor Code section 2802. Defendants would
16 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

17
18 33. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
19 and at all times relevant hereto had, a policy or practice of failing to provide Plaintiff and other
20 aggrieved employees with the amount of paid sick leave required to be provided pursuant to
21 California law (including, without limitation, Labor Code section 246, *et seq.* and the Healthy
22 Workplace Healthy Family Act of 2014 (AB 1522), and also did not permit its use upon request as
23 contemplated under California laws. As such, Defendants would be liable for civil penalties for
24 violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

25
26 34. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
27 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
28

1 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
2 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
3 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
4 wage; the regular payday designated by Defendants; the name, address, and telephone number of the
5 workers' compensation insurance carrier; information regarding paid sick leave; and other pertinent
6 information required to be disclosed by Defendants under Labor Code section 2810.5. As such,
7 Plaintiff is informed and believes, and based thereon alleges that the failure to provide such
8 information, including rates of pay that are in effect, has permitted Defendants to pay employees at
9 rates of pay that were not agreed upon, in violation of overtime wage and minimum wage laws in
10 California. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor
11 Code sections 558 and 2699.
12

13 35. Plaintiff and other aggrieved employees at all times pertinent hereto were not exempt
14 from receiving overtime wages, minimum wages, meal breaks or compensation in lieu thereof, rest
15 breaks or compensation in lieu thereof, accurate wage statements, timely pay, indemnifying work
16 expenses, making documents available for inspection, the proper accrual and use of paid sick leave,
17 and other such provisions of California law and the implementing rules and regulations of the IWC
18 California Wage Orders. As a result of these violations, Defendants are liable for civil penalties,
19 including in the form of unpaid wages, under PAGA.
20
21

22 **FIRST CAUSE OF ACTION**

23 **(Civil Penalties Under Labor Code § 226.3 — Against All Defendants)**

24 36. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs of this Complaint as though fully set forth hereat.

26 37. Defendants had and have a policy or practice of failing to comply with Labor Code
27 section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage
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1 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the
2 name and address of each direct employer with whom they have been placed to work; all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate; and other such information as required by Labor Code section 226, subdivision (a).

5 38. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
7 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
8 violation in a subsequent citation, for which the employer fails to provide the employee a wage
9 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

10 39. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
11 this section are in addition to any other penalty provided by law.”

12 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
13 have a policy or practice of failing to furnish non-exempt employees, including, without limitation,
14 Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours
15 worked; net wages earned; the name and address of each direct employer with whom they have been
16 placed to work; all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate; and other such information as required by Labor Code
18 section 226, subdivision (a).

19 41. Pursuant to Labor Code section 226.3, Plaintiff, and other aggrieved employees he
20 seeks to represent are entitled to recover civil penalties for Defendants’ violation of Labor Code
21 section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved
22 current or former employee per pay period for the initial violation, and one thousand dollars (\$1,000)
23 for each aggrieved current or former employee per pay period for each subsequent violation.

24 S

1 **ECOND CAUSE OF ACTION**

2 **(Violation of Labor Code § 558 — Against All Defendants)**

3 42. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

5 43. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
6 acting on behalf of an employer who violates, or causes to be violated ... any provision regulating
7 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
8 penalty as follows:

9
10 a) For any initial violation, fifty dollars (\$50) for each underpaid employee and for
11 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
12 underpaid wages;

13
14 b) For each subsequent violation, one hundred dollars (\$100) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to an amount
16 sufficient to recover underpaid wages;

17 c) Wages recovered pursuant to this section shall be paid to the affected employee.”

18 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
19 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
20 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
21 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
22 and after their employment separation; receive accurate, itemized wage statements; be provided with
23 the opportunity to inspect employment records; be reimbursed for work expenses; be provided with
24 the proper accrual and use of paid sick leave; and be provided with notice as required under Labor
25 Code section 2810.5.
26

27 45. As a direct and proximate result of Defendants’ conduct, Plaintiff and other aggrieved
28

1 employees are entitled to recover directly from Defendants civil penalties pursuant to Labor Code
2 section 558 in amounts to be determined at trial.

3 46. Further, Plaintiff is entitled to receive damages for Defendants' failure to pay timely
4 wages during the course of his and other aggrieved employees' employment with Defendant.
5 Failure to provide timely payment of wages pursuant to Labor Code sections 201 and other sections
6 of the Labor Code including:
7

- 8 a. \$100 for the initial violation;
- 9 b. \$200 for each subsequent violation; and
- 10 c. 25% of the amount of wages wrongfully withheld. This amount shall be in
11 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
12 1194.2, and any applicable penalties imposed pursuant to Section 203.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of Labor Code § 1197.1 — Against All Defendants)**

15 47. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and
16 incorporates each by reference as though fully set forth hereat.
17

18 48. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
19 person acting either individually or as an officer, agent, or employee of another person, who pays or
20 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
21 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
22 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
23 Section 203 as follows:
24

- 25 a) For any initial violation that is intentionally committed, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
27 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
28

1 pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

2 b) For each subsequent violation for the same specific offense, two hundred fifty
3 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
4 regardless of whether the initial violation is intentionally committed. This amount shall be in
5 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
6 1194.2, and any applicable penalties imposed pursuant to Section 203.

7
8 c) Wages, liquidated damages, and any applicable penalties imposed pursuant to
9 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

10 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
11 Plaintiff and aggrieved employees not be paid minimum wages as a result of Defendants, without
12 limitation, failing to accurately track and/or pay for all hours actually worked; engaging, suffering,
13 or permitting employees to work off the clock, including, without limitation, by auto-deducting meal
14 periods not taken; failing to pay prevailing wages; and by detrimentally rounding, manipulating
15 and/or shaving time from employees' time records to the detriment of Plaintiff and other aggrieved
16 employees. As a direct and proximate result of Defendants' conduct, Plaintiff and other aggrieved
17 employees are entitled to recover directly from Defendants' civil penalties pursuant to Labor Code
18 section 1197.1.
19

20 **FOURTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code §§ 6300 *et seq.* — Against All Defendants)**

22 50. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs of this Complaint as though fully set forth herein.

24 51. Pursuant to Labor Code sections 6300 *et seq.*, the California legislature intends for
25 employers to provide a workplace that is safe, healthful, provides appropriate safeguards, and
26 reasonable safety devices and safeguards. Specifically, Labor Code section 6428 provides for
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1 penalties up to \$25,000 for each violation. In addition, section 2699 provides for penalties to be
2 assessed including one hundred dollars (\$100) for each aggrieved employee per pay period for the
3 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
4 subsequent violation.

5
6 52. Moreover, Plaintiff and other aggrieved current and former employees within the
7 State of California whom she seeks to represent are entitled to an award of reasonable attorneys' fees
8 and costs in connection with their herein-described claims for civil penalties.

9 **FIFTH CAUSE OF ACTION**

10 **(Civil Penalties Under Labor Code § 2699 — Against All Defendants)**

11 53. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs of this Complaint as though fully set forth hereat.

13
14 54. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and
16 collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.

20
21 55. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
22 Code except those for which a civil penalty is specifically provided, the established civil penalty for
23 a violation of those provisions is as follows: if at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.

27 56. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
28

1 of them, violated the Labor Code sections described herein, including, without limitation, for the
2 failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation
3 in lieu thereof; be paid timely wages during and after their employment separation; receive accurate,
4 itemized wage statements; be provided with the opportunity to inspect employment records; be
5 reimbursed for work expenses; be provided with the proper accrual and use of paid sick leave; and
6 be provided with notice as required under Labor Code section 2810.5, entitling Plaintiff and other
7 aggrieved employees to civil penalties for each of these Labor Code violations in the amounts set
8 forth in Labor Code section 2699, subdivision (f).

10 57. Moreover, Plaintiff and other aggrieved current and former employees within the
11 State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees
12 and costs in connection with their herein-described claims for civil penalties.

13 **REQUEST FOR JURY TRIAL**
14

15 58. Plaintiff hereby requests a trial by jury.

16 **PRAYER**

17 WHEREFORE, on behalf of himself and all others aggrieved, Plaintiff prays for judgment
18 against Defendants as follows:

- 19 a) An award of civil penalties pursuant to Labor Code sections 226.3, 2699, 558, and
20 1197.1;
21
22 b) An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 226.3, 558, 1197.1, and 2699;
24
25 c) Pre-judgment and post-judgment interest;
26
27 d) For costs of suit incurred herein; and
28 e) Such other and further relief as the Court deems just and proper.

///

1 Dated: August 27, 2021

HARMOUSH AND RASHEDI LAW GROUP, LLP

2
3
4 BY: 
5 SAMY HARMOUSH, ESQ.

6 Attorneys for Plaintiff ANTHONY GARCIA,
7 on behalf of himself and all other aggrieved employees
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EXHIBIT A



**HARMOUSH & RASHEDI
LAW GROUP LLP**

10866 Washington Blvd. #835 Culver City, CA 90232 | www.GoHR.law
Tel: (833) GOHR-LAW (464-7529) | Fax: (213) 330-0019

June 21, 2021

PAGA NOTICE FILED ELECTRONICALLY
PAGA FILING FEE BY U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

Re: *Notice Letter of Anthony Garcia on Behalf of Himself and Aggrieved Employees
Under California Labor section 2699.3*

Employers: Sysco Riverside Inc.
15750 Meridian Pkwy.
Riverside, CA 92518

Sysco Riverside Inc.
Saul J. Adelsberg
15750 Meridian Pkwy.
Riverside, CA 92518

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the PAGA Notice was paid simultaneously upon filing this this PAGA Notice to the Department of Industrial Relations at the above-listed mailing address.

This PAGA Notice concerns Anthony Garcia's ("Mr. Garcia") employment with his former employer: Sysco Riverside Inc. and its CEO Saul J. Adelsberg (collectively, "Employers"). Mr. Garcia was an employee of Employers during the relevant time period. Mr. Garcia and other aggrieved employees served as non-exempt employees of Employers, with duties that included, without limitation, driving within the State of California, unloading and organizing products, scanning products, and handing off invoices to shipment receivers. In return, Employers paid (or purported to pay) Mr. Garcia and similarly aggrieved employees an hourly wage for their services.

Mr. Garcia and similarly aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Mr. Garcia is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of compelling their employees to work over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a result of, among other things, failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by auto-deducting meal periods not taken; failing to pay overtime hours at the proper over time rate of pay, including, without limitation, by paying straight pay instead of overtime pay, failing to pay prevailing wages, and/or failing to include prevailing wages in the overtime rate of pay; and by detrimentally rounding, manipulating, and/or shaving time from employees' time records. Consequently, Mr. Garcia is informed and believes, and based thereon alleges, that Employers violated Labor Code sections 510, 1194, and applicable Wage Orders based on their practice of providing total compensation that is less than the required legal overtime compensation, entitling Mr. Garcia and similarly aggrieved employees to damages. Employers would also be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Mr. Garcia is informed and believes, and based thereon alleges, that Employers had and have a practice or policy of failing to compensate Mr. Garcia and similarly aggrieved employees with minimum wages for all hours worked or otherwise under Employers' control as a result of, without limitation, as a result of, among other things, failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by auto-deducting meal periods not taken; requiring employees to be on call without compensation; and by detrimentally rounding, manipulating, and/or shaving time from employees' time records. As such, Mr. Garcia is informed and believes and based thereon alleges, that Employers violated, without limitation, Labor Code section 1197 and applicable Wage Orders based on their continued failure to pay minimum wages for all hours worked, entitling Mr. Garcia and similarly aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employers would also be liable for civil penalties pursuant to Labor Code sections 210, 558, 1197.1, and 2699.

Mr. Garcia is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of compelling their employees to work without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by failing to provide a route which includes an appropriate meal period, interrupting meal periods, not providing timely meal periods, failing to provide first and second meal periods altogether, providing short meal periods, and/or auto-deducting meal periods even when they were not taken. Consequently, Mr. Garcia is informed and believes, and based thereon alleges, that Employers violated Labor Code section 512, entitling Mr. Garcia and similarly aggrieved employees to premium payments under Labor Code section 226.7. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Garcia is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of compelling their non-exempt employees, including, without limitation, Mr. Garcia, to work without authorizing and permitting their employees to take timely, paid, uninterrupted, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties including, without limitation, by interrupting rest periods and/or failing to provide rest periods, among other things. As such, Mr. Garcia is informed and believes, and based thereon alleges, that Mr. Garcia and similarly aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. Employers would also be liable for civil (including in the form of unpaid wages) pursuant to Labor Code sections 558 and 2699.

In addition to the above, Mr. Garcia is informed and believes, and based thereon alleges, that Employers failed and continue to fail to keep adequate and/or accurate time records as required by Labor Code sections 226 and 1174, making it difficult for Mr. Garcia and similarly aggrieved employees to calculate their unpaid wages and/or premium payments.

As a result of, among other things, Employers' herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods or compensation in lieu thereof; and provide rest periods or compensation in lieu thereof, as described above, Mr. Garcia is informed and believes, and based thereon alleges, that Employers also intentionally failed and continue to fail to furnish employees, including Mr. Garcia, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a). Consequently, since Employers have failed to comply with Labor Code section 226, subdivision (a), Mr. Garcia and similarly aggrieved employees are entitled to recover penalties under, without limitation, Labor Code sections 226, subdivision (e), and 226.3. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Garcia is informed and believes, and based thereon alleges, that Employers also failed and refused, and continue to fail and refuse, to timely pay compensation to Mr. Garcia and similarly terminated or resigned employees, including but not limited to, all wages owed at the proper rate(s) of pay as a result of Employers' practice or policy of failing to pay, among other wages, overtime wages, minimum wages, and/or premium wages. Further, Employers failed to timely pay wages upon termination of employment in violation of Labor Code section 201. Consequently, Employers would be liable for waiting time penalties under Labor Code section 203 for having violated California Labor Code sections 201 and 202. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Garcia is informed and believes, and based thereon alleges that Employers also failed and refused, and continue to fail and refuse, to reimburse employees, including, without limitation, Mr. Garcia and similarly aggrieved employees, with costs expended. Among other relief, employees may collect from Employers in connection with these violations, civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Garcia is further informed and believes, and based thereon alleges, that Employers have or had a policy or practice of failing to provide Mr. Garcia and other aggrieved employees

with, or permit them inspection of, complete records pertaining to their employment, including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174. Consequently, Employers would be liable under those Code sections for prescribed penalties, as applicable. Moreover, Employers would also be liable for civil penalties for violations of these Labor Code sections pursuant to Labor Code sections 558 and 2699.

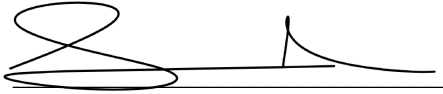
Mr. Garcia is further informed and believes, and based thereon alleges, that Employers have or had a policy or practice of failing to provide Mr. Garcia and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to Los Angeles and California law (including, without limitation, Labor Code section 246, *et seq.* and Los Angeles Municipal Code section 187.01, *et seq.*), and also did not permit its use upon request as contemplated under both Los Angeles and California laws. As such, Employers would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Mr. Garcia is informed and believes, and based thereon alleges, that Employers failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other actions, failing to provide Mr. Garcia and similarly aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part of the minimum wage; the regular payday designated by Employers; the name, address, and telephone number of the workers' compensation insurance carrier; information regarding paid sick leave; and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Mr. Garcia is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employers in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Mr. Garcia may immediately thereafter file a civil complaint against Employers to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

HARMOUSH & RASHEDI LAW GROUP, LLP

A handwritten signature in black ink, appearing to read 'Sammy M. Harmoush', written over a horizontal line.

Samy M. Harmoush, Esq.

cc: Anthony Garcia (via U.S. Mail)

Sysco Riverside Inc. (via U.S. Certified Mail, Return Receipt Requested)

Saul J. Adelsberg (via U.S. Certified Mail, Return Receipt Requested)