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and all others aggrieved

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

JOSE MAGALLAN, on behalf of himself
and all others aggrieved,

Plaintiff,

v.

SW INGREDIENTS HOLDINGS, LLC
d/b/a SPICE WORLD, INC., a Delaware
Limited Liability Company; and DOES 1
Through 10, inclusive,

Defendants.

Case No.

CIV SB 2123386

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")**

- 1. PAGA CIVIL PENALTIES FOR FAILURE
TO PAY MINIMUM, REGULAR, AND
OVERTIME WAGES**
- 2. PAGA CIVIL PENALTIES FOR FAILURE
TO PAY PAID TIME OFF WAGES**
- 3. PAGA CIVIL PENALTIES FOR FAILURE
TO PROVIDE MEAL PERIODS**
- 4. PAGA CIVIL PENALTIES FOR FAILURE
TO AUTHORIZE AND PERMIT PAID
REST PERIODS**
- 5. PAGA CIVIL PENALTIES FOR FAILURE
TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS**

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 30 2021

RV Nicole O'Dwyer
NICOLE O'DWYER, DEPUTY

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- 6. PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
- 7. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**
- 8. PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING AND AT SEPARATION FROM EMPLOYMENT**
- 9. PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

NATURE OF CLAIM

1. Plaintiff JOSE MAGALLAN (“Plaintiff”) brings this representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all other aggrieved employees against Defendant SW INGREDIENTS HOLDINGS, LLC d/b/a SPICE WORLD, INC. and Does 1 through 10 (collectively, “Defendants”) for Defendants’ failure to: pay correctly-calculated minimum, regular, and overtime wages for all time worked or subject to Defendants’ control; pay correctly-calculated paid time off wages; provide meal and rest periods; provide compliant wage statements; maintain accurate records; provide one day’s rest in seven; timely pay wages due during and upon separation from employment; and reimburse reasonably necessary business-related expenses.

2. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on June 17, 2021 per Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of this notice. A true and correct copy of Plaintiff’s Notice is attached as **Exhibit 1**. Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and has standing as an aggrieved non-exempt employee. Plaintiff seeks to represent all current and former non-exempt employees of Defendants who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

3. Plaintiff JOSE MAGALLAN worked for Defendants from approximately April 2020 to April 21, 2021. From April 2020 to August 2020, Plaintiff worked as a Sanitation Cleaner, from August 2020 to February 2021 as a Quality Assurance employee, and from February 2021 to April 21, 2021 as a Maintenance Clerk. As a Sanitation Cleaner, Plaintiff’s duties included taking machines apart and cleaning and soaking parts according to specific processes. As a Quality Assurance employee, Plaintiff’s duties included taking product samples and sending them to a lab for testing, receiving results from the lab, and releasing products that

1 had passed and throwing away products that had not passed the testing process. As a
2 Maintenance Clerk, Plaintiff's duties included ordering parts, driving to pick up parts, keeping
3 track of maintenance items and inventory, and conducting quality checks every hour.

4 4. Defendant SW INGREDIENTS HOLDINGS, LLC ("SW INGREDIENTS") is a
5 limited liability company registered in Delaware and doing business in California. SW
6 INGREDIENTS manufactures spices.

7 5. Does 1 through 10, inclusive, are persons or entities whose true names and
8 identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff
9 will amend this complaint to allege their true names and capacities when known. Plaintiff is
10 informed and believes each Doe defendant is the agent, representative, or parent or subsidiary
11 corporation of SW INGREDIENTS, is responsible in some manner for the occurrences and
12 injuries alleged, and that harm suffered by Plaintiff was proximately caused by them in addition
13 to SW INGREDIENTS.

14 6. Plaintiff is informed, believes, and alleges each Defendant, including each Doe
15 defendant, acted in concert with each and every other Defendant, intended to and did
16 participate in the practices alleged, and was a proximate cause of damage and injury to
17 Plaintiff.

18 7. At all relevant times each Defendant was the agent or employee of each of the
19 other Defendants and was acting within the course and scope of such agency or employment.

20 **JURISDICTION AND VENUE**

21 8. Venue as to each Defendant is proper in this judicial district, as SW
22 INGREDIENTS is a foreign corporation that has not designated a principal place of business in
23 California. Code of Civil Procedure § 395.5. Additionally, SW INGREDIENTS maintains
24 operations in California and in San Bernardino County.

25 9. No federal jurisdiction exists to remove this action to federal court. No federal
26 question is at issue, as the issues are based solely on California law, including the Labor Code,
27 IWC Wage Orders, Code of Civil Procedure, and Business and Professions Code. Further, as a
28 representative action under the PAGA, the matter is not subject to removal under 28 U.S.C.

1 sections 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

2 **FACTUAL ALLEGATIONS**

3 10. During the PAGA Period, Plaintiff and other aggrieved employees were
4 employed by Defendants in California, and Defendants conducted business in California.

5 11. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
6 employees at least minimum wages for all time worked or spent under Defendants' control. For
7 instance, when Plaintiff worked as a Quality Assurance employee and as a Maintenance Clerk,
8 he was regularly required by Defendants to work after clocking out from his shift, including to
9 rearrange items and complete paperwork. Defendants encouraged Plaintiff and other aggrieved
10 employees to clock out before completing this work to avoid paying Plaintiff and other
11 aggrieved employees overtime wages.

12 12. During the PAGA Period, Defendants did not always properly calculate wages.
13 On several occasions, when multiplying Plaintiff's pay rate by his hours worked on his pay
14 stubs, the total pay listed is less than it should be mathematically.

15 13. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
16 employees all correctly-calculated overtime wages for hours worked over eight in one day or
17 forty in one week. For instance, Defendants failed to incorporate non-discretionary bonuses and
18 shift differential pay, including "REGNS" or regular night shift pay, into Plaintiff's and other
19 aggrieved employees' regular rates of pay for the purpose of calculating their overtime wages.

20 14. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
21 employees all correctly-calculated paid time off wages. Defendants failed to incorporate non-
22 discretionary bonuses and shift differential pay, including "REGNS" or regular night shift pay,
23 into Plaintiff's and other aggrieved employees' regular rates of pay for the purpose of
24 calculating their paid time off wages.

25 15. During the PAGA Period, Defendants subjected all aggrieved employees to
26 policies and practices which failed to provide timely, uninterrupted, duty-free meal periods of
27 at least 30 minutes before the end of the fifth hour of work, and second such meal periods
28 before the end of the tenth hour of work. Meal periods were often late, short, or interrupted. For

1 instance, Plaintiff often took his meal periods late because he was required to fix machines that
2 had broken down before taking his meal period. In addition, Defendants required Plaintiff and
3 other aggrieved employees to carry their cell phones with them, and to respond to any incoming
4 calls, during all meal periods.

5 16. During the PAGA Period, Defendants subjected all aggrieved employees to
6 policies and practices which failed to provide duty-free, uninterrupted rest periods of at least
7 ten minutes for every four hours or major fraction thereof worked. Plaintiff was often unable to
8 take rest periods at all. When Plaintiff was able to take rest periods, they were almost always
9 interrupted. In addition, Defendants required Plaintiff and other aggrieved employees to remain
10 on the premises, to carry their cell phones with them, and to respond to any incoming calls
11 during all rest periods. Thus, Plaintiff and other aggrieved employees were on-call during all
12 rest periods and could not use this time for their own purposes. On one occasion, Plaintiff left
13 the premises during his rest period to buy a coffee and was warned by an HR Representative of
14 Defendants that he would be fired if he left the premises during a rest period again.

15 17. During the PAGA Period, despite failing to provide compliant meal and rest
16 periods, Defendants did not pay employees' one hour of pay at their regular rate of pay for each
17 day such a rest or meal period was not provided, as required by Labor Code section 226.7.

18 18. During the PAGA Period, Defendants did not provide accurate itemized wage
19 statements containing all required categories of information to Plaintiff and other aggrieved
20 employees. For instance, because of the Defendants' failure to pay all correctly-calculated
21 minimum, overtime, and paid time off wages, and provide all meal and rest period premium
22 wages, the wage statements issued by Defendants did not contain the correct amount of gross
23 wages earned, net wages earned, total hours worked, nor all applicable hourly rates of pay and
24 all hours worked at each rate.

25 19. During the PAGA Period, Defendants failed to record (and maintain records)
26 reflecting when the employees actually began and ended each work period and meal period,
27 due to off-the-clock work at the beginnings and ends of shifts and during meal periods that was
28 not recorded.

1 20. During the PAGA Period, Defendants did not provide one day's rest in seven to
2 Plaintiff and other aggrieved employees. For instance, when Plaintiff worked as a Sanitation
3 Cleaner and as a Quality Assurance employee, he was often required to work seven days per
4 workweek because his services were required every day to keep his workplace operational.
5 Plaintiff signed a waiver of his right to one day's rest in seven, but this waiver was invalid
6 under California law.

7 21. During the PAGA Period, Defendants maintained a regular practice of failing to
8 pay separated employees all wages owed within the time requirements of Labor Code sections
9 201- 202 because they did not pay all wages earned as set forth herein. Defendants also did not
10 pay a day's wages for every day final pay was not paid through the date final wages were paid,
11 as required by Labor Code section 203. Plaintiff is informed and believes that Defendants have
12 no policy or practice to comply with Labor Code sections 201, 202, and 203 as to all separated
13 employees in California by timely paying final wages and paying waiting time penalty wages
14 when failing to timely pay final wages.

15 22. During the PAGA Period, Defendants failed to reimburse Plaintiff and other
16 aggrieved employees for reasonably necessary business-related expenses, including cell phone
17 expenses, mileage expenses, and other vehicle-related expenses. Plaintiff and other aggrieved
18 employees were required to use their personal cell phones for work-related purposes during
19 their shifts, including to call coworkers and managers when issues arose. Plaintiff made and
20 received work calls on every shift, several times per shift using his personal cell phone.
21 Plaintiff was required to use his personal vehicle to drive during work hours when machines
22 broke down and he was required to buy parts to repair them. Plaintiff estimates he drove ten to
23 fifteen miles per day during his shift.

24 23. Plaintiff further alleges, based on personal experience and observations, that the
25 violations of the Labor Code described herein were suffered by other aggrieved employees of
26 Defendants.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages
(By Plaintiff and Aggrieved Employees against Each Defendant)**

24. Plaintiff incorporates the preceding paragraphs of this Complaint.

25. Labor Code sections 510 and 1194 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay.

26. Labor Code § 2699(a) provides: "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

27. Labor Code § 2699(f)(2) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

28. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510 and 1194 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

29. By failing to pay at least minimum wages for all hours worked, Defendants violated Labor Code section 1194 and the "Minimum Wages" section of the applicable IWC Wage Order. By failing to pay overtime wages and overtime wages at the correct rate, Defendants violated Labor Code sections 510 and 1194 and the "Overtime Wages" section of

1 the applicable IWC Wage Order.

2 30. Plaintiff will seek \$100 for the initial pay period an employee was underpaid,
3 and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with
4 the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
5 California. The amount of the applicable penalty will be proven at trial.

6 **SECOND CAUSE OF ACTION**

7 **PAGA Civil Penalties for Failure to Pay Paid Time Off Wages**
8 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

9 31. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 32. An employer must pay its non-exempt employees for paid sick leave at the
11 employees' regular rate of pay. Labor Code § 246(l). An employer must calculate this pay
12 either "in the same manner as the regular rate of pay for the workweek in which the employees
13 uses paid sick leave, whether or not the employee actually works overtime in that workweek"
14 or "by dividing the employee's total wages, not including overtime premium pay, by the
15 employee's total hours worked in the full pay periods of the prior 90 days of employment." §§
16 246(l)(1)-(2). An employer may use a paid time off policy in lieu of a paid sick leave policy so
17 long as "the employer makes available an amount of leave applicable to employees that may be
18 used for the same purposes and *under the same conditions*" as an equivalent paid sick leave
19 policy. § 246(f). Accordingly, as with paid sick leave, paid time off offered in lieu of sick leave
20 must be paid at the employee's regular rate of pay.

21 33. By failing to pay Plaintiff and other aggrieved employees correctly-calculated
22 paid time off wages because Defendants failed to incorporate non-discretionary bonuses and
23 shift differential pay into these employees' regular rates of pay, Defendants violated Labor
24 Code section 246.

25 34. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
26 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
27 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to
28 the LWDA on behalf of the State of California. The amount of the applicable penalty will be
proven at trial.

THIRD CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Meal Periods
(By Plaintiff and Aggrieved Employees Against Each Defendant)

35. Plaintiff incorporates the preceding paragraphs of this Complaint.

36. Labor Code section 512(a) provides in pertinent part: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. . . An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. . . .” The Meal Period section of the applicable Wage Order provides in pertinent part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked....” IWC Wage Order(s), § 11(C). If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a meal period is not provided. IWC Wage Order(s), § 11(D); Lab. Code § 226.7(c).

37. By failing to: provide duty-free uninterrupted meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free uninterrupted meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees’ regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512 and the “Meal Periods” section of the applicable IWC Wage Order as to Plaintiff and other aggrieved employees.

38. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

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FOURTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

39. Plaintiff incorporates the preceding paragraphs of this Complaint.

40. The Rest Period section of the applicable Wage Order provides: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” IWC Wage Order(s), § 12(A). A first rest period must be authorized and permitted when 3.5 hours are worked, a second when 6 hours are worked, and a third when 10 hours are worked.

41. “Employees forced to remain on call during a 10-minute rest period must fulfill certain duties: carrying a device or otherwise making arrangements so the employer can reach the employee during a break, responding when the employer seeks contact with the employee, and performing other work if the employer so requests. These obligations are irreconcilable with employees’ retention of freedom to use rest periods for their own purposes.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586).

42. “The conclusion that on-call rest periods are impermissible is not only the most logical in light of our construction of Wage Order 4, subdivision 12(A), but is the most consistent with the protective purpose of the Labor Code and wage orders...A different result would undermine the rationale underlying the provision of rest periods during the workday.” *Augustus v. ABM Sec. Servs., Inc.*, *supra*, at 2 Cal. 5th at pp. 270-271. Wage Order 4, subdivision 12(A) is identical to Wage Order 1, subdivision 12(A).

43. If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Lab. Code § 226.7(c).

44. By failing to authorize and permit Plaintiff and other aggrieved employees a

1 paid rest period of at least 10 minutes for every four hours or major fraction worked per day,
2 and by failing to provide premium wages at the regular rate of pay when not permitted or
3 authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and the
4 “Rest Periods” section of the applicable IWC Wage Order.

5 45. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
6 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
7 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to
8 the LWDA on behalf of the State of California. The amount of the applicable penalty will be
9 proven at trial.

10 **FIFTH CAUSE OF ACTION**
11 **PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**
12 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

13 46. Plaintiff incorporates the preceding paragraphs of this Complaint.

14 47. California employers are required to provide itemized wage statements showing,
15 among other things, “gross wages earned,” “total hours worked by the employee,” “net wages
16 earned,” and “all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2),
18 (5), (9).

19 48. By failing to provide accurate itemized wage statements showing the correct
20 amount of gross and net wages earned, total hours worked, and all applicable hourly rates of
21 pay and all hours worked at each rate, Defendants intentionally and willfully violated Labor
22 Code section 226.

23 49. Labor Code section 226.3 provides for civil penalties for violations of Section
24 226.

25 50. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for
26 each subsequent violation. Labor Code § 226.3. Funds recovered will be distributed in
27 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf
28 of the State of California. The amount of the applicable penalty will be proven at trial.

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SIXTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Maintain Accurate Records
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

51. Plaintiff incorporates the preceding paragraphs of this Complaint.

52. An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code § 1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

53. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain records required by Section 1174(d).

54. By failing to maintain accurate records of when the employees began and ended each work period and meal period, Defendants violated Labor Code section 1174.

55. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2) and/or penalties provided for in Labor Code § 1174.5. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

SEVENTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide One Day's Rest in Seven
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

56. Plaintiff incorporates the preceding paragraphs of this Complaint.

57. Labor Code section 551 provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Labor Code section 552, entitled "Maximum consecutive working days," provides that "[n]o employer of labor shall cause his employees to work more than six days in seven." Additionally, Labor Code section 556 contains an exception to the requirements of Sections 551 and 552 "when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof." The right to one day's rest in seven cannot be waived by employees. *Mendoza v. Nordstrom, Inc.* (C.D. Cal. May 13, 2011) 2011 U.S. Dist. LEXIS 161602, at *10.

58. By failing to provide Plaintiff and other aggrieved employees one day's rest in

1 seven, Defendants violated Labor Code sections 551 and 552.

2 59. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
3 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
4 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to
5 the LWDA on behalf of the State of California. The amount of the applicable penalty will be
6 proven at trial.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Timely Pay Wages Due During and at Separation from Employment**
9 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

60. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 61. An employer must pay “[a]ll wages, other than those mentioned in Section 201,
11 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each
12 calendar month, on days designated in advance by the employer as the regular paydays.” Labor
13 Code § 204.

14 62. An employer must pay all wages owed to terminated employees at the time of
15 termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer
16 willfully fails to timely pay all wages to separated employees, the wages continue at the same
17 rate for up to 30 days, until paid. Cal. Labor Code § 203.

18 63. By failing to pay Plaintiff and other aggrieved employees all earned minimum,
19 regular, and overtime wages, Defendants failed to pay these employees all wages due during
20 their employment, in violation of Labor Code section 204. Because Defendants failed to pay
21 these earned wages, Defendants also failed to timely pay all final wages owed to Plaintiff and
22 other aggrieved employees in violation of Labor Code sections 201 and 202. Defendants did
23 not pay waiting time penalties to Plaintiff and other aggrieved employees for each day any
24 portion of their final wages went unpaid, in violation of Labor Code section 203.

25 64. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
26 not reimbursed, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds
27 recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties
28 provided to the LWDA on behalf of the State of California. The amount of the applicable

1 penalty will be proven at trial.

2 **NINTH CAUSE OF ACTION**

3 **PAGA Civil Penalties for Failure to Reimburse Business Expenses**
4 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

5 65. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 66. An employer must reimburse its employees for their reasonable business-related
7 expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code §
8 2804.

9 67. By failing to reimburse Plaintiff and other aggrieved employees for their
10 business-related expenses, including personal cell phone, mileage, and other vehicle expenses,
11 Defendants willfully violation Labor Code section 2802.

12 68. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
13 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
14 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the
15 LWDA on behalf of the State of California. The amount of the applicable penalty will be
16 proven at trial.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff prays for the following relief on behalf of himself and other
19 aggrieved employees against Defendants:

20 1. That this action be maintained as a PAGA Representative Action, and Plaintiff
21 and his counsel be provided with enforcement capability as if the action were brought by the
22 DLSE;

23 2. For recovery of all civil penalties as permitted by Labor Code section 2699, for
24 unpaid minimum, regular, and overtime wages owed pursuant to Labor Code sections 204, 510
25 and 1194, according to proof;

26 3. For recovery of all civil penalties as permitted by Labor Code section 2699, for
27 unpaid paid time off wages pursuant to Labor Code section 246, according to proof;

28 4. For recovery of civil penalties as permitted by Labor Code section 2699, for
unpaid meal period premiums pursuant to Labor Code section 226.7, according to proof;

1 5. For recovery of civil penalties as permitted by Labor Code section 2699 for
2 unpaid rest period premiums pursuant to Labor Code section 226.7, according to proof;

3 6. For recovery of civil penalties as permitted by Labor Code section 2699, for
4 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
5 to proof;

6 7. For recovery of civil penalties as permitted by Labor Code section 2699 and/or
7 1174.5, for failing to maintain accurate records pursuant to Labor Code section 1174,
8 according to proof;

9 8. For recovery of civil penalties as permitted by Labor Code section 2699, for
10 failing to provide one day's rest in seven pursuant to Labor Code sections 551-552, according
11 to proof;

12 9. For recovery of civil penalties as permitted by Labor Code section 2699, for
13 failing to timely pay all wages owed upon separation from employment pursuant to Labor
14 Code sections 201-203, according to proof;

15 10. For recovery of civil penalties as permitted by Labor Code section 2699 for
16 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

17 11. For all civil penalties to be distributed 75% to the LWDA and 25% to the
18 aggrieved employees, pursuant to Labor Code section 2699(i);

19 12. For the Plaintiff to be recognized as a Representative of the LWDA and an
20 "aggrieved employee," and that he be awarded enhanced compensation for bringing this action
21 should he prevail and provide benefit to California or other "aggrieved employees";

22 13. For recovery of reasonable attorneys' fees and costs, as specifically permitted
23 by Labor Code Section 2699(g), or alternatively as permitted as a private enforcement action
24 seeking public redress for fees and costs as permitted by California Code of Civil Procedure
25 section 1021.5; and

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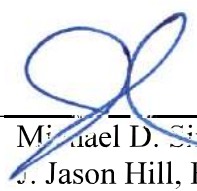
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1 14. Such other relief as the Court may deem appropriate.

2 COHELAN KHOURY & SINGER

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4 Dated: August 27, 2021

By: 

Michael D. Singer, Esq.

J. Jason Hill, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Jose Magallan, on behalf of
himself and all others aggrieved

EXHIBIT 1

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A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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June 17, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

Spice World, Inc.
14020 S. Wilkie Ave.
Gardena, CA 90249

SW Ingredients Holdings, LLC
8101 Presidents Dr.
Orlando, FL 32809

Re: Notice by Jose Magallan, on behalf of himself and all other aggrieved employees of Spice World, Inc. and SW Ingredients Holdings, LLC, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Jose Magallan ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against Spice World, Inc. and SW Ingredients Holdings, LLC ("Employers") on behalf of all other aggrieved employees. In this notice, "aggrieved employees" means all non-exempt California employees subject to the policies and practices described below, including, but not limited to, Sanitation Cleaners, Quality Assurance employees, and Maintenance Clerks.

Factual Statement

Claimant worked for Employers from approximately April 2020 through April 21, 2021. Claimant worked as a Sanitation Cleaner from April 2020 to August 2020, a Quality Assurance employee from August 2020 to February 2021, and a Maintenance Clerk from February 2021 to April 2021. As a Sanitation Cleaner, Claimant's duties included taking machines apart and cleaning and soaking parts according to specific processes. As a Quality Assurance employee, Claimant's duties included taking product samples and sending them to a lab for testing, receiving results from the lab, and releasing products that had passed and throwing away products that had not passed the testing process. As a Maintenance Clerk, Claimant's duties included ordering parts, driving to pick up parts, keeping track of maintenance items and inventory, and conducting quality checks every hour.

Employers failed to pay Claimant and other aggrieved employees at least minimum wages for all time worked or spent under the Employers' control. For instance, when Claimant worked as a Quality Assurance employee and as a Maintenance Clerk, he was regularly required

by Employers to work after clocking out from his shift, including to rearrange items and complete paperwork, which took ten to fifteen minutes per shift. Employers encouraged Claimant and other aggrieved employees to clock out before completing this work to avoid paying Claimant and other aggrieved employees overtime wages. In addition, Employers did not always properly calculate wages. On several occasions, when multiplying Claimant's pay rate by his hours worked on his pay stubs, the total pay listed is less than it should be.

Employers failed to pay Claimant and other aggrieved employees all correctly-calculated overtime wages for hours worked over eight in one day or forty in one week. For instance, Employers failed to incorporate non-discretionary bonuses and shift differential pay, including "REGNS" or regular night shift pay, into Claimant's and other aggrieved employees' regular rates of pay for the purpose of calculating their overtime wages.

Employers failed to pay Claimant and other aggrieved employees all correctly-calculated paid time off wages. Employers failed to incorporate non-discretionary bonuses and shift differential pay, including "REGNS" or regular night shift pay, into Claimant's and other aggrieved employees' regular rates of pay for the purpose of calculating their paid time off wages.

Employers subjected all aggrieved employees to policies and practices which failed to provide timely, uninterrupted, duty-free meal periods of at least 30 minutes before the end of the fifth hour of work, and second such meal periods before the end of the tenth hour of work. Meal periods were often late, short, or interrupted. For instance, Claimant often took his meal periods late because he was required to fix machines that had broken down before taking his meal period. In addition, Employers required Claimant and other aggrieved employees to carry their cell phones with them, and to respond to any incoming calls, during all meal periods.

Employers subjected all aggrieved employees to policies and practices which failed to provide duty-free, uninterrupted rest periods of at least ten minutes for every four hours or major fraction thereof worked. Claimant was often unable to take rest periods at all. When Claimant was able to take rest periods, they were almost always interrupted. In addition, Employers required Claimant and other aggrieved employees to remain on the premises, to carry their cell phones with them, and to respond to any incoming calls during all rest periods. Thus, Claimant and other aggrieved employees were on-call during all rest periods and could not use this time for their own purposes. On one occasion, Claimant left the premises during his rest period to buy a coffee and was warned by an HR Representative of Employers that he would be fired if he left the premises during a rest period again.

Despite failing to provide compliant meal and rest periods, Employers did not pay employees' one hour of pay at their regular rate of pay for each day such a rest or meal period was not provided, as required by Labor Code section 226.7.

Employers did not provide accurate itemized wage statements containing all required categories of information to Claimant and other aggrieved employees. For instance, because of the Employers' failure to pay all correctly-calculated minimum, overtime, and paid time off wages, and provide all meal and rest period premium wages, the wage statements issued by

Employers did not contain the correct amount of gross wages earned, net wages earned, total hours worked, nor all applicable hourly rates of pay and all hours worked at each rate.

Employers failed to record (and maintain records) reflecting when the employees actually began and ended each work period and meal period, due to off-the-clock work at the beginnings and ends of shifts and during meal periods that was not recorded.

Employers did not provide one day's rest in seven to Claimant and other aggrieved employees. When Claimant worked as a Sanitation Cleaner and as a Quality Assurance employee, he was often required to work seven days per workweek because his services were required every day to keep his workplace operational. Claimant signed a waiver of his right to one day's rest in seven, but this waiver was invalid under California law. When Claimant worked as a Maintenance Clerk, he worked approximately 5 to 6 days per week for approximately 50 hours per week.

Employers maintained a regular practice of failing to pay separated employees all wages owed within the time requirements of Labor Code sections 201- 202 because they did not pay all wages earned as set forth herein. Employers also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Claimant is informed and believes that Employers have no policy or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages.

Employers failed to reimburse Claimant and other aggrieved employees for reasonably necessary business-related expenses, including cell phone expenses, mileage expenses, and other vehicle-related expenses. Claimant and other aggrieved employees were required to use their personal cell phones for work-related purposes during their shifts, including to call coworkers and managers when issues arose. Claimant made and received work calls on every shift, several times per shift using his personal cell phones. Claimant was required to use his personal vehicle to drive during work hours when machines broke down and he was required to buy parts to repair them. Claimant estimates he drove ten to fifteen miles per day during his shift.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other aggrieved employees of Employers.

Summarizing the claims on behalf of Mr. Magallan and all other aggrieved employees of Employers, Employers failed to:

1. Pay minimum wages for all time worked or subject to Employers' control;
2. Pay correctly calculated minimum and regular wages;
3. Pay correctly-calculated overtime wages for hours worked in excess of 8 in one day and/or 40 in one week;
4. Pay correctly-calculated paid time off wages;

5. Provide meal periods;
6. Authorize and permit paid rest periods;
7. Provide compliant wage statements;
8. Maintain accurate records;
9. Provide one day's rest in seven;
10. Timely pay all wages owed during and at separation from employment; and
11. Reimburse reasonably necessary business-related expenses.

MINIMUM, REGULAR, AND OVERTIME WAGES

Labor Code §§ 510, 1194

Labor Code sections 510 and 1194 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay.

Employers failed to pay all minimum, regular, and overtime wages to Claimant and other aggrieved employees. Employers did not pay Claimant and other aggrieved employees any wages for time worked off-the-clock, and failed to properly calculate these employees' pay on several occasions. Employers also failed to pay overtime wages at the correct rate by failing to incorporate all applicable forms of compensation, including non-discretionary bonuses and shift differentials, into employees' regular rates of pay.

PAID TIME OFF WAGES

Labor Code § 246

An employer must pay its non-exempt employees for paid sick leave at the employees' regular rate of pay. Labor Code § 246(l). An Employer must calculate this pay either "in the same manner as the regular rate of pay for the workweek in which the employees uses paid sick leave, whether or not the employee actually works overtime in that workweek" or "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." §§ 246(l)(1)-(2). An employer may use a paid time off policy in lieu of a paid sick leave policy so long as "the employer makes available an amount of leave applicable to employees that may be used for the same purposes and *under the same conditions*" as an equivalent paid sick leave policy. § 246(f). Accordingly, as with paid sick leave, paid time off offered in lieu of sick leave must be paid at the employee's regular rate of pay.

Employers failed to pay paid time off wages to Claimant and other aggrieved employees at these employees' regular rates of pay because Employers failed to incorporate all applicable

forms of compensation, including non-discretionary bonuses and shift differentials, into the regular rates of pay.

MEAL PERIODS & PREMIUM WAGES

Labor Code §§ 226.7 & 512

Labor Code section 512(a) provides in pertinent part: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. . . An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. . . .” The Meal Period section of the applicable Wage Order provides in pertinent part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked...” IWC Wage Order 1-2001, § 11(C). If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a meal period is not provided. IWC Wage Order 1-2001, § 11(D); Lab. Code § 226.7(c).

Employers failed to provide Claimant and other aggrieved employees with compliant meal periods and failed to pay one hour of premium pay for each day such a meal period was not provided.

REST PERIODS & PREMIUM WAGES

Labor Code § 226.7

The Rest Period section of the applicable Wage Order provides: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” IWC Wage Order 1-2001, § 12(A). A first rest period must be authorized and permitted when 3.5 hours are worked, a second when 6 hours are worked, and a third when 10 hours are worked.

“Employees forced to remain on call during a 10-minute rest period must fulfill certain duties: carrying a device or otherwise making arrangements so the employer can reach the employee during a break, responding when the employer seeks contact with the employee, and performing other work if the employer so requests. These obligations are irreconcilable with employees’ retention of freedom to use rest periods for their own purposes.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586)

“The conclusion that on-call rest periods are impermissible is not only the most logical in light of our construction of Wage Order 4, subdivision 12(A), but is the most consistent with the protective purpose of the Labor Code and wage orders...A different result would undermine the rationale underlying the provision of rest periods during the workday.” *Id.* at 270-271. Wage Order 4, subdivision 12(A) is identical to Wage Order 1, subdivision 12(A).

If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day a rest period is not provided. IWC Wage Order 1-2001, § 12(B); Lab. Code § 226.7(c).

Employers failed to provide Claimant and other aggrieved employees with compliant rest periods and failed to pay one hour of premium pay for each day such a rest period was not provided.

WAGE STATEMENTS

Labor Code § 226

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code §§ 226(a)(1), (2), (5), (9).

Employers did not provide accurate itemized wage statements containing all required categories of information to Claimant and other aggrieved employees, including their gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

ACCURATE RECORDS

Labor Code § 1174; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Employers did not maintain accurate time and pay records as to Claimant and other aggrieved employees. For instance, because Employers did not record off-the-clock work, Employers failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

ONE DAY'S REST IN SEVEN

Labor Code §§ 551, 552, & 556

Labor Code section 551 provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Labor Code section 552, entitled "Maximum consecutive working days," provides that "[n]o employer of labor shall cause his employees to work more than six days in seven." Additionally, Labor Code section 556 contains an exception to the requirements of Sections 551 and 552 "when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof." The right to one day's rest in seven cannot be waived by employees. *Mendoza v. Nordstrom, Inc.* (C.D. Cal. May 13, 2011) 2011 U.S. Dist. LEXIS 161602, at *10.

Employers required Claimant and other aggrieved employees to work seven consecutive days in a workweek. Based on the hours worked by Claimant and other aggrieved employees, the exception in Labor Code section 556 does not apply. Any purported waiver by Claimant or other aggrieved employees of the right to one day's rest in seven is invalid.

WAGES DUE DURING EMPLOYMENT & UPON SEPARATION

Labor Code §§ 201-204

An employer must pay "[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays." Labor Code § 204.

An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Cal. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, Employers failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-204.

EXPENSE REIMBURSEMENT

Labor Code §§ 2802 & 2804

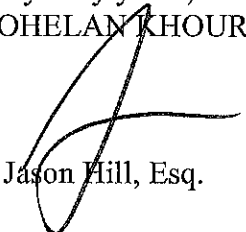
An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

Employers failed to reimburse Claimant and other aggrieved employees for their reasonable business-related expenses, including their cell phone expenses, mileage expenses, and other vehicle expenses.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above against Employers. If the LWDA does not pursue enforcement, Claimant will pursue claims for statutory penalties and seek all remedies available for Employers' violations of the Labor Code and applicable Industrial Welfare Commission Wage Order(s), including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER



J. Jason Hill, Esq.