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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ZACHERY POLTOR, as an individual, on behalf of himself, and all persons similarly situated,

Plaintiff,

v.

AV SQUAD, LP, a California limited partnership authorized to do business in the state of California; and DOES 1 through 50 inclusive,

Defendants.

Case No.: 21STCV43467

CLASS AND REPRESENTATIVE ACTION

COMPLAINT FOR DAMAGES, RESTITUTION, PENALTIES AND INJUNCTIVE RELIEF:

(1) FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES (Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199);

(2) FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES (Labor Code §§ 204, 210, 226.7, 512, and 558);

(3) FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR TIMELY PAY PREMIUM WAGES (Labor Code §§ 204, 210, and 226.7);

(4) FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES (Labor Code §§ 201-203 and 210);

(5) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES (Labor Code § 2802);

(6) FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code §§ 226 and 226.3);

(7) FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §§ 226, 1174, and 1174.5);

(8) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (Bus. & Prof. Code §§ 17200 *et seq.*); and

(9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698 *et seq.*).

DEMAND FOR JURY TRIAL

Plaintiff Zachery Poltor ("Plaintiff") brings this class and representative action on behalf of himself and all persons similarly situated against Defendants AV Squad, LP, and DOES 1 through 50, inclusive (collectively, "AV" or "Defendants"), on the following grounds:

INTRODUCTION

1. This class and representative action is brought by Plaintiff on behalf of himself and all other current or former non-exempt employees of AV who worked at any of AV's locations in the state of California during the relevant time period (referred to herein as "AV Employees").

2. Plaintiff asserts that during the relevant time period, AV engaged in a common pattern and practice of wage and hour violations under the California Labor Code ("Labor Code") and the California Industrial Welfare Commission's ("IWC") Wage Order No. 12-2001 to decrease its employment related costs and increase its profits by, among other things:

a. Failing to timely compensate for all hours actually worked, including minimum, regular, and/or overtime wages;

b. Failing to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods;

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c. Failing to authorize and permit legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods;

d. Failing to timely pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties;

e. Failing to reimburse for necessary business expenses;

f. Failing to furnish accurate itemized wage statements;

g. Failing to maintain accurate records;

h. Engaging in unlawful, unfair and/or fraudulent business practices; and

i. Violating the Private Attorneys General Act of 2004 ("PAGA").

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, penalties, and injunctive relief, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10. Pursuant to Code of Civil Procedure section 382, California Business and Professions Code ("Business & Professions Code") section 17203, and Labor Code sections 2698 *et seq.*, Plaintiff brings this action on behalf of himself and all other AV Employees.

6. This Court has personal jurisdiction over AV because AV conducts business in the state of California and has caused injuries in the county of Los Angeles, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and Business & Professions Code.

7. Venue as to AV is proper in this judicial district pursuant to Code of Civil Procedure section 395(a). AV transacts business in Los Angeles County and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other AV Employees within the county of Los Angeles and throughout the state of California.

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8. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

9. Per Judicial Council Emergency Rule 9, the Statute of Limitations on all Causes of Action in this Complaint were tolled from April 6, 2020 to October 1, 2020.

THE PARTIES

I. PLAINTIFF

10. Plaintiff Zachery Poltor at all material times mentioned herein:

a. Was a resident of the county of Los Angeles, California;

b. Was employed by AV from about May 2018 to April 16, 2021 as an Assistant Editor at AV's building located in Los Angeles, California;

c. Engaged in work for AV in the county of Los Angeles;

d. Earned an hourly wage;

e. Was to be paid on a bi-weekly basis;

f. Was typically scheduled to work five (5) days per week and forty (40) hours per week;

g. Was classified by AV as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;

h. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time engaged in work;

i. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid compensation in lieu thereof;

j. Was not authorized and permitted to take legally compliant rest periods and/or timely paid compensation in lieu thereof;

k. Was not timely paid all wages due and payable upon separation of employment and/or the required waiting time penalties for the late payment of wages;

l. Was not reimbursed for all necessary business expenses that he incurred in the discharge of his job duties;

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m. Was not furnished with accurate itemized wage statements;

n. Contends his employee and/or payroll records were not accurately maintained by AV;

o. Was subject to AV's unlawful, unfair, and fraudulent business practices;

p. Is a member of the class and sub-class defined herein;

q. Is an "aggrieved employee" as defined by Labor Code section 2699(c); and

r. Has complied with all requirements outlined in Labor Code sections 2698 *et seq*.

II. DEFENDANTS

11. Defendant AV Squad, LP is organized in the state of California and has its headquarters located in West Hollywood, California. AV Squad, LP is authorized to do business, and is actually doing business, in the state of California. AV Squad, LP is a creative advertising agency specializing in entertainment marketing throughout California.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

13. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant are also alleged to have been done and/or caused by each fictitiously named defendant, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

14. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other defendants.

15. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of

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the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

16. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, were and are acting with authority of each and every other defendant and/or are acting as agents of each and every other named defendant or Doe defendant.

17. At all times mentioned herein there was a unity of interest and ownership between each named defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other AV Employees.

18. At all times mentioned herein each named defendant, including each fictitiously named defendant, exercised supervision and control over the working conditions of Plaintiff and all other AV Employees, including, but not limited to, implementing standard policies and procedures.

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FACTUAL ALLEGATIONS

19. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

20. Plaintiff was employed by, or otherwise performed work for, AV from approximately May 2018 to April 16, 2021. During his employment, Plaintiff performed work for AV as an Assistant Editor. Plaintiff's job duties as an Assistant Editor included, but were not limited to, video editing and finishing processes.

21. During his employment, Plaintiff was classified by AV as a non-exempt employee, earned an hourly rate, and was to be paid on a bi-weekly basis. Plaintiff typically worked five (5) days per week and forty (40) hours per week, and sometimes worked overtime.

22. Plaintiff asserts that AV has employed, and will continue to employ, individuals in a non-exempt capacity in Los Angeles County and throughout the state of California.

23. Plaintiff further alleges that throughout the relevant time period all AV Employees earned an hourly wage and were to be paid on a bi-weekly basis.

24. Plaintiff contends that he and all other AV Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

25. Plaintiff further alleges that he and all other AV Employees have suffered, and, on information and belief, those currently employed will continue to suffer, the same and/or similar violations of law described herein.

26. Plaintiff contends that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not compensating him and all other AV Employees, on the designated pay days, all minimum, regular, and/or overtime wages for all time engaged in work on behalf of AV.

27. Plaintiff asserts that he and other AV Employees regularly performed work for AV and/or were under the control of AV while they were off-the-clock for a meal period. However, AV considered such time as non-compensable time and therefore failed to provide any remuneration to Plaintiff and AV Employees.

28. Plaintiff also contends AV failed to compensate AV Employees, including Plaintiff, for all hours worked because AV had, and continues to have, an illegal policy of paying Plaintiff and other AV Employees based on a pre-determined schedule which generally begins at 10:00 a.m. and ends at 7:00 pm, regardless of whether these were the actual times worked by Plaintiff and AV Employees. Therefore, based on the foregoing, Plaintiff and, on information and belief, other AV Employees, were not paid on the days designated in advance by AV as regular pay days for all time actually worked and/or spent under the control of AV.

29. Plaintiff contends that AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all AV Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work when they worked five (5) or more hours in a day. Similarly, Plaintiff contends that AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all AV Employees with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they worked more than ten (10)

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hours in a day.

30. Plaintiff contends that when he first started working for AV, his direct supervisor told him, "we don't take lunch breaks here", when Plaintiff asked to go on a meal period. In addition, when Plaintiff asked another employee if the employees were allowed to take meal periods, the employee responded saying "fuck no". In fact, Plaintiff contends that AV usually provided catered lunches to AV Employees with the expectation that they continue working while eating their lunches. If Plaintiff and/or other AV Employees took more than a few minutes to finish eating their lunches, they would be ridiculed by their supervisors and pressured to return to work and/or assigned more work.

31. Plaintiff also contends that when he and other AV Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Plaintiff was still not provided with the opportunity to take a 30-minute, off-duty, uninterrupted meal period that was free from AV's control because of an increase in the workload assigned on Plaintiff and other AV Employees due to a companywide reduction in workforce. As a result, Plaintiff and other AV Employees regularly received meal periods that were not free from AV's control, late, interrupted by work duties and/or less than thirty (30) minutes in length.

32. Plaintiff asserts that AV knew or should have known that Plaintiff and other AV Employees were not provided with the opportunity to take legally compliant meal periods due in part to AV's policy, practice, procedure, guideline, and/or culture of automatically deducting a one hour meal period from Plaintiff's and other AV Employees' time sheets, regardless of whether or not Plaintiff and other AV Employees actually took a meal period and because AV failed to adequately hire enough workers so that AV Employees could be relieved of all duties and AV's control for their meal periods. For Plaintiff in particular, although he usually worked from 12:00 p.m. to 8:00 p.m. or later, AV included meal periods scheduled from 1:00 p.m. to 2:00 p.m. on an overwhelming majority of Plaintiff's time sheets. On multiple occasions Plaintiff and other AV Employees missed, or were otherwise compelled to forgo, their meal periods.

33. Despite not being provided with legally compliant meal periods, Plaintiff alleges that AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of timely paying meal period premium wages at an employee's regular rate of pay to Plaintiff and other AV Employees for all meal periods that do not comply with California law.

34. Plaintiff further alleges that AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other AV Employees to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

35. Plaintiff asserts that he and other AV Employees were not authorized and permitted to take lawful rest periods because of AV's policy, practice, procedure, guideline, and/or culture of requiring Plaintiff and other AV Employees to work through their rest periods. In fact, Plaintiff contends that when he asked another employee if the employees were allowed to take rest periods, he responded saying "fuck no". When Plaintiff and other AV Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Plaintiff was still not authorized or permitted to take rest periods because of the increase in the workload assigned on Plaintiff and other AV Employees due to a companywide reduction in workforce. As a result, Plaintiff and other AV Employees received rest periods that were not free from AV's control, interrupted by work duties, and/or less than ten (10) minutes in length. On multiple occasions Plaintiff and other AV Employees missed, or were otherwise compelled to forgo, their rest periods.

36. Plaintiff contends that AV knew, or should have known, that Plaintiff and other AV Employees were not authorized and permitted to take legally compliant rest periods because AV failed to adequately hire enough workers so that AV Employees could be relieved of all duties and AV's control for their rest periods.

37. Despite not being provided with legally compliant rest periods, Plaintiff alleges that AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of timely compensating Plaintiff and other AV Employees premium wages for all unlawful rest periods at the employee's regular rate of pay.

38. Plaintiff asserts that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to reimburse all AV Employees, including Plaintiff, for all necessary business expenses that were incurred in the discharge of their job duties. For example, Plaintiff and other AV Employees were not reimbursed for costs of equipment and supplies like desk chairs, lap top mounts, mouse pads, and keyboards when employees transitioned to working from home in March of 2020 due to

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the COVID-19 pandemic. In addition, Plaintiff and other AV Employees were also not reimbursed a reasonable percentage of the added electrical and internet expenses incurred as a result of working from home, in violation of California law.

39. Plaintiff alleges that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay former AV Employees, such as himself, all wages due and owing upon separation of employment and/or the mandated waiting time penalties for the late payment of such wages. For instance, AV has failed to timely pay Plaintiff and former AV Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Plaintiff further contends, on information and belief, that Plaintiff and former AV Employees have not yet received the required waiting time penalties for AV's failure to immediately pay all wages due and owing upon separation of employment.

40. Plaintiff asserts that AV has a policy, practice, procedure, guideline, and/or culture of furnishing AV Employees, including Plaintiff, with wage statements that do not comply with California law. Plaintiff contends that the wage statements furnished to him and other AV Employees did not include, for instance, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, the corresponding number of hours worked at each hourly rate by the employee, and the actual gross and net wages earned.

41. Due to the lack of information on the furnished wage statements, AV Employees, such as Plaintiff, were unable to promptly and easily determine the total number of hours actually worked, the applicable hourly rates in effect during the pay period and/or the corresponding number of hours worked at each hourly rate, among other things.

42. As a result of AV's policies, practices, procedures, guidelines, and/or culture described herein including, but not limited to, failing to compensate AV Employees all minimum, regular, and/or overtime wages, failing to provide legally compliant meal periods or compensation in lieu thereof, and failing to furnish accurate itemized wage statements, AV knowingly and intentionally failed to maintain accurate employee and payroll records, reflecting AV Employees' actual time worked, the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, among other things, as required by California law.

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43. On June 8, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and AV as required by the Private Attorneys General Act of 2004 ("PAGA") informing them of AV's alleged violations of the Labor Code. A true and correct copy of the June 8, 2021 written notice is attached hereto as **Exhibit 1** and incorporated herein by reference.

44. According to Labor Code section 2699.3 the LWDA had sixty-five (65) days from the date of submission to notify the parties of whether it intends to investigate the alleged violations. To date, the LWDA has not informed Plaintiff that it intends to investigate Plaintiff's allegations. Thus, pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative action in his representative capacity on behalf of himself, all other AV Employees, the general public and the state of California as permitted by Labor Code section 2699.3.

45. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

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CLASS DEFINITIONS

46. Plaintiff seeks to represent the following class and sub-class, which are defined as:

The Non-Exempt Class

All current or former non-exempt employees of Defendants who worked for Defendants in California during the period commencing on June 4, 2017 through and including the last date of trial (hereinafter the "Class Period").

The Non-Exempt Waiting Time Penalties Sub-Class

All current or former non-exempt employees of Defendants who worked for Defendants in California during the period commencing June 4, 2018 through and including the last date of trial. Members of the class and/or sub-class are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

47. A more precise definition of the class and/or sub-class may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the class, sub-class and/or create additional sub-classes at any time prior to the court's order on Plaintiff's class certification motion as provided by law. (Cal. Rules Ct., R. 3.765(b).)

CLASS ALLEGATIONS

48. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

49. Plaintiff brings this action on behalf of himself and on behalf of all persons within the class and/or sub-class defined herein.

50. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code of Civil Procedure section 382 and California Civil Code ("Civil Code") section 1781, in that:

a. The persons who comprise the class and/or sub-class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the class and/or sub-class and will apply uniformly to every member of the class and/or sub-class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;

c. The parties opposing the class and/or sub-class have acted or have refused to act on grounds generally applicable to the class, thereby making final injunctive relief or declaratory relief appropriate with respect to the class as a whole; and

d. Common questions of law and fact exist as to the members of the class and/or sub-class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of class members and/or sub-class members in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class and/or sub-class;

iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and

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iv. The likely difficulties in the managing a class action.

51. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure 382 and Civil Code section 1781 because:

a. Questions of law and fact common to the class and/or sub-class are substantially similar and predominate over any questions affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of class members' and/or sub-class members' claims;

c. The members of the class and/or sub-class are so numerous that it is impractical to bring all class members before the Court;

d. Plaintiff's claims are typical of the claims of the class and/or sub-class;

e. Class members and/or sub-class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the class and/or sub-class;

g. Plaintiff can fairly and adequately protect the interests of the class and/or sub-class;

h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the class and/or sub-class for the injuries sustained; and

i. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class and/or sub-class as a whole.

<u>CAUSES OF ACTION</u>

FIRST CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

[Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the "Minimum

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Wages" and "Hours and Days of Work" Sections of IWC Wage Order No. 12-2001]

52. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

53. Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Thus, Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work.

54. Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." (*See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].)

55. Labor Code section 1198 mandates,

> [t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

56. The "Minimum Wages" section of IWC Wage Order No. 12-2001 also states that, "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

57. Codifying an employee's right to overtime compensation, Labor Code section 510 provides:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the

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rate of no less than twice the regular rate of pay of an employee.

58. The "Hours and Days of Work" and "Minimum Wages" sections of the IWC Wage Order No. 12-2001 mandate the same requirements as Labor Code section 510.

59. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

60. Labor Code section 1194(a) mandates:

> …any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

61. Labor Code section 1197.1 further provides,

> Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

62. For actions brought under Labor Code sections 1194 or 1197.1, Labor Code section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

63. Labor Code section 1199 imposes "a fine of not less than one hundred dollars ($100)" for any employer who violates the provisions set forth in Labor Code section 1198.

64. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section 204 shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

65. Labor Code section 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of $50 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages for any initial violation, and $100 for each

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underpaid employee for each pay period for which the employee was underpaid for each subsequent violation in addition to an amount sufficient to recover unpaid wages.

66. Plaintiff alleges that he and other AV Employees, earned an hourly wage and were to be paid on a bi-weekly basis.

67. Plaintiff alleges that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not compensating him and all other AV Employees, on the days designated in advance by the employer as regular pay days, all minimum, regular, and/or overtime wages for all the time engaged in work on behalf of AV. For example, Plaintiff asserts that he and other AV Employees regularly performed work for AV and/or were under the control of AV while they were off-the-clock for a meal period. However, AV considered such time as non-compensable time and therefore failed to provide any remuneration to Plaintiff and AV Employees. Moreover, Plaintiff also contends AV failed to compensate him and all other AV Employees for all hours worked because AV had, and continues to have, an illegal policy of paying Plaintiff and other AV Employees based on a pre-determined schedule which generally begins at 10:00 a.m. and ends at 7:00 pm, regardless of whether these were the actual times worked by Plaintiff and AV Employees. Therefore, based on the foregoing, Plaintiff and, on information and belief, other AV Employees, were not paid on the days designated in advance by AV as regular pay days for all time actually worked and/or spent under the control of AV.

68. By virtue of AV's unlawful failure to compensate Plaintiff and other AV Employees minimum, regular, and/or overtime wages for all of their time actually worked, AV Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

69. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiff and other AV Employees are entitled to, and now seek to recover, all wages and penalties owed including, but not limited to, penalties and liquidated damages available under Labor Code sections 210, 558, 1194.2, 1197.1, and 1199, as well as interest and reasonable attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, and Code of Civil Procedure section 1021.5.

70. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the prayer below.

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SECOND CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS

[Labor Code §§ 204, 210, 226.7, 512, 558, and the "Meal Periods" Section of IWC Wage Order No. 12-2001]

71. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

72. Labor Code section 512(a) mandates,

> <u>An employer may 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</u>, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. <u>An employer may 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</u>, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

73. The "Meal Periods" section of IWC Wage Order No. 12-2001 provides, in pertinent part,

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, nor more than one (1) hour.
>
> (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

74. The "Meal Periods" section of IWC Wage Order No. 12-2001 also states,

> 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. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

75. A meal period generally comports with the requirements under California law if the employee (1) has at least thirty (30) minutes uninterrupted, (2) is free to leave the premises, and (3) is

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relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) Additionally, "an employer may not undermine formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id*. at 1040.)

76. Labor Code section 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission…" Labor Code section 226.7(c) further provides,

> If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

77. Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1103-1114.)

78. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

79. Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code sections 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid."

80. Plaintiff alleges that AV did not, and does not, have a policy, practice, procedure, guideline and/or culture of providing all AV Employees with the opportunity to take a thirty (30) minute, uninterrupted, off-duty meal period before the end of their fifth (5^{th}) hour of work when they worked five (5) or more hours in a day, and/or the opportunity to take a second thirty (30) minute, uninterrupted, off-

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duty meal period when they worked more than ten (10) hours in a day.

81. Plaintiff alleges that he and other AV Employees did not receive lawful meal periods due to AV's policy, practice, procedure, guideline, and/or culture of not providing meal periods. Plaintiff contends that when he first started working for AV, his direct supervisor told him, "we don't take lunch breaks here", when Plaintiff asked to go on a meal period. In addition, when Plaintiff asked another employee if the employees were allowed to take meal periods, the employee responded saying "fuck no". In fact, Plaintiff contends that AV usually provided catered lunches to AV Employees with the expectation that they continue working while eating their lunches. If Plaintiff and/or other AV Employees took more than a few minutes to finish eating their lunches, they would be ridiculed by their supervisors and pressured to return to work and/or assigned more work.

82. Plaintiff also contends that when he and other AV Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Plaintiff was still not provided with the opportunity to take a 30-minute, off-duty, uninterrupted meal period that was free from AV's control because of an increase in the workload assigned on Plaintiff and other AV Employees due to a companywide reduction in workforce. As a result, Plaintiff and other AV Employees regularly received meal periods that were not free from AV's control, late, interrupted by work duties and/or less than thirty (30) minutes in length.

83. Plaintiff further contends that AV knew or should have known that Plaintiff and other AV Employees were not provided with the opportunity to take legally compliant meal periods due in part to AV's policy, practice, procedure, guideline, and/or culture of automatically deducting a one hour meal period from Plaintiff's and other AV Employees' time sheets, regardless of whether or not Plaintiff and other AV Employees actually took a meal period and because AV failed to adequately hire enough workers so that AV Employees could be relieved of all duties and AV's control for their meal periods. For Plaintiff in particular, although he usually worked from 12:00 p.m. to 8:00 p.m. or later, AV included meal periods scheduled from 1:00 p.m. to 2:00 p.m. on an overwhelming majority of Plaintiff's time sheets. On multiple occasions Plaintiff and other AV Employees missed, or were otherwise compelled to forgo, their meal periods.

84. Plaintiff asserts that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not timely paying the required meal period premiums when a lawful meal

period was not provided. Plaintiff contends that despite not being provided with legally compliant meal periods, he and other AV Employees did not receive timely premium wages for unlawful meal periods.

85. AV's unlawful conduct caused Plaintiff and other AV Employees to suffer, and current AV Employees will continue to suffer, damages in an amount which is presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

86. Pursuant to Labor Code section 226.7(c) and IWC Order No. 12-2001, Plaintiff and other AV Employees are entitled to, and seek to recover the full amount of unpaid premium wages for unlawful meal periods.

87. Pursuant to Labor Code section 218.6, Plaintiff and other AV Employees are entitled to, and now seek to recover, prejudgment interest on the amount of premium wages owed.

88. Plaintiff and all other AV Employees are entitled to, and therefore seek, the penalty outlined in Labor Code section 210 for the late payment of premium wages.

89. Plaintiff, on behalf of himself and other AV Employees, is entitled to and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

90. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

THIRD CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

AND/OR TIMELY PAY PREMIUM WAGES. FOR NON-COMPLIANT REST PERIODS

[Labor Code §§ 204, 210, 226.7, and the "Rest Periods" Section of IWC Wage Order No. 12-2001]

91. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

92. The "Rest Periods" section of IWC Wage Order No. 12-2001 provides,

> (A) 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 of net rest time per four (4)

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> hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

93. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

94. In pertinent part, Labor Code section 226.7 states,

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

95. Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy*, *supra*, 40 Cal.4th at 1103-1114.)

96. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

97. Plaintiff alleges AV did not, and does not, have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other AV Employees to take a ten (10) minute, uninterrupted, off-duty rest period for every four (4) hours worked or major fraction thereof.

98. Plaintiff also alleges that he and other AV Employees were not authorized and permitted

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to take lawful rest periods because AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of requiring Plaintiff and other AV Employees to perform work during their rest periods. In fact, Plaintiff contends that when he asked another employee if the employees were allowed to take rest periods, he responded saying “fuck no”. When Plaintiff and other AV Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Plaintiff was still not authorized or permitted to take rest periods because of the increase in the workload assigned on Plaintiff and other AV Employees due to a companywide reduction in workforce. As a result, Plaintiff and other AV Employees received rest periods that were not free from AV’s control, interrupted by work duties, and/or less than ten (10) minutes in length. On multiple occasions Plaintiff and other AV Employees missed, or were otherwise compelled to forgo, their rest periods.

99. Plaintiff further contends that AV knew, or should have known, that Plaintiff and other AV Employees were not authorized and permitted to take legally compliant rest periods because AV failed to adequately hire enough workers so that AV Employees could be relieved of all duties and AV’s control for their rest periods.

100. Plaintiff alleges that AV does not have, and did not have, a policy, practice, procedure, guideline, and/or culture of timely paying premium wages for unlawful rest periods. Plaintiff asserts that despite not being provided with legally compliant rest periods, he and other AV Employees did not receive timely premium wages for unlawful rest periods.

101. Due to AV’s unlawful conduct, Plaintiff and other AV Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

102. According to Labor Code section 226.7(c) and IWC Wage Order No. 12-2001, Plaintiff and other AV Employees are entitled to, and now seek to recover, the full amount of unpaid premium wages for unlawful rest periods.

103. Plaintiff and all other AV Employees are entitled to, and therefore seek, the penalty outlined in Labor Code section 210 for the late payment of premium wages.

104. Pursuant to Labor Code section 218.6, Plaintiff and other AV Employees are entitled to, and now seek to recover, prejudgment interest on the amount of premium wages owed.

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105. Plaintiff, on behalf of himself and other AV Employees, is entitled to and seeks recovery of reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

106. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

FOURTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Sub-Class Against Defendant and Does 1-50)

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING

UPON SEPARATION OF EMPLOYMENT AND/OR PAY WAITING TIME PENALTIES

[Labor Code §§ 201-203 and 210]

107. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

108. Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

109. In pertinent part, Labor Code section 202 provides,

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

110. Labor Code section 203(a) further mandates,

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

111. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Sections…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

112. AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay all wages due and owing upon separation of employment to all AV Employees. For

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instance, AV has failed to timely pay Plaintiff and former AV Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations.

113. As a result of AV's failure to timely and appropriately compensate AV Employees, including Plaintiff, for all minimum, regular, overtime, and premium wages, Plaintiff contends that AV has a policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay all wages due and owed to Plaintiff and other former AV Employees who separated from their employment during the relevant statutory period.

114. Plaintiff further contends that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to pay the appropriate waiting time penalties to AV Employees as provided under California law. For example, Plaintiff has not yet received the required waiting time penalties for AV's failure to immediately pay all wages due and owing to his upon separation of employment.

115. AV knowingly failed to timely and appropriately compensate Plaintiff and other AV Employees for all minimum, regular, and overtime wages and meal and/or rest period premium wages, as described herein.

116. Although AV no longer employs a number of AV Employees, including Plaintiff, AV has yet to pay all wages owed to former AV Employees, including Plaintiff, as required under California law, as well as the required waiting time penalties.

117. As a consequence of AV's willful and deliberate refusal to render such wages, Plaintiff and other former AV Employees are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203, as well as penalties pursuant to Labor Code section 210.

118. Plaintiff, on behalf of himself and other former AV Employees, is also entitled to, and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

119. Plaintiff, on behalf of himself and other former AV Employees, requests further relief as described in the below prayer.

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FIFTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

[Labor Code § 2802]

120. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

121. Labor Code section 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

122. Labor Code section 2802(b) mandates,

> [a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

123. Labor Code section 2802(c) further states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

124. Plaintiff asserts that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to reimburse all AV Employees, including Plaintiff, for all necessary business expenses that were incurred in the discharge of their job duties. For example, Plaintiff and other AV Employees were not reimbursed for costs of equipment and supplies like desk chairs, lap top mounts, mouse pads, and keyboards when employees transitioned to working from home in March of 2020 due to the COVID-19 pandemic. In addition, Plaintiff and other AV Employees were also not reimbursed a reasonable percentage of the added electrical and internet expenses incurred as a result of working from home, in violation of California law.

125. Plaintiff and other AV Employees are entitled to, and now seek to recover, reimbursement of their necessary expenditures, plus interest on the applicable amount, pursuant to Labor Code section 2802(b).

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126. Plaintiff and other AV Employees are also entitled to, and seek recovery of reasonable attorneys' fees and costs under Labor Code sections 218.5 and 2802(c) and Code of Civil Procedure section 1021.5.

127. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

SIXTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code §§ 226, 226.3, and the "Records" Section of IWC Wage Order No. 12-2001]

128. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

129. Labor Code section 226(a) states, in pertinent part,

> An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number…(8) the name and address of the legal entity that is the employer, and… (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…

130. The "Records" section of IWC Wage Order No. 12-2001 provides, in pertinent part,

> Every employer shall semimonthly or at the time of each payment of wages furnish to each employee…an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

131. An injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

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132. Labor Code section 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

133. Labor Code section 226(e)(1) further provides,

> An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorneys' fees.

134. According to Labor Code section 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

135. Labor Code section 226.3 imposes an additional civil penalty on the employer of $250.00 per employee per violation of Labor Code section 226(a) in an initial citation and $1,000 per employee for each violation in a subsequent citation.

136. Plaintiff asserts that AV had, and continues to have, a policy, practice, procedure, guideline, and/or culture of furnishing AV Employees, including Plaintiff, with wage statements that do not comply with California law. Plaintiff contends that the wage statements furnished to him and other AV Employees did not include, for instance, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, the corresponding number of hours worked at each hourly rate by the employee, and the actual gross and net wages earned.

137. Plaintiff further asserts the wage statements furnished to AV Employees were inaccurate. The wage statements, for example, did not include all applicable hourly rates that were actually in effect during the pay period, including the proper overtime rate, the corresponding number of hours actually worked at each hourly rate by the employee, and the actual gross and/or net wages earned and paid. Plaintiff alleges that the inaccuracies were largely due to AV's failure to appropriately pay minimum, regular, and/or overtime wages, and failure to pay meal and/or rest period premiums.

138. Due to the incorrect information on the furnished wage statements, AV Employees, such

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as Plaintiff, were unable to promptly and easily determine the total number of hours actually worked, the applicable hourly rates in effect during the pay period, including the proper overtime rate, and/or the corresponding number of hours worked at each hourly rate, among other things.

139. Plaintiff and other AV Employees are entitled to, and now seek to recover, civil penalties pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

140. Plaintiff and other AV Employees are also entitled to, and seek recovery of liquidated damages as provided by Labor Code section 226(e).

141. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and other AV Employees are entitled to, and therefore seek injunctive relief in order to ensure that AV complies with Labor Code section 226.

142. Plaintiff and other AV Employees are further entitled to, and seek recovery of reasonable attorneys' fees and costs as provided under Labor Code section 226(e)(1) and 226(h) and Code of Civil Procedure section 1021.5.

143. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendant and Does 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

[Labor Code §§ 226, 1174, 1174.5, and the "Records" Section of IWC Wage Order No. 12-2001]

144. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

145. Labor Code section 226(a) provides, in pertinent part,

> The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

146. Labor Code section 1174(c) requires every employer to "keep a recording showing the names and addresses of all employees employed…." Labor Code section 1174(d) further provides, in pertinent part, "[e]very person employing labor in this state shall…[k]eep, at a central location in the state

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or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, …, employees employed at the respective plants or establishments."

147. The "Records" section of IWC Wage Order No. 12-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

148. Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

149. Labor Code section 226(e)(1) further provides,

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

150. Plaintiff alleges that AV, as described herein, had, and continues to have, a policy, practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate payroll and/or employee records that properly show, among other things, the total number of hours actually worked by AV Employees, the proper beginning and end of each work period, the beginning and end of each meal period, all earned wages, and all wages paid to Plaintiff and other AV Employees.

151. Plaintiff and other AV Employees have suffered, and continue to suffer, injuries and damages as a consequence of AV's deliberate failure to maintain accurate records as required by the Labor Code. Specifically, Plaintiff and other AV Employees were denied their legal right and protected interest in having accurate and complete payroll and employment records available to them.

152. Plaintiff and other AV Employees are entitled to, and now seek damages and penalties, as outlined in Labor Code section 226(e)(1) and 1174.5.

153. Plaintiff, on behalf of himself and other AV Employees, is entitled to, and seeks recovery

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of reasonable attorneys' fees and costs as provided by Labor Code section 226(e)(1) and Code of Civil Procedure section 1021.5.

154. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

EIGHTH CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class Against Defendant and Does 1-50)

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

[Bus. & Prof. Code §§ 17200 *et seq*.]

155. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

156. As codified in Business & Professions Code sections 17200 *et seq.*, California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

157. A cause of action may be brought under the UCL if a practice violates some other law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code sections 17200 *et seq.* (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 "unlawful" violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

158. The "unfair" prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the California Supreme Court, the "unfair standard" is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc.*, 20 Cal.4th at 180-81.)

159. Under the UCL, a "fraudulent" business act or practice is one where "members of the public are likely to be deceived." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is "couched in such a manner that is likely to mislead

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or deceive..., such as by failing to disclose other relevant information." (*Ibid.*)

160. As discussed herein, AV's business practices violate all three prongs of California's UCL.

<u>Unlawful</u>

161. As described herein, AV violated the Labor Code by, among other things, refusing to properly compensate AV Employees for all time worked, including overtime wages. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc'ns, Inc.*, *supra*, 20 Cal.4th at 180.) AV further violated California law by failing to provide legally compliant meal and/or rest periods and/or pay premium wages in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to reimburse employees for necessary business expenditures; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. Therefore, AV has clearly engaged in unlawful business practices pursuant to Business & Professions Code sections 17200 *et seq*.

<u>Unfair</u>

162. AV's policy, practice, procedure, guideline, and/or culture of requiring V Employees to perform job duties while off-the-clock is inherently unfair because AV knowingly prevents AV Employees from receiving adequate compensation for all time actually worked, in violation of California's policy of prompt payment of wages.

163. AV's policy, practice, procedure, guideline, and/or culture of failing to provide AV Employees, including Plaintiff, with legally compliant meal and/or rest periods, as a result of requiring AV Employees to work through their meal and/or rest periods and be readily available during their meal and/or rest periods, constitutes an unfair practice because AV knowingly strips AV Employees of their rights under the Labor Code.

164. AV also violates the unfair prong of the UCL by failing to pay premium wages to AV Employees for unlawful meal and/or rest periods because AV knowingly denied AV Employees, including Plaintiff, their legal right to one additional hour of pay at their regular rate of pay for each workday a meal and/or rest period was not provided.

165. AV's policy, practice, procedure, guideline, and/or culture of requiring AV Employees to purchase and use equipment and supplies like desk chairs, lap top mounts, mouse pads, and keyboards

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when employees transitioned to working from home in March of 2020 due to the COVID-19 pandemic, in the discharge of their job duties, without reimbursement, is inherently unfair because AV Employees, including Plaintiff, incurred significant costs in connection with the work performed on behalf of AV.

166. AV's policy, practice, procedure, guideline, and/or culture of failing to provide AV Employees with accurate itemized wage statements is a violation of the unfair prong of the UCL because AV knowingly denies AV Employees their legal right and protected interest in readily ascertaining their total number of hours worked and the applicable hourly rates in effect during the pay period.

167. Additionally, AV's failure to timely pay Plaintiff and other AV Employees all minimum, regular, and/or overtime wages and/or premium wages upon separation of employment violates the unfair prong of the UCL because AV knowingly deprived AV Employees of timely compensation of their final earned wages, in violation of California law.

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Fraudulent

168. AV's policy, practice, procedure, guideline, and/or culture of improperly considering the work that AV Employees, including Plaintiff, performed while off-the-clock as non-compensable time constitutes a fraudulent business practice as it knowingly and intentionally caused AV Employees to not receive all minimum, regular, and/or overtime wages earned for all time actually worked as mandated by California law, as well as premium wages for non-compliant meal and/or rest periods.

169. Additionally, AV's policy, practice, procedure, guideline, and/or culture of providing Plaintiff and other AV Employees with inaccurate wage statements constitutes a fraudulent business practice as Plaintiff and other AV Employees are likely to be, and were actually deceived, as to whether they were paid for all time worked.

170. AV's practice of failing to maintain accurate employee and/or payroll records is also a fraudulent business practice as the inaccuracies intentionally misled AV Employees as to their total hours worked and wages earned.

171. As a direct and proximate result of AV's unlawful, unfair, and fraudulent business practices, Plaintiff and other AV Employees have suffered injury-in-fact and have lost wages rightfully owed to them.

172. Through its unlawful, unfair, and fraudulent conduct, AV has been unjustly enriched by

receiving and continuing to receive benefits and profits at the expense of AV Employees. Therefore, pursuant to Business & Professions Code sections 17200 *et seq.*, AV should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and other AV Employees the wages wrongfully withheld from them.

173. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has continued, and there is no indication that AV will refrain from such activity in the future. Plaintiff believes and alleges that if AV is not enjoined from the conduct described herein, AV will continue to violate California law at the expense of AV Employees. Accordingly, Plaintiff requests that the court issue a preliminary and permanent injunction against AV.

174. Plaintiff, on behalf of himself and other AV Employees, requests further relief as described in the below prayer.

NINTH CAUSE OF ACTION

(By Plaintiff in his Representative Capacity Against Defendant and Does 1-50)

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

175. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

176. Pursuant to Labor Code sections 2698 *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the 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 Labor Code section 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to section 2699(i).

177. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with the LWDA, AV was Plaintiff's and all other AV Employees' employer or person acting on behalf of AV Employees' employer either individually or as an officer, agent, or employee of

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another person, within the meaning of Labor Code sections 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

178. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by the alleged violator, AV, and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other AV Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

179. Plaintiff alleges that all other AV Employees are also "aggrieved employees" under the PAGA as AV employed them and all AV Employees experienced one or more of the alleged violations outlined herein.

180. Pursuant to Labor Code sections 2698 *et seq*., Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code section 2699.3. On June 8, 2021, Plaintiff submitted notice to the LWDA and AV informing them of AV's alleged Labor Code violations pursuant to PAGA. (Exhibit 1.) Under the statute, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not notified Plaintiff of its intent investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to Labor Code sections 2698 *et seq*.

181. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, the claims brought under the PAGA are not subject to the requirements for class certification and thus Plaintiff does not seek to certify the claims brought under the PAGA.

182. As set forth herein, AV has committed, and continues to commit, numerous violations for which the Labor Code and IWC Wage Order No. 12-2001 entitles Plaintiff in his representative capacity, to recover civil penalties, on behalf of himself and all other AV Employees and the general public, as well as attorneys' fees and costs, against AV for the alleged violations of the Labor Code, described herein.

183. Plaintiff, in his representative capacity, on behalf of himself and all other AV Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on AV's

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violations of the following Labor Code and/or IWC Wage Order provisions:

a. Failure to timely pay minimum, regular, and/or overtime wages in violation of Labor Code sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage Order No. 12-2001;

b. Failure to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods in violation of Labor Code sections 204, 210, 226.7, 512, and the "Meal Periods" section of IWC Wage Order No. 12-2001;

c. Failure to authorize and permit legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods in violation of Labor Code sections 204, 210, 226.7 and the "Rest Periods" section of IWC Wage Order No. 12-2001;

d. Failure to timely pay all wages due and owed upon separation of employment and/or pay waiting time penalties in violation of Labor Code sections 201-203, and 210;

e. Failure to reimburse for necessary business expenses in violation of Labor Code section 2802;

f. Failure to furnish accurate itemized wage statements in violation of Labor Code sections 226, 226.3, and the "Records" section of IWC Wage Order No. 12-2001; and

g. Failure to maintain accurate records in violation of Labor Code sections 226, 1174, 1174.5 and the "Records" section of IWC Wage Order No. 12-2001.

184. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation $200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code section 210 on behalf of himself and all other AV

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Employees.

185. Labor Code section 226.3 imposes a civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation for violations of Labor Code section 226(a). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code section 226.3 on behalf of himself and all other AV Employees.

186. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of $50 per pay period for each underpaid employee for the initial violation and $100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC.[1] Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code section 558 on behalf of himself and all other AV Employees.

187. Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per employee that would be imposed pursuant to Labor Code section 2699(f) for a violation of Labor Code section 1174(d). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code section 1174.5 on behalf of himself and all other AV Employees.

188. Labor Code section 1197.1 imposes a civil penalty of $100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of $250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code section 1197.1 on behalf of himself and all other AV Employees.

189. Labor Code section 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation, and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 1174(c) and (d), 1194, 1194.2, 1197, 1198, and 1199. Plaintiff and other

[1] Plaintiff expressly disclaims the recovery of underpaid wages on behalf of himself and all other AV Employees.

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AV Employees are entitled to, and therefore seek the above-described civil penalty.

190. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other AV Employees, is entitled to, and therefore seeks attorneys' fees and costs.

191. Plaintiff, in his representative capacity on behalf of himself and all other AV Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Codes section 218.5, and2699 and Code of Civil Procedure section 1021.5.

192. Plaintiff, in his representative capacity on behalf of himself and all other AV Employees, requests further relief as described in the prayer below.

PRAYER FOR RELIEF

Plaintiff prays for judgement against Defendants in favor of the class and the representative action as follows:

a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;

b. For the attorneys appearing on the above caption to be named class counsel;

c. For an order determining that Plaintiff is entitled to recover a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code section 2699(f);

d. For all wages and benefits due to Plaintiff and all other AV Employees pursuant to California law;

e. For damages, pursuant to Labor Code section 226(e)(1), Civil Code section 3281, and/or other applicable law;

f. For all minimum, regular, and/or overtime wages owed pursuant to Labor Code sections 510, 558, 1194, 1197.1, and/or other applicable law;

g. For premium wages pursuant to Labor Code section 226.7, and/or other applicable law;

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h. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;

i. For reimbursement of necessary business expenditures pursuant to Labor Code section 2802, and/or other applicable law;

j. For all liquidated damages, pursuant to Labor Code sections 1194.2, 1197.1, and/or other applicable law;

k. For any and all penalties available for the Labor Code violations alleged herein, including but not limited. to penalties under Labor Code sections 203, 210, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 1199, and/or other applicable law;

l. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;

m. For injunctive relief, pursuant to Labor Code section 226(h) and Business & Professions Code section 17203, and/or other applicable law;

n. For restitution for AV's unfair, unlawful, and fraudulent business practices as provided by Labor Code section 1197.1 and Business & Professions Code section 17203 and/or other applicable law;

o. For reasonable attorneys' fees and costs of suit pursuant to Labor Code sections 210, 218.5, 218.6, 226(e)(1), 226(h), 558, 1194(a), 1194.2, 1197.1, 2802, 2699(g)(1), Code of Civil Procedure section 1021.5, the "common fund" theory, the "substantial benefit" theory, and/or other applicable law, theory or doctrine;

p. For a declaratory judgment that AV violated Labor Code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and 2698 *et seq.*; the "Hours and Days of Work," "Minimum Wages," "Records," "Meal Periods," and "Rest Periods" sections of IWC Wage Order 12-2001; and Business and Professions Code sections 17200 *et seq.*;

q. For pre- and post- judgment interest as provided by California law;

r. For appropriate equitable relief pursuant to California law; and

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s. For any other relief, the Court may deem as just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

Dated: November 29, 2021

GRAHAMHOLLIS APC

By: ______________________

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EXHIBIT 1

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June 8, 2021

VIA ONLINE ELECTRONIC FILING
California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)
AV Squad, LP
c/o Michael B. Cooper, Agent for Service of Process
3713 Highland Avenue, Suite 2
Manhattan Beach, CA 90266

Re: Zachery Poltor's Wage and Hour Claims Against AV Squad, LP.

Dear California Labor and Workforce Development Agency and AV Squad, LP:

Please be advised that Zachery Poltor ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against AV Squad, LP (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations the Company committed against him and all other current or former non-exempt employees who worked for the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq*., "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent all other current or former non-exempt employees who worked for the Company at any of the Company's California locations, whether hired directly by the Company or hired by the use of an employment agency, during the relevant time period (referred to herein as the "Aggrieved Employees"). All Aggrieved Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein.

Graham S.P. Hollis
Vilmarie Cordero
Nathan Reese
Hali Anderson
David Lin
Erik Dos Santos
Alex Kuner
Monique Rodriguez
Ridgeway Woulfe

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FACTUAL BACKGROUND

AV Squad, LP is a creative advertising agency specializing in entertainment marketing based out of Los Angeles and operating throughout California. AV Squad, LP provides services including, but not limited to, creative editing, live action production, post production finishing, music composition, animation, sound design, and branding. AV Squad, LP is organized in the state of California and has its headquarters located in West Hollywood, CA.

Claimant worked for the Company as an Assistant Editor from May 2018 to approximately April 16, 2021. Claimant's job duties included video editing and finishing processes, among other things. At all relevant times, Claimant had been classified as a non-exempt employee, earned an hourly rate of $25.00 per hour and was paid on a biweekly basis. Claimant typically worked five (5) days per week, Monday through Friday, from 12:00 p.m. to 8:00 p.m., and occasionally worked overtime.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various non-exempt positions who earned an hourly wage and regularly worked at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Aggrieved Employees.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Aggrieved Employees, including Claimant; failed, and continues to fail, to provide Claimant and other Aggrieved Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed, and continues to fail, to reimburse Claimant and other Aggrieved Employees for all business expenses; failed to timely pay Aggrieved Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Aggrieved Employees, including Claimant, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment records.

Claimant contends that the Company had, and continues to have a policy, practice, procedure, guideline and/or culture of not timely paying all minimum, regular and/or overtime wages to Claimant and Aggrieved Employees for all hours actually worked. For instance, Claimant and Aggrieved Employees regularly performed work for the Company and/or were under the control of the Company while they were off-the-clock for a meal period. However, the Company considered such time as non-compensable time and therefore failed to provide any remuneration to Claimant and Aggrieved Employees. In addition, the Company has failed to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular and/or overtime wages owed because the Company has an illegal policy of paying Claimant and other Aggrieved Employees based on a schedule beginning at 10:00 a.m. and ending at 7:00 pm, regardless of whether these were the actual times worked by Claimant and Aggrieved Employees. As a result, the Company has failed to timely pay all minimum, regular, and/or overtime wages for all time actually worked.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not providing Aggrieved Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also contends that the Company has a policy, practice, procedure, guideline, and/or culture of not providing Claimant and other Aggrieved Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. For instance, Claimant contends that when he first started working for the Company, his direct supervisor told him, "we don't take lunch breaks here", when Claimant asked to go on a meal period. In addition, when Claimant asked another employee if the employees were allowed to take meal periods, the employee responded saying "fuck no". In fact, Claimant contends that the Company usually provided catered lunches to its employees with the expectation that they continue working while eating their lunches. If Claimant or other Aggrieved Employees took more than a few minutes to finish eating their lunches, they would be ridiculed by their supervisors and pressured to return to work and/or assigned more work. When Claimant and other Aggrieved Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Claimant was still not provided with the opportunity to take a 30-minute, off-duty, uninterrupted meal period that was free from the employer's control because of an increase in the workload assigned on Claimant and other Aggrieved Employees due to a reduction in workforce.

Further, the Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of automatically deducting a one hour meal period from Claimant's and other Aggrieved Employees time sheets, regardless of whether or not Claimant and other Aggrieved Employees actually receive a meal period. For example, although Claimant usually worked from 12:00 p.m. to 8:00 p.m. or later, the Company included meal periods scheduled from 1:00 p.m. to 2:00 p.m. on an overwhelming majority of Claimant's time sheets. As a result, Claimant and other Aggrieved Employees received meal periods that were not free from the Company's control, late, on-duty, interrupted by work duties, and/or less than thirty (30) minutes in length.

Additionally, the Company also had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not authorizing and permitting Claimant and Aggrieved Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Claimant alleges that Aggrieved Employees, such as himself, were not authorized and permitted to take lawful rest periods because of the Company's policy, practice, procedure, guideline, and/or culture of requiring Claimant and other Aggrieved Employees to work through their rest periods. In fact, Claimant contends that when he asked another employee if the employees were allowed to take rest periods, he responded saying "fuck no". When Claimant and other Aggrieved Employees transitioned to working from home due to the COVID-19 pandemic in March 2020, Claimant was still not authorized or permitted to take rest periods because of the increase in the workload assigned on Claimant and other Aggrieved Employees due to a reduction in workforce. As a result, Claimant and other Aggrieved Employees were not authorized or permitted to take rest periods.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. For instance, although Claimant and other Aggrieved Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees were not provided with a legally compliant meal and/or rest period.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. For instance, Claimant and other Aggrieved Employees were not reimbursed for costs of equipment and supplies like desk chairs, lap top mounts, mouse pads, and keyboards when employees transitioned to working from home in March of 2020 due to the COVID-19 pandemic. In addition, Claimant and other Aggrieved Employees were also not reimbursed a reasonable percentage of the added electrical and internet expenses incurred as a result of working from home, in violation of California law.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the mandated waiting time penalties for any late payment of final wages. For instance, the Company failed to timely pay Claimant and former Aggrieved Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, on information and belief, that former Aggrieved Employees have not yet received the required waiting time penalties for the Company's failure to immediately pay all wages due and owing upon separation of employment. Claimant and other Aggrieved Employees have not received any waiting time penalties for late payment of all wages due and owing.

The Company had, and continues to have a policy, practice, procedure, guideline and/or culture of failing to furnish Aggrieved Employees with accurate itemized wage statements.

Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show, and still do not correctly show, the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net wages actually earned. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the appliable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, guidelines, and/or culture, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Aggrieved Employees' actual time worked, the proper beginning and end time of each work period, the meal periods, the actual wages earned and paid, and the applicable rates of pay, among other things, in violation of California law.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of himself and other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the Labor Code violations, wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].) The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1198 states,

> [t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes "a fine of not less than one hundred dollars ($100)" for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee's right to overtime compensation, provides:

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

> for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

Labor Code § 1197.1 states,

> [a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) provides:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other Aggrieved Employees for all hours actually worked. For example, the Company frequently required Claimant and other Aggrieved Employees to work through their meal periods without any compensation. Therefore, the Company failed to pay at least minimum wages, contractual wages and/or the legal overtime compensation for these hours Claimant and other Aggrieved Employees worked.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

<u>FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR COMPENSATION IN LIEU THEREOF</u>

(Labor Code §§ 204, 226.7 and 512, and the "Meal Periods" section of the applicable IWC Wage Order)

Labor Code § 512(a) provides:

> An employer may 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In pertinent part, the "Meal Periods" section of the applicable IWC Wage Order states:

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee….
>
> (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
>
> (C) 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. An "on duty" meal period shall

> be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to….
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id*. at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c),

> [i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6^{th}) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the

Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR COMPENSATION IN LIEU THEREOF

(Labor Code §§ 204 and 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

> (A) 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 of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

> Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy*, *supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimant and, on information and belief, other Aggrieved Employees to take an off-duty, uninterrupted rest period of at least 10-minutes for every four hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES
(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states,

> [a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company has and continues to have a policy, practice, procedure, guideline, and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides, in pertinent part,

> [i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states,

> [i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, "every person who fails to pay the wages of an employee as provided in Sections 201.3…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation."

As discussed herein, the Company violated these Labor Code sections by not timely paying to former Aggrieved Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Company, on information and belief, also did not pay the required waiting time penalties for the late payment of wages. Thus, the Company violated California law. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of himself and all former Aggrieved Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid… (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number…(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…

Labor Code § 226(e)(1) provides:

> An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorneys' fees.

Labor Code § 226(h) states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees." Labor Code § 226.3 imposes an additional civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor

Code because the wage statements did not, among other things, include the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174 requires every employer to "keep a recording showing the names and addresses of all employees employed…" Labor Code § 1174 further requires,

> [e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily [] and the wages paid. Such records are to be kept according to the rules established by the commission for such purpose and must be kept on file for no less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The "Records" section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

> [a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for

> each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper beginning and end of each work period, meal period, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the law on behalf of himself and all Aggrieved Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC WAGE ORDER

(Labor Code §§ 210, 226(f), 226.3, 558, 558.1, 1174.1, 1197.1, 1198.5, 2699(f), 6317 and 6342)

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation $200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) permits the current or former employee, or the Labor Commissioner, to recover a $750 penalty from the employer.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code § 558.1(a) states that,

> "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,

> Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of $500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

> (1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

For violations of Labor Code § 1198.5, Labor Code § 1198.5(k) permits the current or former employee, or the Labor Commissioner, to recover a $750 penalty from the employer.

Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6400 *et seq*. and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following,

> [e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . . [i]s punishable by . . . a fine not to exceed five thousand dollars ($5,000).

Furthermore, employers that repeatedly violate "any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees" are subject to "a fine not exceeding fifteen thousand dollars ($15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars ($150,000)." Labor Code § 6423(d).

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Aggrieved Employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor Code and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company's violations on behalf of himself and all Aggrieved Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Sincerely,

Oswaldo Calvachi