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SEP - 2 2021

Superior Court of California
County of Tuolumne

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TUOLUMNE**

MOLLY O'REILLY, an individual, on behalf
of herself and others similarly situated

PLAINTIFF,

v.

DAY-O, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. CV64034

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1197.1, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
4. Violation of Labor Code § 226(a)
5. Violation of Wage Order 4-2001 § 15(A)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

BY
FAX

1 Plaintiff MOLLY O'REILLY, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant DAY-O, INC. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as an hourly
10 employee by DAY-O, INC., in the State of California since four (4)
11 years prior to the filing of this action to the present plus any
12 additional time during which the statutes of limitation for the causes
13 of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19’. (“Proposed Class”)

14 2. Any limitations period referenced in this complaint is extended pursuant to
15 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
16 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
17 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
18 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
19 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
20 relevant time period or statute of limitations referenced in this complaint is extended into the past
21 by the number of days in which this tolling was in effect.

22 3. From at least four (4) years prior to the filing of this action continuing to the present,
23 Defendant has had a consistent policy of failing to pay wages and/or overtime for all hours worked
24 at the proper rate to all Proposed Class Members.

25 a. Plaintiff and the Proposed Class Members were routinely required to work
26 “off the clock.” Plaintiff and the Proposed Class were required to start Defendant’s computer
27 system for timekeeping before clocking in causing delays for employees to clock in of up to
28 twenty-five (25) minutes. Additionally, Defendant had a policy of requiring Plaintiff and the

1 Proposed Class to clock out no later than fifteen (15) minutes after closing time. However,
2 Defendant also had a policy of never refusing service to customers who arrive at or close to closing
3 time. As a result, Plaintiff and the Proposed Class were required to serve customers and perform
4 their closing well past the time they were clocked out. The time spent waiting to clock in on the
5 computer and serving customers after hours was “clocked out” and as such, Plaintiff and the
6 Proposed Class were not compensated at the appropriate rate of pay for this time worked.

7 b. Plaintiff and the Proposed Class Members were not properly compensated
8 for wages/overtime at the appropriate rate of pay when they worked consecutively for seven (7)
9 days or more. Defendant often called Plaintiff and the Proposed Class on their days off and
10 required them to come into work by threatening termination if they did not comply. Plaintiff and the
11 Proposed Class were not paid at the proper overtime rate when they were working consecutively
12 for seven (7) days or more.

13 4. From at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
15 their right to take meal periods by way of a lawful policy and failing to provide Plaintiff and
16 Proposed Class Members compliant meal periods within the first five (5) hours of work failing to
17 pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each
18 workday that the meal period is not provided or provided after five (5) hours as required by
19 California state wage and hour laws.

20 5. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
22 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
23 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
24 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
25 of pay at the employee’s regular rate of compensation for each workday that the rest period was
26 not provided, as required by California state wage and hour laws. In addition, Defendant maintains
27 an unlawful policy of requiring Plaintiff and the Proposed Class to remain on the premises during
28 meal periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016)

1 (an employer that limits where an employee can take a break does not “relinquish control over
2 how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the
3 Proposed Class with compliant rest periods.

4 6. For at least one (1) year prior to the filing of this action continuing to the present,
5 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001
6 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized
7 wage statements in writing showing the total hours worked and all applicable hourly rates in effect
8 during the pay period and the corresponding number of hours worked at each hourly rate by the
9 employee.

10 7. For at least one (1) year prior to the filing of this action continuing to the present,
11 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001
12 § 15(A) and Labor Code § 1199 (by violating the Wage Order) by failing to provide Plaintiff and
13 the Proposed Class a work area where temperatures are reasonably comfortable and consistent
14 with industry-wide standards.

15 8. For at least three (3) years prior to the filing of this action continuing to the present,
16 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
17 the Proposed Class.

18 9. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
19 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199; Wage Order
20 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
21 wages/overtime, meal and rest period penalties, accurate itemized wage statements, other
22 penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

23 10. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
24 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
25 all benefits Defendant enjoyed from its unlawful conduct as described herein.

26 11. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
27 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
28 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph

2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in her PAGA notice letter (see Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s failure to pay all wages and/or overtime, failure to provide lawful meal periods, failure to provide lawful rest periods, failure to provide accurate itemized wage statements, failure to maintain appropriate temperature in the work area, failure to keep accurate records, and failure to pay all wages due at the time of termination.

II.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

13. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Tuolumne and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Tuolumne County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of Tuolumne.

15. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.
PARTIES

A. PLAINTIFF

16. Plaintiff MOLLY O'REILLY is a resident of California.

17. Plaintiff worked for Defendant from approximately December 4, 2019 to October 8, 2020.

18. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided meal periods;
- c. Work without being provided rest periods;
- d. Work without being provided accurate itemized wage statements; and,
- e. Work without being provided a work area with reasonable comfort consistent with industry-wide standards.

19. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

20. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

21. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA are "aggrieved employees" within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

22. Defendant DAY-O, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 13676 Tuolumne Road, Sonora, CA 95370. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

23. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
2 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
4 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

6 24. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
9 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
10 employer and/or joint employer of Plaintiff and the Proposed Class Members.

11 25. Furthermore, Defendants acted in all respects as the employers or joint employers
12 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
13 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
14 engaged, thereby creating a common law employment relationship, with the Proposed Class.
15 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

16 **IV.**

17 **FACTUAL BACKGROUND**

18 26. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
19 classified as non-exempt employees by Defendant. Defendant hires employees who work as
20 hourly employees who are paid on an hourly basis.

21 27. Upon information and belief, Plaintiff and the Proposed Class are covered by
22 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
23 Code of Regs. § 11040).

24 28. On a regular and consistent basis, Plaintiff and the Proposed Class Members were
25 not paid at the proper rate of compensation. Plaintiff and Proposed Class Members were not
26 properly compensated for overtime at the appropriate rate of pay because Defendant failed to
27 compensate them at the appropriate overtime rate when they worked over eight (8) hours in one
28 day or forty (40) hours in one week. Defendant also failed to compensate Plaintiff and the

1 Proposed Class Members when they worked consecutively for seven (7) days or more.
2 Additionally, Plaintiff and Proposed Class Members were not properly compensated for overtime
3 at the appropriate rate of pay because they were routinely required to work “off the clock.”

4 29. Plaintiff and all Proposed Class Members have been forced by Defendant to work
5 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
6 and not being compensated one (1) hour of pay at the regular rate of compensation for each
7 workday that a meal period was not provided or provided after five (5) hours, all in violation of
8 California labor laws, regulations, and Industrial Welfare Commission Wage Orders.
9 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take
10 meal periods by way of a lawful policy.

11 30. Plaintiff and the Proposed Class have been required to work four-hour increments
12 (or major fractions thereof) without being provided with a ten (10) minute rest period.
13 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest
14 periods by way of a lawful policy.

15 31. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
16 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
17 statements that include the total hours worked and all applicable hourly rates in effect during the
18 pay period and the corresponding number of hours worked at each hourly rate for Plaintiff and the
19 Proposed Class.

20 32. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
21 Wage Order 4-2001 § 15(A) and Labor Code § 1199 (by violating the Wage Orders) by failing to
22 provide Plaintiff and the Proposed Class a work area where temperatures are reasonably
23 comfortable and consistent with industry-wide standards.

24 33. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
25 Proposed Class Members quit or were discharged. This failure was willful, without legal
26 justification, and interfered with Plaintiff’s and Class Members’ rights.

27 34. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

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1 V.

2 CLASS ACTION ALLEGATIONS

3 35. Plaintiff brings this action on behalf of herself and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
5 proposed class composed of and defined as follows:

6 All persons who are employed or have been employed as an hourly
7 employee by DAY-O, INC., in the State of California since four (4)
8 years prior to the filing of this action to the present plus any
9 additional time during which the statutes of limitation for the causes
10 of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the 'Emergency Rules Related to
COVID-19'. ("Proposed Class")

11 36. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
12 amend or modify the class description with greater specificity, by division into subclasses, or by
13 limitation to particular issues.

14 37. This action has been brought and may properly be maintained as a class action
15 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
16 community of interest in the litigation and the Proposed Classes are easily ascertainable.

17 **A. NUMEROSITY**

18 38. The potential members of the Proposed Class as defined are so numerous that
19 joinder of all the members of the Proposed Class is impracticable. While the precise number of
20 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
21 that Defendant currently employ, and during the relevant time periods employed over 50 members
22 of the Proposed Class.

23 39. Plaintiff alleges that Defendant's employment records would provide information
24 as to the number and location of all Proposed Class Members. Joinder of all members of the
25 Proposed Class is not practicable.

26 **B. COMMONALITY**

27 40. There are questions of law and fact common to the Proposed Class that predominate
28 over any questions affecting only individual Proposed Class Members. These common questions

of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1197.1, and 1199;

b. Whether Defendant violated Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods and by failing to provide required meal periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 - 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take rest periods and failing to provide required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

e. Whether Defendant violated Wage Order 4-2001 § 15(A) or other applicable IWC Wage Orders, and Labor Code § 1199 (by violating the Wage Orders) by failing to provide a work area with appropriate temperature to Plaintiff and the members of the Proposed Class;

f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

g. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

h. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the

1 acts alleged herein.

2 **C. TYPICALITY**

3 41. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
4 all members of the Proposed Class sustained injuries and damages arising out of and caused by
5 Defendant's common course of conduct in violation of laws, regulations that have the force and
6 effect of law, and statutes as alleged herein.

7 **D. ADEQUACY OF REPRESENTATION**

8 42. Plaintiff will fairly and adequately represent and protect the interests of the
9 members of the proposed Class.

10 43. Counsel who represent Plaintiff and the Proposed Class are competent and
11 experienced in litigating large employment class actions.

12 **E. SUPERIORITY OF CLASS ACTION**

13 44. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
15 practicable, and questions of law and fact common to the Proposed Class predominate over any
16 questions affecting only individual members of the Proposed Class. Each member of the Proposed
17 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
18 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide
19 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

20 45. Class action treatment will allow those similarly situated persons to litigate their
21 claims in the manner that is most efficient and economical for the parties and the judicial system.
22 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
23 action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

5 **LABOR CODE §§ 510, 1194, 1197.1, AND 1199**

6 46. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

8 47. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
9 employees at the rate of no less than one and one-half times the regular rate of pay for any work
10 in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one
11 workweek.

12 48. Labor Code §1197.1. provides that: (a) Any employer or other person acting either
13 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
14 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
15 order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated
16 damages payable to the employee, and waiting time penalties.

17 49. Plaintiff and the Proposed Class were forced to work on a regular and consistent
18 basis without receiving compensation for all hours worked at the proper regular rate of pay.
19 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were working
20 more than eight (8) hours in one day or forty (40) hours in one week.

21 50. Plaintiff and the Proposed Class Members were routinely required to work “off the
22 clock.” Plaintiff and the Proposed Class were required to start Defendant’s computer system for
23 timekeeping before clocking in causing delays for employees to clock in of up to twenty-five (25)
24 minutes. The time spent waiting to clock in on the computer was “clocked out” and as such,
25 Plaintiff and the Proposed Class were not compensated at the appropriate rate of pay for this time
26 worked.

27 51. Defendant had a policy of requiring Plaintiff and the Proposed Class to clock out
28 no later than fifteen (15) minutes after closing time. Defendant also had a policy of never refusing

1 service to customers who arrive at or close to closing time. As a result, Plaintiff and the Proposed
2 Class were required to serve customers and perform their closing well past the time they were
3 clocked out. The time spent serving customers and performing closing duties after hours was
4 “clocked out” and as such, Plaintiff and the Proposed Class were not compensated at the
5 appropriate rate of pay for this time worked.

6 52. Plaintiff and the Proposed Class Members were not properly compensated for
7 wages/overtime at the appropriate rate of pay when they worked consecutively for seven (7) days
8 or more. Defendant often called Plaintiff and the Proposed Class on their days off and required
9 them to come into work by threatening termination if they did not comply. Plaintiff and the Proposed
10 Class were not paid at the proper overtime rate when they were working consecutively for seven
11 (7) days or more.

12 53. By their policy of requiring Plaintiff and members of the Proposed Class to work
13 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully
15 violated the provisions of Labor Code §§ 510, 1194, 1197.1, and 1199.

16 54. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
17 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
18 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
19 costs.

20 **VII.**

21 **SECOND CAUSE OF ACTION**

22 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

23 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

24 **LABOR CODE § 226.7 AND LABOR CODE § 512**

25 55. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
26 reference all previous paragraphs.

27 56. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of pay
28 at the appropriate rate for each meal period the employer fails to provide. Employees are entitled

1 to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
2 within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff
3 and the Proposed Class of these rights.

4 57. On a regular and consistent basis, Plaintiff and the Proposed Class were required to
5 work by themselves when Defendant failed to adequately schedule enough employees for a shift.
6 Plaintiff and the Proposed Class were required to continue working throughout their entire shift,
7 preventing them from being able to take their required meal break.

8 58. While Defendant sometimes scheduled more than one employee for a shift, not all
9 employees were trained to serve both hot and cold beverages. Defendant required Plaintiff and
10 the Proposed Class to never leave a fully trained employee on their own. This policy prevented
11 Plaintiff and the Proposed Class from being able to take lawful meal periods even when there was
12 more than one employee scheduled.

13 59. Plaintiff and the Proposed Class were not able to take timely meal periods even
14 when they were permitted to take meal breaks in violation of Labor Code §§ 226.7 and 512.

15 60. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
16 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
17 than thirty (30) minutes, uninterrupted as required by the Labor Code during the relevant time
18 period.

19 61. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in
20 an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at
21 trial.

22 **VIII.**

23 **THIRD CAUSE OF ACTION**

24 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

25 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

26 **LABOR CODE § 226.7**

27 62. Plaintiff, on behalf of herself and the proposed Class, realleges and incorporates by
28 reference all previous paragraphs.

63. Labor Code § 226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

64. On a regular and consistent basis, Defendant failed to adequately schedule more than one staff member to permit Plaintiff and the Proposed Class to take their paid rest breaks.

65. While Defendant sometimes scheduled more than one employee for a shift, not all employees were trained to serve both hot and cold beverages. Defendant required Plaintiff and the Proposed Class to never leave a fully trained employee on their own. This policy prevented Plaintiff and the Proposed Class to take lawful rest periods even when there was more than one employee scheduled.

66. Plaintiff and the Proposed Class were not permitted to leave the premises without management's approval even when they did take their required rest breaks. Defendant's policies and rules state, "if you must leave during the work day for any reasons (other than on your lunch break), you must notify the management office at (209) 532-2025." Defendant's unlawful policy of requiring Plaintiff and the Proposed Class to remain on the premises during meal periods is in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a break does not "relinquish control over how employees spend their time"). As Such, Defendant failed to provide Plaintiff and the Proposed Class with compliant meal periods.

67. Plaintiff and the Class consistently worked shifts with no rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Class of these rest breaks and failed to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

68. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **VIOLATION OF LABOR CODE § 226(A)**

5 69. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

7 70. California Labor Code § 226(a) requires employers to issue accurate itemized wage
8 statements that include the total hours worked by the employee and all applicable hourly rates in
9 effect during the pay period and the corresponding number of hours worked at each hourly rate by
10 the employee. (Labor Code §§ 226(a)(2) and (9).)

11 71. Here, Defendant has failed to maintain accurate itemized wage statements that
12 include the total hours worked by the employee under Labor Code § 226(a)(2) and all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee under Labor Code § 226(a)(9).

15 72. As a result of Defendant's failure to pay wages as described above, Defendant has
16 failed to include the appropriate rates of pay and the accurate hours worked on itemized wage
17 statements for Plaintiff and the Proposed Class.

18 73. Defendant's failure to provide accurate itemized wages statements according to
19 Labor Code § 226(a) was all done on a regular and consistent basis.

20 74. An employee suffering injury as a result of a knowing and intentional failure by an
21 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
23 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
24 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
25 reasonable attorneys' fees.

26 ///

1 X.

2 FIFTH CAUSE OF ACTION

3 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

4 VIOLATION OF WAGE ORDER 4 § (15) AND LABOR CODE § 1199

5 75. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

7 76. Wage Order 4-2001 § 15(A) states “the temperature maintained in each work area
8 shall provide reasonable comfort consistent with industry-wide standards for the nature of the
9 process and the work performed.”

10 77. Labor Code §1199 makes it actionable when an employer violates a wage order.

11 78. Here, Defendant refused to invest in adequate ventilation and cooling systems in
12 the workplace. Defendant used ineffective swamp coolers in the work areas during the summer
13 which did not allow for appropriate temperatures to be maintained.

14 79. Plaintiff and the Proposed Class were required to work in temperatures that were
15 below industry-wide standards. Defendant has failed to provide a work area where temperatures
16 are reasonably comfortable and consistent with industry-wide standards.

17 80. As a result of Defendant’s failure to maintain appropriate temperature as described
18 above, Defendant has failed to provide a work area where temperatures are reasonably comfortable
19 and consistent with industry-wide standards for Plaintiff and the Proposed Class in violation of
20 Wage Order 4-2001 § 15(A) and Labor Code § 1199 (by violating the Wage Orders).

21 XI.

22 SIXTH CAUSE OF ACTION

23 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

24 WAITING TIME PENALTIES UNDER LABOR CODE § 203

25 81. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
26 reference all previous paragraphs.

27 82. Numerous members of the Proposed Class including the Plaintiff are no longer
28 employed by Defendant. They were either fired or quit Defendant’s employ.

83. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

84. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class Members' daily wage multiplied by thirty (30) days.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

85. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

86. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

87. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

88. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

89. California's wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and

1 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
2 vigorously minimum labor standards, to ensure that employees are not required or permitted to
3 work under substandard and unlawful conditions, and to protect law-abiding employers and their
4 employees from competitors who lower their costs by failing to comply with minimum labor
5 standards.

6 90. Defendant has violated statutes and public policies as alleged herein. Through the
7 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
8 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
9 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
10 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
11 guaranteed to all employees under law.

12 91. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
13 violation of § 17200, *et seq.* of the Business & Professions Code.

14 92. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
15 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
16 § 17200, *et seq.* of the Business & Professions Code.

17 93. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
18 others similarly situated have been damaged in a sum as may be proven.

19 94. Unless restrained, Defendant will continue to engage in the unlawful conduct as
20 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
21 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
22 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
23 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
24 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
25 proposed Class the money Defendant has unlawfully failed to pay.

26 ///

1 **XIII.**

2 **EIGHTH CAUSE OF ACTION**

3 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

4 95. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
5 incorporates by reference all previous paragraphs.

6 96. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
7 seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§
8 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1199; Wage Order 4-2001; and
9 California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

10 97. For each such penalty, Plaintiff and the aggrieved employees are entitled to
11 penalties in an amount to be shown at trial, subject to the following formula:

12 a. \$100 for the initial violation per employee per pay period.

13 b. \$200 for each subsequent violation per employee per pay period.

14 98. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
15 twenty-five percent (25%) to the affected employees.

16 99. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
17 LWDA¹ and mailed a letter by certified mail to Defendant DAY-O, INC.'s entity address, which
18 is 13676 Tuolumne Road, Sonora, CA 95370, as proscribed by the Code on June 2, 2021,
19 describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7,
20 510, 512, 1174, 1194, and 1199. (see Exhibit "1.")

21 100. As no letter evidencing the LWDA's intention to investigate was received by
22 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
23 action as though the LWDA had not chosen to investigate pursuant to Labor Code
24 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the Class
25 and Representative Action Complaint immediately.

26 ///

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;
2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each rest period and/or meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;
3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of 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 exceeding an aggregate penalty of four thousand dollars (\$4,000);
4. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;
5. An award of prejudgment and post judgment interest;
6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from failure to provide Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, appropriate temperature in the workplace, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199, and IWC 4-2001;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;
8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 1174, 1194, 1199, and Wage Order 4-2001;
9. An award providing for payment of costs of suit;
10. An award of attorneys' fees; and
11. Such other and further relief as this Court may deem proper and just.

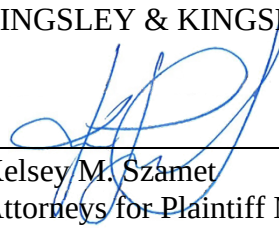
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: September 1, 2021

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff Molly O'Reilly and the
Proposed Class

EXHIBIT "1"



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #200
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

June 2, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *O'Reilly v. Day-O, Inc.*

Dear Labor Commissioner,

As counsel for Molly O'Reilly ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Day-O, Inc.
13676 Tuolumne Road
Sonora, CA, 95370

Anthony Benites Sr.
13676 Tuolumne Road
Sonora, CA, 95370

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Day-O, Inc., and Anthony Benites Sr. ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, perform work for Defendants in California as hourly, non-exempt employees from one year prior to the date of this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately December 4, 2019 to October 8, 2020 as an hourly, non-exempt employee. Plaintiff and similarly situated employees were not fully compensated due to Defendants' multiple Labor Code violations.



Defendants failed to pay Plaintiff and similarly situated employees for all hours spent working. During opening shifts, Plaintiff and similarly situated employees were required to start Defendants' computer system for timekeeping. Defendants' computers are old and riddled with defects, which often caused delays of up to twenty-five (25) minutes before Plaintiff and similarly situated employees were able to clock in for their shifts. Plaintiff and similarly situated employees were expected to continue working during this time without compensation.

Defendants also had a strict policy of requiring employees to clock out fifteen (15) minutes after closing time at the latest. However, Defendants had another policy of never refusing service to customers who arrived at or close to closing time. This caused Plaintiff and similarly situated employees to continue to serve customers and perform their closing duties well past the time when they were required to clock out. Plaintiff and similarly situated employees are owed unpaid regular wages for the uncompensated time during opening and closing shifts.

Defendants did not consistently provide Plaintiff and similarly situated employees with the required thirty (30) minute lunch break every five hours of work completed. Plaintiff and similarly situated employees were often required to work by themselves when Defendants failed to adequately schedule employees for shifts. When this occurred, Plaintiff and similarly situated employees were required to remain on duty throughout their entire shift, leaving them unable to take thirty (30) minute meal breaks. While Defendants sometimes scheduled more than one employee for a shift, not all employees were trained to serve both hot and cold beverages. Defendants instructed Plaintiff and similarly situated employees to never leave an employee who was not fully trained unattended. This policy deprived Plaintiff and similarly situated employees of their ability to take duty-free meal breaks. Even when Defendants scheduled employees that were adequately trained, meal breaks were routinely delayed past the fifth hour of work because of how busy the establishments were. Due to Defendants refusal to properly account for missed or delayed meal periods, Plaintiff and similarly situated employees are owed meal period premiums.

Defendants failed to provide Plaintiff and similarly situated employees with the required opportunity for rest breaks. When Plaintiff and similarly situated employees were required to work alone, there were no opportunities to take rest breaks due to Defendants' requirement that establishments remain open during operating hours. Even when Plaintiff and similarly situated employees were able to take rest breaks when other fully trained employees were scheduled, they were unable to leave the premises without managements approval. Defendants' policies and rules state, "if you must leave during the work day for any reasons (other than on your lunch break), you must notify the management office at (209) 532-2025." This policy deprived Plaintiff and similarly situated employees of their right to ten (10) minutes of uninterrupted and off duty rest breaks for each four (4) hours of work completed. Plaintiff and similarly situated employees are owed compensation for their missed rest breaks.



Defendants failed to adequately compensate Plaintiff and similarly situated employees for overtime. Due to Defendants inadequate staffing and hiring, it was routine for Plaintiff and similarly situated employees to work consecutively for seven days or more. Defendants often called Plaintiff and similarly situated employees on their days off and forced them to come into work, threatening terminating if they did not comply. Plaintiff and similarly situated employees were not compensated at overtime rates for this work and are entitled to all unpaid overtime wages.

Defendants failed to provide Plaintiff and similarly situated employees with an adequate workspace. Several of Defendants' locations do not have restrooms, forcing Plaintiff and similarly situated employees to go to other establishments to go to the restroom. This lack of restrooms coupled with Defendants' policies of never leaving untrained employees unattended or closing establishments during operating hours, made it extremely difficult for Plaintiff and similarly situated employees to use the restroom.

Defendants also refused to invest in adequate ventilation and cooling systems at their establishments. Defendants used cheap swamp coolers in their establishments during the summer, which were grossly inadequate and often stopped working. Plaintiff and similarly situated employees were required to work in dangerous and unhealthy temperatures, causing at least one employee to need medical attention.

Defendants failed to provide Plaintiff and similarly situated employees with accurate wage statements. Defendants failed to account for missed or delayed meal and rest period premiums. Defendants also failed to compensate Plaintiff and similarly situated employees for work completed before clocking in. Due to Defendants failure to accurately account for all wages owed to Plaintiff and similarly situated employees, Defendants owe penalties for willfully distributing inaccurate wage statements.

At the time of Plaintiff's and similarly situated employees' termination and/or separation, Plaintiff and similarly situated employees had regular wages owed to them, meal and rest period premiums, and paid sick time according to the regular rate of pay. To date, Defendants have not paid Plaintiff and similarly situated employees these unpaid wages.

Anthony Benites Sr. is the owner, director, officer, and/or managing agent of Day-O, Inc. and caused each and every one of the aforementioned Labor Code violations.

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B. ALLEGATIONS AND CHARGES

Count #1 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count #2 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count #3 – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



Count #4 – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked consecutively for seven (7) days or more and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count #5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count #6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, meal period premiums, and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.



Count #7 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count #8 – Violation of Wage Order No. 4, § 15(A) (Failure to Maintain Appropriate Temperature)

Wage Order No. 4 section, section 15(A) requires employers to provide a work area where temperatures are reasonably comfortable and consistent with industry-wide standards. Defendants' lack of investment in ventilation and cooling systems in their establishments caused extreme temperatures that were a risk to Plaintiff's and Aggrieved Employees' health and safety. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: 
Galen T. Shimoda

GS:eg
cc: Client via e-mail

1 *O'Reilly v. Day-O, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Erika F. Collazo, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to the
6 within above-entitled action.

7 On June 2, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

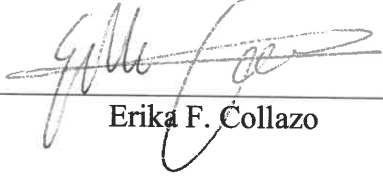
9 Day-O, Inc. 10 13676 Tuolumne Road 11 Sonora, CA, 95370	Anthony Benites Sr. 13676 Tuolumne Road Sonora, CA, 95370
12 Timothy T. Trujillo 13 Dambacher, Trujillo, & Russell 14 32 North Washington Street Sonora, CA 95370	

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal Service
17 and that each day's mail is deposited with the United States Postal Service that
18 the aforementioned document(s) on the parties in said action by placing a true copy
19 thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
collection and mailing on this date, following ordinary business practices, at Elk
Grove, California, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
22 personally delivered via the following overnight courier service: _____.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on June 2, 2021, at Elk Grove, California.

25
26 
27 Erika F. Collazo
28