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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO CIVIL DIVISION

OCT 08 2021

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Attorney for Plaintiff.
 Esmeralda C. Zarazua, on behalf of
 themself, all aggrieved employees, and the State
 of California as a Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 SAN BERNARDINO COUNTY**

CIV SB 2126751

Esmeralda C. Zarazua, an individual, on
 behalf of themself, all aggrieved
 employees, and the State of California as a
 Private Attorneys General,

) Case No.:

Plaintiffs,

REPRESENTATIVE ACTION

vs.

**Violation of the Private Attorneys
 General Act of 2004, Cal. Labor Code
 §2698 et seq.**

Industrial Clerical Recruiters, Inc., a
 California Corporation and Keurig Dr.
 Pepper, Inc., a Delaware Corporation, and
 DOES 1-50, inclusive,

Defendants.

1 Plaintiff Esmeralda C. Zarazua brings this PAGA representative action complaint
2 on behalf of themselves, all aggrieved employees, and the State of California as a Private
3 Attorneys General, and alleges as follows:

4 **NATURE OF THE ACTION**

5
6 1. Plaintiff Esmeralda C. Zarazua worked for Defendants Industrial Clerical
7 Recruiters, Inc., and Keurig Dr. Pepper, Inc. from February 2021 until April of 2021.
8 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
9 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
10 former employees of Defendants within one year of serving notice on the LWDA to the
11 present are aggrieved employees.

12 2. Defendants failed to comply with California Labor Code requirements due to
13 erroneous, willful, and intentional employment practices and policies. Plaintiff brings this
14 representative action on behalf of themselves, all others similarly situated aggrieved
15 employees, and the State of California, based upon the claims articulated below. Plaintiff
16 provided notice of their claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and
17 Development Agency (“LWDA”), as illustrated by the attached Exhibit. The LWDA has
18 not provided any notice to Plaintiff following the exhaustion of the 65-day notice period
19 required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
20 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

21 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for
22 all hours worked, including overtime hours worked; (2) failing to pay minimum wage; (3)
23 failing to provide timely meal breaks; (4) failing to provide rest breaks; (5) failing to
24 provide proper cool-down rest periods; (6) failing to provide safe working conditions; (7)
25 failing to provide a place of employment that is safe and healthful; (8) failing to provide
26 suitable seating; (9) failing to reimburse for required business expenses; (10) and failing
27 to provide accurate wage statements and maintain accurate payroll records. Defendants
28 are therefore liable for civil penalties under the Cal. Labor Code, including the Private

1 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully
2 herein.

3 4. Defendants are co-employers of Plaintiff and Aggrieved Employees pursuant to
4 subdivision 6 (d) of Section 2810.3, which provides:

5 A client employer shall share with a labor contractor all civil legal
6 responsibility and civil liability for all workers supplied by that labor
7 contractor for both of the following: (1) The payment of wages.
8 (2) Failure to secure valid workers’ compensation coverage as required
9 by Section 3700.

10 (c) A client employer shall not shift to the labor contractor any legal
11 duties or liabilities under Division 5 (commencing with Section 6300)
12 with respect to workers supplied by the labor contractor.

13 (d) At least 30 days prior to filing a civil action against a client
14 employer for violations covered by this section, a worker or his or her
15 representative shall notify the client employer of violations under
16 subdivision (b).

17 (e) Neither the client employer nor the labor contractor may take any
18 adverse action against any worker for providing notification of
19 violations or filing a claim or civil action.

20 (f) The provisions of subdivisions (b) and (c) are in addition to, and
21 shall be supplemental of, any other theories of liability or requirement
22 established by statute or common law.

23 THE PARTIES

24 5. Plaintiff Esmeralda C. Zarazua is a resident of the State of California and was
25 employed as an hourly, nonexempt employee of Defendants until April 21, 2021.

26 6. Defendant Industrial Clerical Recruiters, Inc. is a California Corporation doing
27 business in California with the capacity to sue and to be sued, and doing business, in San
28 Bernardino County, State of California.

7. Keurig Dr. Pepper, Inc., is a Delaware Corporation doing business in California with
the capacity to sue and to be sued, and doing business in San Bernardino County, State of
California.

1 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
2 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50,
3 but is informed and believes and thereon alleges that said Defendants are legally
4 responsible for the wrongful conduct alleged herein and therefore sues these Defendants
5 by such fictitious names, Plaintiffs will amend this complaint when their true names and
6 capabilities are ascertained.

7 9. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
8 or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved
9 employees of the representative class, and exercised control over their wages, hours, and
10 working conditions. Plaintiff is informed and believes and thereon allege that each
11 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
12 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the
13 acts of each Defendants are legally attributable to the other Defendants.

14 **JURISDICTION AND VENUE**

15 10. Venue is proper in this judicial district because Defendants conduct business in this
16 county, and each defendant has legal obligations to Plaintiff and many of the aggrieved
17 employees in this case that arose in this county.

18 11. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional
19 limits of the Superior Court and will be established according to proof at trial. Based on
20 information, investigation, and analysis, Plaintiff alleges that the amount in controversy,
21 including claims for monetary damages, penalties, and attorney's fees, is more than
22 twenty-five thousand dollars (\$25,000).

23 12. The California Superior Court has jurisdiction in this matter because Plaintiff is a
24 resident of California, and Defendants are incorporated in and/or qualified to do business
25 in California and regularly conduct business in California. Further, there is no federal
26 question at issue as the claims herein are based solely on California law.

27 ///

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1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 13. During the relevant period, Defendants committed various violations of the
3 California Labor Code as alleged below in more detail. Defendants enforce multiple
4 policies that violate state law, which is intended to increase profits to the detriment of
5 aggrieved employees.

6 14. Plaintiff is an aggrieved employee of Defendants, having worked for Defendants
7 in a shipping and receiving warehouse from February until April 21 of 2021.

8 15. For at least one (1) year prior to the date of service notice on the LWDA, and
9 continuing to the present, Defendants engaged in unlawful employment practices that
10 resulted in violations of numerous Labor Code sections, as set forth more fully below.

11 16. Plaintiff and all current and former employees within one year of filing this action
12 to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.*
13 (*See* Labor code §2699(c).)

14 17. Defendants, and each of them, have committed the following violations of the
15 California Labor Code:

16 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**
17 **(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)**

18 18. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 19. Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which
21 an employee is subject to the control of an employer, and including all the time the
22 employee is suffered or permitted to work, whether or not required to do so.” When
23 employees like Plaintiff and her coworkers earning at or near minimum wage do not
24 receive payment for all hours worked as a result of unlawful employment practices,
25 including being forced to wait in line for temperature checks prior to clocking in,
26 answering a required health questionnaire from their phone at home prior to coming to
27 work and delivering their time card at an ICR location which was a 30 minute drive away
28 from their work location, the result is that they are earning less than the statutory minimum

1 wages for all hours worked. Defendants have been engaged in many unlawful employment
2 practices which resulted in underpayment for hours worked each pay period, including
3 overtime hours worked, as more fully set forth below. Defendants have also failed to pay
4 the required minimum wage for all hours worked, and has failed to pay all wages owed
5 twice per month.

6 20. Off-the-Clock Hours Worked- Waiting in Required Lines. Plaintiff and aggrieved
7 employees frequently worked off the clock and were routinely subjected to periods
8 wherein they were under the Defendants' control but not compensated for their time.
9 Plaintiff and aggrieved employees were required to perform several required duties off the
10 clock. Employees were required to wait in lines to participate in mandatory temperature
11 checks prior to clocking into work. This time spent waiting in these required lines was
12 required by Employer and was essential and required before employees could begin and/or
13 resume working on the clock. Plaintiff and aggrieved employees were also required to
14 answer a series of COVID related questions on their personal cell phones, during their
15 personal time prior to coming to work. Finally, Plaintiff and aggrieved employees were
16 also required to submit their hand-written time sheets to an ICR location which was a 30-
17 minute drive from the worksite, for which they were paid zero for their drive time.
18 Defendants have violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1.
19 Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

20 21. Work Performed During Unpaid Meal Periods. As more fully set forth below,
21 Defendants failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
22 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor
23 Code §§226.7 and 512. Plaintiff and aggrieved employees have been employed under
24 conditions prohibited by the wage order, and thus Defendants have also violated §§1198
25 and 1199. Defendants are liable for civil penalties pursuant to Labor Code §§558 and
26 2699 *et seq.*

27 22. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to
28 pay Plaintiff and employee all wages earned twice during each calendar month pursuant

1 to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result
2 of the unlawful employment policies and practices discussed herein. As a result of these
3 practices, employees were underpaid for hours worked, including penalty wages, and this
4 underpayment resulted in a failure to pay all wages owed twice per month.

5 **Failure to Pay Minimum Wage**

6 **(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199,**
7 **2698 et seq.)**

8 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 24. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an
11 employer to suffer or permit a California employee to work without paying wages at the
12 proper minimum wage for all time worked as required by the applicable IWC Wage Order.

13 25. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked
14 as a result of Defendants' practices described above, including forcing employees to wait
15 in long lines to receive mandatory temperature checks, requiring employees to answer a
16 mandatory health questionnaire off the clock from home and driving their time card 30
17 minutes away to another ICR location. Based on Defendants' unlawful conduct described
18 above, and because Plaintiff and the aggrieved employees were paid at or near minimum
19 wage, Defendants' failure to pay for all hours worked, including overtime, resulted in a
20 payment of less than the minimum wage for all hours worked, in violation of Labor Code
21 §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Defendants are liable for civil
22 penalties pursuant to Labor Code §§558 and 2699 et seq.

23 **Failure to Provide Timely Meal Breaks**

24 **(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order 1)**

25 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 27. Labor Code §512 provides, "[a]n employer may not employ an employee for a
28 work period of more than five hours per day without providing the employee with a meal

1 period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer
2 shall require an employee to work during any meal... period mandated by an applicable
3 order of the Industrial Welfare Commission.” Paragraph 11 of Wage Order 1 provides, in
4 pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal
5 period, the meal period shall be considered an ‘on duty’ meal period and counted as time
6 worked.”

7 28. In this case, Plaintiff claims that she and her coworkers frequently were given
8 their meal breaks late. Plaintiff and those similarly situated would often times work more
9 than five consecutive hours with no meal break.

10 29. Section 11 of Wage Order 1 requires employers to authorize and permit
11 employees to take an uninterrupted 30-minute meal period after no more than 5 hours of
12 work. Pursuant to Labor Code §1198, “the employment of any employee... under
13 conditions of labor prohibited by the order is unlawful.” Defendants failed to permit
14 Plaintiff and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for
15 each five consecutive hours of work in violation of Labor Code §§226.7 and 512.
16 Employer never paid penalty pay to Plaintiff or aggrieved employees for noncompliant
17 meal periods. As a derivative claim, Plaintiff alleges that her pay statements were
18 inaccurate, failing to include required meal period penalties, thus failing the requirements
19 of Labor Code §226(a). As a result of these violations, Defendants are liable for civil
20 penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

21 **Failure to Provide Rest Breaks**

22 **(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.)**

23 30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 31. Defendants have failed to maintain a policy and practice that provides or permits
26 its employees to take off-duty rest periods as required by California law. Employees are
27 entitled to at least a ten minute rest period in which they are relieved of all duties, as
28 required by Cal. Lab. Code §226.7, §512 and Wage Order 1. Instead of providing a second

1 meal period, Plaintiff and aggrieved employees were to end their shifts 10 minutes early
2 and were not paid for the required break time.

3 32. Defendants failed to pay Plaintiff and similarly situated employees all premium
4 compensation (one hour of pay at the employee's regular rate of pay for missed or
5 untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods.
6 As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to
7 include required rest period penalties, thus failing the requirements of Labor Code §226(a)
8 and §1198. As a result of these violations, Defendants are liable for civil penalties pursuant
9 to Cal. Labor Code §558 and §2698 *et. seq.*

10 **Failure to Provide Proper Cool-Down Rest Periods**

11 **(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)**

12 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 34. Labor Code section 226.7, subdivision (c) further provides that:

15 If an employer fails to provide an employee a...
16 recovery period in accordance with a state ., law,
17 including, but not limited to an applicable statute or
18 applicable regulation, standard, or order of the
19 Occupational Safety and Health Standards Board, or
20 the Division of Occupational Safety and Health, the
21 employer shall pay the employee one additional hour
22 of pay at the employee's regular rate of compensation
23 for each workday that the meal or rest or recovery
24 period is not provided.

25 35. Defendants required Plaintiff and aggrieved employees to consistently work in in
26 temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate
27 cool down period opportunities. Because the break room was a 10 minute walk from the
28 work area and because there was no seating provided by Defendants, there was no

1 opportunity to be able to cool down. Defendants did let the Plaintiff and aggrieved
2 employees know that they would be allowed to take a moment if they felt like they were
3 going to pass out from the heat or felt dizzy from the odor of the drink mixes, however,
4 even if they did take “a moment” there was nowhere to escape the conditions. Plaintiff
5 and aggrieved employees were exposed to a high risk of suffering heat illness so that their
6 life, safety, and health were jeopardized by Defendants’ conduct, violating California
7 Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

8 **Failure to Provide Safe Working Conditions**

9 **(Cal. Labor Code §1198, Wage Order 1)**

10 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
11 incorporate said paragraphs herein by reference.

12 37. Defendants’ workplaces would get unsafely hot in the summer. Plaintiff and
13 aggrieved employees are required to work at or near areas where they burned plastic and
14 stored drink mixes for their packaged beverages. This left them in incredibly hot and
15 unventilated rooms reaching temperatures of over 100 degrees as well as feeling dizzy
16 from the highly pungent odor of the concentrated drink mixes.

17 38. Defendants do not have proper climate control or ventilation. Plaintiff and her
18 coworkers worked in unbearable heat and humidity in the summer as well as dizzying
19 odors from concentrated drink mixes. Wage Order 1 ¶15 requires:

20 (A) The temperature maintained in each work area shall
21 provide reasonable comfort consistent with industry-wide
22 standards for the nature of the process and the work performed.

23 (B) If excessive heat or humidity is created by the work
24 process, the employer shall take all feasible means to reduce such
25 excessive heat or humidity to a degree providing reasonable
26 comfort.
27
28

1 39. In addition to climate control issues, Defendants failed to take safety measures
2 required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful
3 to employ employee in conditions prohibited by the wage order. By violating the wage
4 order, Defendants are liable for civil penalties pursuant to §2698 *et. seq.*

5 **Failure to Provide Place Of Employment That Is Safe And Healthful**
6 **(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)**

7 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 41. Cal. Labor Code § 6400(a) provides that every employer shall furnish
10 employment and a place of employment that is safe and healthful for the employees
11 therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety
12 devices and safeguards, and shall adopt and use practices, means, methods, operations,
13 and processes which are reasonably adequate to render such employment and place of
14 employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no
15 employer shall require, or permit any employee to go or be in any employment or place
16 of employment which is not safe and healthful. Cal. Labor Code §6403 states that no
17 employer shall fail or neglect to provide and use safety devices and safeguards reasonably
18 adequate to render the employment and place of employment safe, or to adopt and use
19 methods and processes reasonably adequate to render the employment and place of
20 employment safe, or to do every other thing reasonably necessary to protect the life, safety,
21 and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy
22 or maintain any place of employment that is not safe and healthful. Cal. Labor Code §
23 6407 provides that every employer and every employee shall comply with occupational
24 safety and health standards, with Section 25910 of the Health and Safety Code, and with
25 all rules, regulations, and orders pursuant to this division which are applicable to his own
26 actions and conduct.

27 42. Defendants failed to timely make changes to the workplace at the onset of
28 COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory

1 syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without
2 distancing throughout the pandemic. Plaintiff and aggrieved employees continued to work
3 in enclosed and improperly ventilated spaces without any distancing from others
4 throughout the pandemic. There was no effective written covid prevention program.
5 Employers employed their employees under unsafe conditions violative of Cal-OSHA
6 regulations and the Health and Safety Code.

7 43. As a result of these practices, Employers have violated Cal. Labor Code §§6400,
8 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment
9 for their Employees, as outlined above. Employers are liable for civil penalties pursuant
10 to Cal. Labor Code §2699 *et seq* .

11 **Failure To Provide Suitable Seating**

12 **(Lab. Code section 1198 and Wage Order 1-2001, Section 14)**

13 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
14 incorporate said paragraphs herein by reference.

15 45. Labor Code section 1198 states, in pertinent part, “The employment of any
16 employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”
17 Section 14 of Wage Order 1 provides that:

18 (A) All working employees shall be provided with
19 suitable seats when the nature of the work reasonably permits the
20 use of seats.

21 (B) When employees are not engaged in the active duties of
22 their employment and the nature of the work requires standing,
23 an adequate number of suitable seats shall be placed in
24 reasonable proximity to the work area and employees shall be
25 permitted to use such seats when it does not interfere with the
26 performance of their duties.

27 46. At all relevant times, Defendants failed to provide Plaintiff and aggrieved
28 employees with suitable seating during their employment as required by section 12 of the

1 applicable Wage Order. Plaintiff and other aggrieved employees were not provided with
2 seating during shifts in which they worked at positions which would reasonably permit
3 the use of seating, nor was seating provided within a 10 minute walk from work areas for
4 necessary breaks. Accordingly, Plaintiff, on behalf of herself and aggrieved employees,
5 will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to
6 the extent allowed by law for the alleged violations.

7 **Failure to Reimburse for Required Business Expenses**

8 **(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)**

9 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 48. Labor Code §2802 requires employers to indemnify employees for necessary
12 expenditures or losses incurred by employees in direct consequence of the discharge of
13 duties.

14 49. Plaintiff and aggrieved employees are required to use their personal cell phones
15 for work related communications, although Defendants did not reimburse them in any way
16 for the expense of their personal cell phone use as required by the Labor Code. Notably,
17 employees are required to answer a COVID health questionnaire every day prior to going
18 to the worksite. This requires employees to utilize their personal every workday for the
19 sole purpose of serving their employers. Accordingly, Defendants are liable for civil
20 penalties under PAGA §2699 *et seq.*

21 **Failure to Provide Accurate Itemized Wage Statements**

22 **(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)**

23 50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 51. Defendants knowingly and intentionally failed to provide timely, accurate,
26 itemized wage statements to Plaintiff and the aggrieved employees, as well as maintain
27 accurate records, in accordance with Labor Code §§ 226 and 1174. The statements
28 provided to Plaintiff and aggrieved employees have not accurately reflected actual gross

1 wages earned, the correct overtime hourly rate, and total hours worked. Such failures
2 caused injury to Plaintiff and others, by, among other things, impeding them from
3 knowing the total hours worked and the amount of wages to which they are and were
4 entitled. Defendants knowingly and intentionally failed to itemize the correct gross wages
5 earned, net wages earned, and total hours worked. Defendants issued and maintained
6 inaccurate wage statements and records. Defendants are liable for civil penalties pursuant
7 to Labor Code § 2699 *et seq.*

8 **FIRST CAUSE OF ACTION**

9 **Against All Defendants for Violation of the Private Attorneys General Act**
10 **(“PAGA”)**

11 **(California Labor Code §2698 *et seq.*)**

12 52. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 53. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor
16 Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
17 themselves and all other current and former aggrieved employees of Defendants, the civil
18 penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

19 54. Plaintiff seeks to recover the PAGA civil penalties through a representative
20 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
21 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
22 is not required.

23 55. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following
24 Labor Code provisions:

- 25 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked
26 (Cal. Labor Code §§210, 218, 222, 226.7, 510, 512, 558, 1194, 1197,
27 1198, 2698 *et seq.*);
28

- b. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- c. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 1)
- d. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- e. Failure to Provide Proper Cool-Down Rest Periods (Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*)
- f. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage Order 1)
- g. Failure to Provide Place Of Employment That Is Safe And Healthful (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)
- h. Failure To Provide Suitable Seating (Lab. Code section 1198 and Wage Order 1-2001, Section 14)
- i. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)
- j. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174(d), 2699 *et seq.*)

56. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

57. With respect to violations of Labor Code §510, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid

1 employee for each pay period for which the employee was underpaid. Plaintiff only seeks
2 penalties under §558 and does not seek underpaid wages under §558, which are not
3 available in PAGA actions.

4 58. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100)
5 per pay period, per aggrieved employee for initial violations, and two hundred dollars
6 (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
7 Code provisions for which a civil penalty is not specifically provided.

8 59. Plaintiff and the other current and former employees of Defendants are aggrieved
9 employees. They were or are employed by Defendants, and each of them, and the
10 violations alleged herein were committed against them. Plaintiff brings this action on
11 behalf of themselves and all other current and former aggrieved employees.

12 60. At the time of each violation, Defendants employed one or more employees.

13 61. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each
14 of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to
15 be determined at trial, pre-judgment interest, costs, and attorneys' fees.

16 62. Plaintiff has complied with all procedural requirements of Labor Code §2699.3
17 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the
18 Labor and Workforce Development Agency ("LWDA") and served by certified mail upon
19 Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific
20 Labor Code provisions that Defendants have violated. The LWDA did not respond to
21 Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted
22 administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their
23 PAGA claims in this action on behalf of aggrieved employees and the State of California.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees,
26 prays for judgement against Defendants as follows:

27 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount
28 to be determined at trial, but at least the jurisdictional amount of this Court;

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: October 5, 2021

KOUL LAW FIRM



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff Esmeralda C. Zarazua,
and all aggrieved employees

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EXHIBIT 1



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May 11, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Industrial Clerical Recruiters, Inc.
15316 Dos Palmas
Victorville. CA 92392

Diana J Carloni
16195 Siskiyou Rd., Suite 130
Apple Valley, CA 92307

Keurig Dr. Pepper Inc.
6425 Hall Of Fame Lane
Frisco, Tx 75034

Keurig Dr. Pepper Inc.
C/O Ct. Corp.
330 N. Brand Blvd.
Glendale, CA 91203

Re: **AMENDED PAGA Notice Pursuant to California Labor Code §2698 et seq. –
Case No. LWDA Case No. LWDA-CM-839491-21)**

Claimant: Esmeralda C. Zarazua
Employer: Industrial Clerical Recruiters, Inc.
Keurig Dr. Pepper, Inc.

Dear Sir or Madam:

Esmeralda C. Zarazua (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Industrial Clerical Recruiters, Inc. and Keurig Dr. Pepper, Inc. (hereafter “Employers”).

Industrial Clerical Recruiters, Inc. provides wage laborers for Keurig Dr. Pepper, Inc. The work being done by the wage laborers is shipping and receiving of Keurig Dr. Pepper, Inc.’s products. Claimant worked for Employers from February 2021 until April 21, of 2021.

This PAGA Notice letter shall also serve as notice, pursuant to subdivision 6 (d) of Section 2810.3, that Claimant, on behalf of himself and similarly situated employees, will file a civil action against both of the Employers in accordance with Labor Code Section 2810.3, subdivision 6 (b), which provides:

A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following: (1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

(e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

Employers have violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of Wage Order 1 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." When employees like Claimant and her coworkers earning at or near minimum wage do not

receive payment for all hours worked as a result of unlawful employment practices, including being forced to wait in line for temperature checks prior to clocking in, answering a required health questionnaire from their phone at home prior to coming to work and delivering their time card at an ICR location which was a 30 minute drive away from Claimant's work location, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in lines to participate in mandatory temperature checks prior to clocking into work. This time spent waiting in these required lines was required by Employer and was essential and required before employees could begin and/or resume working on the clock. Claimant and aggrieved employees were also required to answer a series of COVID related questions on their personal cell phones, during their personal time prior to coming to work. Finally, Claimant and aggrieved employees were also required to submit their hand written time sheets to an ICR location which was a 30 minute drive from the worksite, for which they were paid zero for their drive time. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours

worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above, including forcing employees to wait in long lines to receive mandatory temperature checks, requiring employees to answer a mandatory health questionnaire off the clock from home and driving their time card 30 minutes away to another ICR location. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 1)

Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11 of Wage Order 1 provides, in pertinent part, "[u]nless an 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."

In this case, Claimant claims that although she and her coworkers frequently were given their meal breaks late. Plaintiff and those similarly situated would often times work more than five consecutive hours with no meal break.

Section 11 of Wage Orders 1 requires employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee... under

conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that her pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1. Instead of providing a second meal period, Employees were to end their shifts 10 minutes early and were not paid for the required break time.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 et seq)

Labor Code section 226.7, subdivision (c) further provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state ., law, including, but not limited to an applicable statute or applicable regulation, standard, or order of 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.

Employers required Claimant and aggrieved employees to consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate cool down period opportunities. Because the break room was a 10 minute walk from the work area and because there was no seating provided by the Employer, there was no opportunity to be able to cool down. Employers did let the Claimant and aggrieved employees know that they would be allowed to take a moment if they felt like they were going to pass out from the heat or felt dizzy from the odor of the drink mixes, however, even if they did take “a moment” there was nowhere to escape the conditions. The Claimant and aggrieved employees were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer’s conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Failure to Provide Safe Working Conditions
(Cal. Labor Code §1198, Wage Order 1)

Employer’s workplaces would get unsafely hot in the summer. Claimant and aggrieved employees are required to work at or near areas where they burned plastic and stored drink mixes for their packaged beverages. This left them in incredibly hot and unventilated rooms reaching temperatures of over 100 degrees as well as feeling dizzy from the highly pungent odor of the concentrated drink mixes.

Employer does not have proper climate control or ventilation. Claimant and her coworkers worked in unbearable heat and humidity in the summer as well as dizzying odors from concentrated drink mixes.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing throughout the pandemic. Claimant and aggrieved employees continued to work in enclosed and improperly ventilated spaces without any distancing from others throughout the pandemic. There was no effective written covid prevention program. Employers employed their employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Order 1-2001, Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 1 provides that:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 12 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 10 minute walk from work areas for necessary breaks. Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses
(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to answer a COVID health questionnaire every day prior to going to the worksite. This requires employees to utilize their personal every workday for the sole purpose of serving their employers. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements
(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employers knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked. Employers issued and maintained inaccurate wage statements and records. Employers are liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.

Attorney for Claimant



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Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

July 27, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Industrial Clerical Recruiters, Inc.
15316 Dos Palmas
Victorville. CA 92392

Diana J Carloni
16195 Siskiyou Rd., Suite 130
Apple Valley, CA 92307

Keurig Dr. Pepper Inc.
C/O Ct Corp
330 N. Brand Blvd
Glendale, CA 91203

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Esmeralda C. Zarazua

Employer: Industrial Clerical Recruiters, Inc.
Keurig Dr. Pepper, Inc.

Dear Sir or Madam:

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(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

(e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

Employers have violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of Wage Order 1 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." When employees like Claimant and her coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, including being forced to wait in line for temperature checks prior to clocking in, answering a required health questionnaire from their phone at home prior to coming to work and delivering their time card at an ICR location which was a 30 minute drive away from Claimant's work location, the result is that they are earning less than the statutory

minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in lines to participate in mandatory temperature checks prior to clocking into work. This time spent waiting in these required lines was required by Employer and was essential and required before employees could begin and/or resume working on the clock. Claimant and aggrieved employees were also required to answer a series of COVID related questions on their personal cell phones, during their personal time prior to coming to work. Finally, Claimant and aggrieved employees were also required to submit their hand written time sheets to an ICR location which was a 30 minute drive from the worksite, for which they were paid zero for their drive time. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

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Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1. Instead of providing a second meal period, Employees were to end their shifts 10 minutes early and were not paid for the required break time.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

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(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

Labor Code section 226.7, subdivision (c) further provides that:

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(Cal. Labor Code §1198, Wage Order 1)

Employer’s workplaces would get unsafely hot in the summer. Claimant and aggrieved employees are required to work at or near areas where they burned plastic and stored drink mixes for their packaged beverages. This left them in incredibly hot and unventilated rooms reaching temperatures of over 100 degrees as well as feeling dizzy from the highly pungent odor of the concentrated drink mixes.

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Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

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As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Order 1-2001, Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 1 provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 12 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 10 minute walk from work areas for necessary breaks. Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to answer a COVID health questionnaire every day prior to going to the worksite. This requires employees to utilize their personal every workday for the sole purpose of serving their employers. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employers knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked. Employers issued and maintained inaccurate wage statements and records. Employers are liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant