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on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KENDALL NUNEZ, on behalf of himself
and all other aggrieved employees,

Plaintiff,

vs.

HAWK II ENVIRONMENTAL
CORPORATION, a California
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. **21STCV34226**

**COMPLAINT FOR RECOVERY OF
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") CIVIL PENALTIES**

- 1. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES**
- 2. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE MEAL
PERIODS**
- 3. PAGA CIVIL PENALTIES FOR
FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS**
- 4. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY ALL
WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT**
- 6. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS**
- 7. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 8. PAGA CIVIL PENALTIES FOR
REQUIRING AN UNLAWFUL
AGREEMENT**

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**9. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE PAID SICK
LEAVE**

1 Plaintiff KENDALL NUNEZ (“Plaintiff”), on behalf of himself and all others aggrieved
2 and as a Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against his former
7 employers and Defendants Hawk II Environmental Corporation (referred to as “Hawk II”) and
8 DOES 1-10 (Hawk II and DOES 1-10 are collectively referred to as “Defendants”) under the
9 California Labor Code to recover civil penalties arising out of Defendants’ multiple labor code
10 violations as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay him or other hourly, non-
14 exempt employees all minimum, regular, and overtime wages, including for time spent at
15 trainings and time worked during meal periods. Defendants also failed to: provide off-duty meal
16 and rest periods or properly-calculated premium wages in lieu thereof; provide compliant wage
17 statements and maintain accurate records; timely pay all wages during and upon termination of
18 employment; reimburse business expenses, including mileage and other vehicle expenses; and
19 provide paid sick leave. Defendants also knowingly required Plaintiff and other aggrieved
20 employees to sign an unlawful cash shortage agreement. Plaintiff seeks to recover penalties for
21 Defendants’ violations of the labor code.

22 3. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
23 state of California, and all “aggrieved employees,” defined as all current and former non-
24 exempt employees of Defendants including, but not limited to, gas station attendants. Pursuant
25 to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and reasonable
26 attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a
27 representative of the State of California. Plaintiff mailed written notice of the specific
28 provisions of the Labor Code that Defendants violated, including the facts and theories to

1 support the alleged violations, to the LWDA and to Defendant Hawk II pursuant to Labor Code
2 section 2699.3 on July 12, 2021. Defendant Hawk II did not provide notice of cure and the
3 LWDA did not provide notice of investigation in the 65 days after the mailing of the PAGA
4 notice.

5 **II.**

6 **JURISDICTION AND VENUE**

7 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
8 Civil Procedure section 395. Defendants conduct business in the city and county of Los Angeles
9 in the state of California and each Defendant is within the jurisdiction of this Court for service
10 of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other
11 aggrieved employees within the State of California and Los Angeles County. Defendants
12 employ numerous employees in Los Angeles County and in California generally. There is no
13 federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are
14 based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code
15 of Civil Procedure.

16 5. Plaintiff is also informed and believes that his individual PAGA claims do not
17 arise to the necessary amount in controversy to implicate traditional jurisdiction under 28
18 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further, PAGA civil penalty actions are
19 not subject to federal jurisdiction.

20 **III.**

21 **THE PARTIES**

22 6. Plaintiff KENDALL NUNEZ is a former non-exempt hourly employee of
23 Defendants. Plaintiff was employed by Defendants as a gas station attendant at a Chevron Gas
24 Station in Los Angeles County from approximately May 2020 until October 11, 2020.

25 7. Plaintiff alleges that all other non-exempt hourly employees in the State of
26 California worked under Defendants' policies and as a result, suffered the same violations of
27 the California Labor Code as alleged herein.

28 8. Plaintiff is an "aggrieved employee" because he was employed by the alleged

1 violators and had one or more of the alleged violations committed against him and therefore is
2 properly suited to represent the interests of all other current and former non-exempt employees
3 of Defendants.

4 9. Pursuant to Cal Labor Code section 2698, *et seq.*, Plaintiff seeks to represent all
5 other aggrieved employees as described herein during the applicable PAGA limitations period
6 (which is defined as any time from one year and 65 days prior to the commencement of this
7 action until the commencement of trial in the matter). The applicable limitations period is
8 referred to herein as “the PAGA Period.”

9 10. Plaintiff is informed and alleges Defendants operate gas stations in California,
10 including in Los Angeles County.

11 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
12 employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or
13 caused to be violated, any provision regulating minimum wages or hours and days of work in
14 the applicable Industrial Welfare Commission order, as well as California Labor Code sections
15 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable for such violations pursuant to
16 California Labor Code sections 558 and 558.1.

17 12. During the PAGA Period, Defendants did, and do, transact and conduct business
18 in the state of California, including, but not limited to, within the jurisdiction of the Court.
19 During the PAGA Period, Defendants, and each of them, were Plaintiff’s and aggrieved
20 employees’ employers for purposes of the California wage and hour laws at issue in this action.

21 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
22 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
23 and believes, and based on that alleges, DOE Defendants are legally responsible for the
24 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
25 amend this complaint when their true names and capabilities are ascertained.

26 14. Plaintiff is informed and believes and, based thereon alleges, that each
27 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
28 other aggrieved employees, and exercised control over their wages, hours, and working

1 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
3 joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each
4 Defendant is legally attributable to the other Defendants.

5 **IV.**

6 **GENERAL ALLEGATIONS**

7 15. During the PAGA Period, Plaintiff and other aggrieved employees were
8 employed by Defendants and each of them, including DOE Defendants, within the state of
9 California.

10 16. At all relevant times, Plaintiff and other aggrieved employees of Defendants
11 worked under the same policies, practices, and procedures relating to their employment,
12 including those governing wage statements, recordkeeping, payment of wages, and provision of
13 rest and meal periods applicable to Defendants' facilities.

14 17. The California Labor Code and applicable IWC Wage Order and portions of the
15 California Code of Regulations provide that all persons employed in the State of California
16 shall be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked"
17 and subject to the control of the employer, whether exercised or not, are to be paid at least the
18 minimum wage as determined by the State of California, and for overtime wages at either 1.5
19 times the regular rate of pay when "hours worked" exceeds 8 hours in a single day or shift, or
20 over 40 hours in a 168-total hour workweek, or 2.0 times the regular rate of pay when "hours
21 worked" exceeds 12 hours in a single day or shift or for the first 8 hours on the seventh
22 consecutive day in a workweek.

23 18. Plaintiff and each aggrieved employee were non-exempt employees covered
24 under one or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or
25 other applicable wage orders, regulations, and statutes, and each aggrieved employee was not
26 subject to an exemption for executive, administrative, professional employees, or any other
27 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and each
28 aggrieved employee lawful minimum and overtime compensation, as well as to provide

1 statutory meal and rest periods.

2 19. Plaintiff and each aggrieved employee worked in excess of the maximum regular
3 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore
4 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
5 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
6 and/or statutes.

7 20. Upon information and belief, Plaintiff and other aggrieved employees worked in
8 non-exempt, hourly positions, and during the relevant time period, each was subject to the
9 Defendants' compensation policies that resulted in underpayment of all minimum, regular, and
10 overtime wages owed.

11 21. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
12 employees all minimum, regular, and overtime wages they were owed for all time worked or
13 subject to Defendants' control. For instance, Defendants required Plaintiff and other aggrieved
14 employees to attend trainings at least twice per year but did not compensate them for this time
15 spent under Defendants' control. Defendants also failed to pay Plaintiff and other aggrieved
16 employees for time spent working while clocked out for meal periods.

17 22. During the PAGA Period, Defendants subjected all aggrieved employees to
18 policies and practices which failed to provide compliant meal periods or correctly-calculated
19 premium wages in lieu thereof. Plaintiff and other aggrieved employees were not provided an
20 opportunity for each shift to take a timely, thirty-minute, uninterrupted, off-duty meal period
21 before the end of the fifth hour of work. When meal periods were provided by Defendants, they
22 were on-duty and were not compensated. Defendants did not allow Plaintiff and other aggrieved
23 employees to leave the premises during meal periods. Rather, Defendants required Plaintiff and
24 other aggrieved employees to remain on the premises, to carry their walkie-talkies with them,
25 and to answer their walkie-talkies and phones during their meal periods. Further, Plaintiff and
26 other aggrieved employees were not provided a suitable location to take their meal periods,
27 requiring them to take their meal periods in the bathroom.

28 23. During the PAGA Period, Defendants subjected all aggrieved employees to

1 policies and practices which failed to authorize and permit compliant paid rest periods or
2 correctly-calculated premium wages in lieu thereof. Plaintiff and other aggrieved employees
3 were not authorized or permitted to take all off-duty rest periods of at least 10 minutes to which
4 they were entitled.

5 24. At times during the PAGA Period, Defendants wholly failed to provide any rest
6 periods. If rest periods were provided, Plaintiff and other aggrieved employees were not
7 permitted to leave the premises during rest periods. During purported rest periods, Plaintiff and
8 other aggrieved employees were still required to remain on the premises, to keep their walkie-
9 talkies with them, and to answer their walkie-talkies and phones during their rest periods

10 25. Additionally, Defendants required Plaintiff and other aggrieved employees to
11 clock out during purported rest periods and did not pay any wages for this time. As a result,
12 Defendants failed to provide paid rest periods.

13 26. During the PAGA Period, Defendants did not pay one hour of wages at a regular
14 rate of pay for each day an employee did not receive a compliant meal or rest period.

15 27. During the PAGA Period, Defendants did not provide accurate itemized wage
16 statements containing all required categories of information to Plaintiff and other aggrieved
17 employees. For instance, because of Defendants' failure to pay all wages and provide all meal
18 and rest periods and associated premium wages, the wage statements issued by Defendants did
19 not contain the correct amount of gross wages earned, net wages earned, total hours worked, nor
20 all applicable hourly rates of pay and all hours worked at each rate.

21 28. Defendants also failed to maintain accurate records of the hours worked daily by
22 employees, including during trainings and meal periods.

23 29. During the PAGA Period, Defendants failed to reimburse Plaintiff and other
24 aggrieved employees for business-related expenses. For instance, Defendants directed and
25 required Plaintiff and other aggrieved employees to use his or her personal vehicle to drive to
26 different gas stations during the workday for work-related purposes. Defendants failed to
27 reimburse them for the business-related mileage and vehicle expenses they incurred.

28 30. During the PAGA Period, Defendants required Plaintiff and other aggrieved

employees to sign an unlawful employee cash shortage agreement which made employees responsible for any cash shortages regardless of whether or not the cash shortage was the result of a dishonest, willful act or gross negligence. Defendants did not reimburse employees if they used their own money to rectify a cash shortage that was not the result of a dishonest act, a willful act, or gross negligence.

31. During the PAGA Period, Defendants failed to provide all required paid sick leave to Plaintiff and other aggrieved employees at the rates required by law. Plaintiff and each aggrieved employee worked at least 30 days for Defendants and were entitled to accrue and use sick leave. However, Defendants did not allow Plaintiff and other aggrieved employees to use accrued sick leave, even after the 90th day of employment.

32. Furthermore, Defendants required Plaintiff and other aggrieved employees to provide a doctor's note or other proof of illness in violation of the sick pay laws. Plaintiff was denied the ability to take sick days on at least two occasions because he did not provide a doctor's note.

33. During the PAGA Period, Defendants further maintained a regular practice of failing to pay Plaintiff and other separated aggrieved employees all wages owed within the time requirements of Labor Code sections 201- 202.

34. Defendants also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203.

35. Plaintiff is informed and believes that Defendants have no policy or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages. Specifically, Plaintiff's last day worked was on October 11, 2020, but he was not paid his final wages until October 23, 2020 in violation of Labor Code sections 201-202, nor was he paid any waiting time penalties in violation of Labor Code section 203.

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

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Minimum, Regular, and
Overtime Wages
(Labor Code § 510, 1197, 1197.1 and 1198 and the “Minimum Wages” and “Overtime
Wages” sections of the applicable IWC Wage Order(s))
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

37. Plaintiff incorporates the preceding paragraphs of this Complaint.

38. Labor Code section 1197 provides: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

39. Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

40. Labor Code section 510, states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

41. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Section 2699.3.”

3 42. Labor Code section 2699(f) states: “For all provisions of this code except those
4 for which a civil penalty is specifically provided, there is established a civil penalty for a
5 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
8 each aggrieved employee per pay period for each subsequent violation.”

9 43. Labor Code section 1197.1(a) provides for civil penalties for an employer’s or
10 other person acting on its behalf’s failure to pay at least minimum wage of \$100 for any initial
11 violation and \$250 for each subsequent violation per underpaid employee.

12 44. As set forth herein, during the PAGA Period, Defendants did not pay employees
13 all minimum, regular, and overtime wages for all applicable hours worked.

14 45. Defendants violated Labor Code sections 510, 1197, and 1198 as well as the
15 “Hours and Days of Work” and “Minimum Wages” and “Overtime Wages” sections of the
16 applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to
17 Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) or, in the alternative, section
18 2699(f)(2), attorney’s fees, expenses, and costs of suit.

19 46. Plaintiff, as a representative of the general public, will and does seek to recover
20 any and all penalties for each and every violation, in an amount according to proof, as to those
21 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
22 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
23 of California.

24 **SECOND CAUSE OF ACTION**

25 **PAGA Civil Penalties for Failure to Provide Meal Periods** 26 **(Labor Code §§ 226.7, 512, 558, and 1198 and the “Meal Periods” section of the** 27 **applicable IWC Wage Order(s))** 28 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

47. Plaintiff incorporates the preceding paragraphs of this Complaint.

48. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

49. Labor Code section 512(a) provides in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

50. "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time." § 11(C) of the applicable IWC Wage Order(s).

51. "In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated." § 11(E) of the applicable IWC Wage Order(s).

52. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

53. Plaintiff and other aggrieved employees were not provided all meal periods as required by law nor provided a suitable place to take their meal periods and were not paid a correctly-calculated meal period premium for failing to do so.

54. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC wage Order(s). As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

55. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION

PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods (Labor Code §§ 226.7 and 1198, and the "Rest Periods" section of the applicable IWC Wage Order(s)) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

56. Plaintiff incorporates the preceding paragraphs of this Complaint.

57. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

58. "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest

time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” § 12(A) of the applicable IWC Wage Order(s).

59. “If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” § 12(B) of the applicable IWC Wage Order(s).

60. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

61. Defendants failed to authorize and permit all paid rest periods as required by law. Plaintiff and other aggrieved employees were not paid a rest period premium for non-compliance with Labor Code section 226.7.

62. Defendants violated Labor Code sections 226.7 and 1198 as well as the “Rest Periods” section of the applicable IWC Wage Order(s). As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

63. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements

(Labor Code § 226)

(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

64. Plaintiff incorporates the preceding paragraphs of this Complaint.

65. Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing”: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (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. “The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

66. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

67. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

68. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved

employees, by failing to provide accurate information in each of the required categories, including the correct amount of gross and net wages earned, total hours worked, and all applicable hourly rates of pay and all hours worked at each rate.

69. Defendants violated Labor Code section 226. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

70. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FIFTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Timely Pay All Wages Due During and Upon Termination of Employment (Labor Code §§ 201-203 and 204 and the "Minimum Wages" section of the applicable IWC Wage Order(s)) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

71. Plaintiff incorporates the preceding paragraphs of this Complaint.

72. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced, but the penalty cannot exceed 30 days' wages. Labor Code § 203.

73. Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Section 204(d) states: "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." The "Minimum Wages" Section of the applicable

1 Wage Order(s) further states “every employer shall pay to each employee, on the established
2 payday for the period involved, not less than the applicable minimum wage for all hours worked
3 in the payroll period.”

4 74. Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent*
5 *and apart from*, any other penalty provided in this article, every person who fails to pay the
6 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
7 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
8 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
9 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
10 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

11 75. California Labor Code section 256 states that a civil penalty shall be imposed “in
12 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

13 76. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
14 of civil penalties for violations of the labor code, to be recovered through a civil action brought
15 by an aggrieved employee on behalf of himself or herself and other current or former
16 employees pursuant to the procedures specified in Section 2699.3.

17 77. As set forth herein, Defendants failed to pay all wages and penalties owed to
18 Plaintiff and other aggrieved employees within the timelines required by Cal. Labor Code
19 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
20 by Labor Code section 203.

21 78. As a result, Defendants willfully violated the Labor Code and are liable to
22 Plaintiff and other aggrieved employees for penalties as required by Labor Code sections 210,
23 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
24 according to proof.

25 79. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

of California.

SIXTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Maintain Accurate Records
(Labor Code §§ 1174 and 1198 and the “Records” section of the applicable IWC
Wage Order(s))
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

80. Plaintiff incorporates the preceding paragraphs of this Complaint.

81. Labor Code section 1174(d) requires each employee to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

82. The “Records” section of the applicable IWC wage order requires each employer to maintain “[t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

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

84. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

85. Defendants failed to maintain all records as required by law, including but not limited to the beginning and ending time of each work period and meal period and the hours worked daily by each of their employees, including during trainings and meal periods.

86. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof, attorney’s fees, expenses, and costs of suit.

87. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those

1 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
2 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
3 of California.

4 **SEVENTH CAUSE OF ACTION**

5 **PAGA Civil Penalties for Failure to Reimburse Business Expenses**
6 **(Labor Code §§ 2802 and 2804 and the “Cash Shortage and Breakage” section of the**
7 **applicable IWC Wage Order(s))**
8 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

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

10 89. An employer must reimburse its employees for their reasonably necessary
11 business-related expenses. Labor Code § 2802. This right to reimbursement cannot be waived.
12 Labor Code § 2804.

13 90. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
14 of civil penalties for violations of the labor code, to be recovered through a civil action brought
15 by an aggrieved employee on behalf of himself or herself and other current or former
16 employees pursuant to the procedures specified in Section 2699.3.

17 91. Defendants failed to reimburse Plaintiff and other aggrieved employees for all
18 reasonably necessary business-related expenses incurred in the course of their work for
19 Defendants, including vehicle, mileage, and cash shortage expenses that were not the result of a
20 dishonest or willful act and/or gross negligence.

21 92. As a result, Defendants willfully violated the Labor Code and are liable to
22 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section
23 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to
24 proof.

25 93. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
of California.

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EIGHTH CAUSE OF ACTION

**PAGA Civil Penalties for Requiring an Unlawful Agreement
(Labor Code § 432.5)**

(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

94. Plaintiff incorporates the preceding paragraphs of this Complaint.

95. It is illegal for an employer to require an employee to agree in writing to any term that the employer knows is illegal. Labor Code § 432.5.

96. “No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.” § 8 of the applicable IWC Wage Order(s).

97. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

98. Defendants knowingly required Plaintiff and other aggrieved employees to sign an unlawful cash shortage agreement.

99. As a result, Defendants willfully violated section 432.5 of the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

100. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

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NINTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Paid Sick Leave
(Labor Code §§ 246 and 246.5)**

(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

101. Plaintiff incorporates the preceding paragraphs of this Complaint.

102. An employer must provide one hour of sick day accrual for every 30 hours worked or provide for regular accrual such that “an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.” Labor Code §§ 246(b) (1)-(3).

103. “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.” Labor Code § 246(c).

104. Upon an employee’s written or oral request, an employer cannot deny an employee the right to used accrued sick days for diagnosis, care or treatment of their illness. Labor Code § 246.5.

105. As set forth herein, Defendants failed to provide required paid sick leave to Plaintiff and other aggrieved employees as required by law.

106. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

107. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

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VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and as a Representative of the Labor and Workforce Development Agency, prays for judgment as follows:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and his counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement ("DLSE");

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

d. For recovery of civil penalties as permitted by Labor Code sections 210, for failing to pay wages timely during employment;

e. For recovery of civil penalties as permitted by Labor Code section 256 for failing to provide wages timely to terminated employees upon separation of employment;

f. For recovery of civil penalties as permitted by Labor Code section 1174 and 1174.5 for failing to maintain records;

g. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 246, 246.5, 432.5, 510, 512, 1174, 1197, 1197.1, 1198, 2802, and 2804.

h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery;

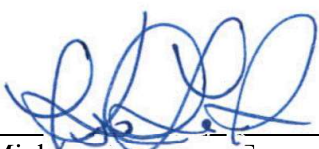
i. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to the California Labor Code, the PAGA, and all other applicable state laws;

j. For injunctive relief; and

1 k. Such other legal equitable relief as this Court deems necessary, just, equitable
2 and proper.

3 COHELAN KHOURY & SINGER

4
5 Dated: September 16, 2021

6 By: 

Michael D. Singer, Esq.

Kristina De La Rosa, Esq.

Rosemary C. Khoury, Esq.

8 Counsel for Plaintiff KENDALL NUNEZ on behalf of
9 himself and all other aggrieved employees
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