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

SEP 15 2021

BY *Felix Garza*
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Attorneys for Plaintiff JACOB REYES, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

Additional Counsel on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CIV SB 21269

JACOB REYES, on behalf of himself and
all other aggrieved employees,

Case No.:

REPRESENTATIVE ACTION

Plaintiff,

v.

TREK BICYCLE, CORP.; and DOES 1
through 50, inclusive,

Defendants.

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
6. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

FILED BY FAX

RECEIVED
SEP 15 2021
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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Attorneys for Plaintiff JACOB REYES, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

1 Plaintiff JACOB REYES ("Plaintiff" or "Mr. Reyes") as a representative of the State of
2 California and the Labor and Workforce Development Agency ("LWDA"), and on behalf of
3 himself and other current and former employees, complains and alleges as follows:

4 INTRODUCTION

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein ("Aggrieved Employees") by
7 Defendant TREK BICYCLE CORP. ("Defendant"). The term "Relevant Time Period" or "Time
8 Period" is defined as one (1) year plus sixty-five (65) days prior to the filing of the complaint.
9 Plaintiff reserves the right to amend this complaint to reflect a different "Time Period" as further
10 discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
14 rest periods or premium compensation in lieu thereof; (4) failure to keep accurate payroll records
15 and provide accurate itemized wage statements; (5) failure to pay wages due upon termination of
16 employment; and (6) failure to indemnify for expenditures or losses in discharge of duties.

17 3. At all relevant times herein, Defendants have consistently maintained and
18 enforced the following unlawful policies and practices against Plaintiff:

- 19 (a) Willfully refusing to pay all hours worked, including both regular and overtime
20 wages;
- 21 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
22 lieu thereof;
- 23 (c) Willfully refusing to permit rest periods or providing compensation in lieu
24 thereof;
- 25 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
26 wages;
- 27 (e) Willfully refusing to pay all wages due upon separation of employment; and
28 (f) Willfully refusing to pay for expenditures or losses in the discharge of their duties.

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5. Venue is proper in the County of San Bernardino, because the Defendant maintains its location and transacts business in this county, the obligations and liability arise in this county, and work performed by Plaintiff and Aggrieved Employees that form the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

///	///	///
///	///	///

1 **Defendants**

2 9. Plaintiff is informed and believes, and based thereon alleges that, Defendant
3 TREK BICYCLE, CORP. is a Wisconsin corporation, manufacturing and distributing bicycle
4 and cycling products throughout California, including the county of San Bernardino, and is
5 and/or was the employer of the Plaintiff and Aggrieved Employees during the Relevant Time
6 Period. During the Relevant Time Period, Defendant employed Plaintiff and similarly situated
7 persons and failed to pay Plaintiff and Aggrieved employees for all hours worked as a result of
8 working off the clock before or after the start of their shifts, failing to pay minimum and overtime
9 wages, failing to provide meal periods or pay a meal period penalty in lieu of, failed to provide
10 rest periods or pay a rest period penalty in lieu of; failed to reimburse employees for necessary
11 business expenditures, failed to pay all wages upon end of employment, and failed to provide
12 accurate and itemized wage statements. On information and belief, and based thereon alleges
13 that Defendants are conducting business in good standing in California.

14 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
15 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
16 inclusive, but on information and belief alleges that said Defendants are legally responsible for
17 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
18 capacities of the DOE Defendant when ascertained.

19 11. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in
20 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
21 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
22 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
23 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
24 joint employers and conspire with one another to increase profits by engaging in the conduct
25 described in this complaint.

26 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
28 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned

below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

13. By this complaint, Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by PAGA, labor Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5. Plaintiff and other aggrieved employees are current and former employees of Defendant dating from one (1) year plus sixty-five (65) days prior to the filing of this matter to the resolution of this matter. Plaintiff specifically alleged the following in their notice to the Labor and Workforce Development Agency ("LWDA") and the employer violations of Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1174.5, 1194, 1194.2, and 2802, as well as Industrial Welfare Commission (IWC) Wage Order No. 1-2001 ("Wage Order 1").

14. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code section alleged to have been violated, and after sixty-five (65) days have passed without notice. Prior to filing this complaint, on July 7, 2021, Plaintiff gave written notice by certified electronic mail to the LWDA and to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. Plaintiff was given an LWDA case number of LWDA-CM-837138-21. A true and correct copy of Plaintiff's original letter sent to the LWDA on July 7, 2021, is attached hereto as Exhibit A.

15. More than sixty-five (65) days have passed since Plaintiff submitted his July 7, 2021, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendants' intent to cure any of the alleged violations.

1 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
2 to his July 7, 2021, PAGA notice.

3 **FACTUAL ALLEGATIONS**

4 16. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny its
5 employees the benefits due under California's wage and hour laws for work performed in
6 California. Defendants wrongfully refused to pay Plaintiff and Aggrieved Employees regular
7 wages, overtime compensation, business expense reimbursements, and other statutory benefits
8 mandated by California.

9 17. Throughout the Relevant Time Period, Defendants employed Plaintiff and
10 Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly,
11 these positions remain non-exempt from California's wage and hour laws, yet Defendant failed
12 to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-
13 exempt employees as required by law.

14 18. During the Relevant Time Period, Defendant failed to compensate Plaintiff and
15 Aggrieved Employees legally mandated minimum wages and overtime rate for all work
16 performed during their shifts in violation of the Labor Code and the Labor Code and Industrial
17 Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with
18 Defendants, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours
19 per day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees
20 primarily performed non-exempt work in excess of the maximum regular rate hours set by the
21 IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff
22 and Aggrieved Employees to overtime compensation at time and a half rate, and when
23 applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or
24 statutes. Further, Plaintiff and Aggrieved Employees regularly worked through meal and rest
25 breaks, and were not paid the legally mandated regular or overtime wages for the hours they
26 worked.

27 19. Furthermore, During the Relevant Time Period, Plaintiff and Aggrieved
28 Employees received non-discretionary bonuses. However, Defendant did not include in the

1 regular rate of pay the non-discretionary bonuses for purposes of calculating, Plaintiff and
2 Aggrieved Employees' overtime rate of pay. An employee's regular rate of pay is properly
3 determined by "dividing his total remuneration for employment (except statutory exclusions) in
4 any work week by the total number of hours actually worked by him in that workweek for which
5 such compensation was paid. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.
6 App.4th 893, 905.) Thus, employees "who receive incentive bonuses in addition to their
7 guaranteed base pay clearly receive a greater regular rate than the minimum base rate." (*Id.*
8 Quoting *Walling v. Hamischfeger Corp.*, (1945) 325 U.S. 427, 431.) "Where an employee
9 receives a higher wage or rate of because of undesirable hours or disagreeable work, such wage
10 represents a shift differential or higher wage, because of the character of work done or the time
11 at which he is required to labor...Such payments enter into the determination of the regular rate
12 of pay." (*Huntington*. 131 Cal.App.4th at 910: quoting *Bay Ridge operating Co. v. Aaron*, (1948)
13 334 U.S. 446, 468-469.) On the other hand, "if an employee is employed solely on the basis of a
14 single hourly rate, that hourly rate is his/her regular rate" (See 29 C.F.R. §778.110 (2004).)

15 20. Plaintiff believes and thereon alleges that, Defendant's failure to include both the
16 shift differential and the non-discretionary bonuses also works to deprive Plaintiff and Aggrieved
17 Employees for the on-duty meal periods, and missed meal and rest period penalties, because
18 Plaintiff and Aggrieved Employees were not paid at the correct regular rate as is required by
19 Labor Code section 226.7. Defendant failed to include all remuneration required when calculating
20 the regular rate for overtime and premium pay purposes for Plaintiff and Aggrieved Employees.

21 21. During the Relevant Time Period, Defendants, and each of them failed and/or
22 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
23 reasonably provide meal and/or rest breaks and/or shift relief for Plaintiff and Aggrieved
24 Employees, thereby causing members of the Aggrieved Employees to work without being given
25 paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and
26 without being given a thirty (30) minute meal period for shifts of at least five (5) hours and second
27 thirty (30) minute meal periods for shifts of at least ten (10) hours during which Aggrieved
28 Employees were relieved of all duties and free to leave the premises. Plaintiff and Aggrieved

1 Employees were regularly required to return to work before the end of their thirty (30) minute
2 meal periods to continue working when Defendant's warehouses were busy. Furthermore,
3 Plaintiff and Aggrieved Employees were required to clock in/out for their meal breaks, on
4 machines that were located at the back of the warehouse (located approximately five (5) to seven
5 (7) minutes away from Plaintiff and Aggrieved Employees' breakroom and/or entrance to
6 Defendant's warehouse). Due to this distance, Plaintiff and Aggrieved Employees' meal break
7 would generally be cut short in the amount of time it took to walk to the back of the warehouse
8 to clock in/out for their meal breaks, resulting in Plaintiff and Aggrieved Employees rarely receive
9 a full thirty (30) minute meal break. Despite returning to work before the end of their thirty (30)
10 minute meal periods, Defendant work alter Plaintiff and Aggrieved Employees time records to
11 reflect a thirty (30) minute meal period. Particularly, Defendant manipulated Plaintiff and
12 Aggrieved Employees time records to reflect a thirty (30) minute meal period, by utilizing an
13 auto-deduct policy in some instances, or by systematically rounding the time punches of Plaintiff
14 and Aggrieved Employees on other instances. Specifically, Defendant utilized an auto deduct
15 policy for meal periods when Plaintiff and Aggrieved Employees failed to clock in/out for their
16 meal periods, or received late, interrupted, or missed meal periods. On other occasions when
17 Plaintiff and Aggrieved Employees did clock in/out for their meal periods, Defendant would
18 systematically round the time punches to the nearest five (5) or ten (10) increments. In these
19 instances, Plaintiff and Aggrieved Employees did not receive a meal premium. When the actual
20 meal period taken by Plaintiff and Aggrieved Employees were in reality, substantially less than
21 thirty (30) minutes. Defendants failed and/or refused to pay any Aggrieved Employee one (1)
22 hour's pay at the employees' regular rate of pay as premium compensation for failure to provide
23 rest and/or meal periods or to providing such rest and/or meal periods within the statutory time
24 frame as a result of their scheduling policy.

25 22. As a result of Defendants' aforementioned failure to pay all wages to Plaintiff and
26 Aggrieved Employees, due to its unfair rounding practices, and requiring Plaintiff and Aggrieved
27 employees to work off the clock, among other things, Defendants failed to maintain accurate
28 payroll records showing the accurate number of hours worked, accurate rate of pay for each hour

1 worked, premium wages earned, and accurate gross and net wages paid in violation of Labor
2 Code sections 226, 1174, and 1174.5. Specifically, Defendant failed to provide Plaintiff and other
3 Aggrieved Employees with wage statements that include all rest and meal premiums, total number
4 of hours worked at each hourly rate, the correct overtime rate, gross and net wages earned, as well
5 as the correct legal entity address.

6 23. Plaintiff and Aggrieved Employees who ended their employment during the
7 Relevant Time Period, were not paid the above due compensation or premium compensation
8 timely upon the termination of their employment as required by Labor Code.

9 24. Defendant further failed to reimburse Plaintiff and Aggrieved Employees for any
10 necessary business expenses. Defendants had a policy and/or practice of failing to reimburse
11 Plaintiff and Aggrieved Employees for incurring necessary business expenditures as required by
12 Labor Code sections 2802. Plaintiff and other Aggrieved Employees were required by Defendant
13 to make use of their personal cellphones to carry out their duties of employment. Specifically,
14 Plaintiff and other Aggrieved Employee were required to routinely communicate with supervisors
15 among other things. Notwithstanding the aforementioned, Defendant failed to reimburse Plaintiff
16 and other Aggrieved Employees for their necessary business expenditures. Defendants failed to
17 reimburse Plaintiff and Aggrieved Employees for the reasonable percentage of their cellphone
18 bills in violation of the Labor Code and the IWC Wage Orders.

19 25. Moreover, during the Relevant Time Period, Plaintiff is informed and believes,
20 and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class
21 Members were entitled to receive business reimbursements for purchasing their own PPE
22 and certain tools to carry out their employment duties for Defendant. Specifically, Plaintiff
23 and Class Members were required to purchased their own tools, which include without
24 limitation, razor blades, gloves, measuring tapes, etc. in order to execute their job duties.
25 Defendant failed to reimburse Plaintiff and Class Members for said expenditures.
26 Defendant's failure to provide reimbursement to Plaintiff and Class Members for
27 expenditures herein mentioned is in violation of the Labor Code.

28 26. During the Relevant Time Period, Defendant and each of them, required Plaintiff

1 and Aggrieved Employees to work without lawful compensation, in violation of the California
2 Labor Code, applicable Wage Orders, regulations and statutes, and Defendants: (1) willfully
3 failed and refused, and continue to fail and refuse to pay compensation for all hours worked for
4 the Plaintiff and Aggrieved Employees: and (2) willfully failed and refused, and continue to fail
5 and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff
6 and Aggrieved Employees.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
9 **OVERTIME**

10 **(Labor Code §§ 510, 1194, 1194.2, 1197, and 1197.1)**

11 **(Plaintiff Against All Defendants)**

12 27. Plaintiff realleges and incorporate by reference the preceding paragraphs of this
13 complaint as if fully set forth herein.

14 28. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
15 and forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees
16 minimum wage for all hours worked and overtime premium for hours worked in excess of over
17 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendants.
18 Defendants failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
19 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
20 Defendants. Defendants failed to schedule Plaintiff and Aggrieved Employees in such a manner
21 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
22 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
23 forty (40) hours per week. Furthermore, Defendant required Plaintiff and Aggrieved Employees
24 to work off the clock, including during meal periods, among other things. As a result, Plaintiff
25 and Aggrieved Employees were not compensated by Defendant for time spent performing their
26 work-related duties off the clock.

27 29. Moreover, Furthermore, During the Relevant Time Period, Plaintiff and
28 Aggrieved Employees received non-discretionary bonuses. However, Defendant did not include

1 in the regular rate of pay the non-discretionary bonuses for purposes of calculating, Plaintiff and
2 Aggrieved Employees' overtime rate of pay. Plaintiff believes and thereon alleges that,
3 Defendant's failure to include both the shift differential and the non-discretionary bonuses also
4 works to deprive Plaintiff and Aggrieved Employees for the on-duty meal periods, and missed
5 meal and rest period penalties, because Plaintiff and Aggrieved Employees were not paid at the
6 correct regular rate as is required by Labor Code section 226.7. Defendant failed to include all
7 remuneration required when calculating the regular rate for overtime and premium pay purposes
8 for Plaintiff and Aggrieved Employees.

9 30. Defendants willfully violated the Labor Code by failing to pay Plaintiff and
10 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
11 Aggrieved Employees were denied proper wages as a result of Defendants' policy of having
12 Plaintiff and Aggrieved Employees work after clocking out for their meal periods and failing to
13 compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay
14 pursuant to Labor Code section 510.

15 31. Moreover, on information and belief, during the Relevant time Period, Defendant
16 implemented an unlawful rounding policy that failed to compensate Plaintiff and Aggrieved
17 Employees for all hours worked, in violation of the applicable Wage Orders, regulations, and
18 statutes. Defendant's rounding policy illegally resulted in favor of Defendant by decreasing the
19 amount of compensation paid to Plaintiff and Aggrieved Employees.

20 32. A valid rounding policy must be applied consistently and "favors neither
21 overpayment nor underpayment." (See e.g. *See's Candy Shops, Inc. v. Superior Court*, (2012)
22 210 Cal.App.4th 889.) An employer's rounding policy violates DOL regulations when it
23 "systematically undercompensates employees, such as...polic[ies] [that] only round down." (*Id.*)
24 Defendant's "rounding" policy fails to meet the "fairness" test as set out by the appellate court
25 that provided a "rounding" legality test. Under *See's*, the rule in California is that an employer is
26 entitled to use the nearest-tenth rounding policy if the rounding policy is fair and neutral on its
27 face and "it is used in such a manner that it will not result, over a period of time, in failure to
28 compensate the employees properly for all the time they have actually worked." (*See's*, 210

1 Cal.App.4th at 907.)

2 33. On information and belief, Plaintiff and Aggrieved Employees were habitually
3 undercompensated for their time. Contrary to federal law (29 C.F.R. § 785.48) which permits
4 rounding time to the nearest five (5) minutes, or one tenth or quarter of an hour, Defendant here
5 had no such distinguishable pattern of rounding employees' actual time worked. Whether
6 employees clocked in ten (10) minutes early or clocked out seven (7) minutes late, they were paid
7 for eight (8) hours. Hence, Defendant routinely rounded to the nearest hour for its own benefit.

8 34. California statutes and regulations do not specifically address rounding, but Labor
9 Code sections 510 and 1194 clearly mandate employees must be paid the legally required
10 compensation for all time worked, including overtime. Plaintiff's preliminary analysis
11 demonstrates that the Defendant's "rounding" policy "systematically undercompensate[s]
12 employees," (*Id.*, citing *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1126-1127 (C.D. Cal.
13 2011) because it is applied in concert with Defendant's "attendance, punctuality, and tardiness"
14 policies such that it is set up to result in Plaintiff and Aggrieved Employees being underpaid for
15 the hours worked and provides Defendants' free labor.) Instead, Defendant consistently rounded
16 the time employees worked downward to evade their overtime obligations.

17 35. Since the LWDA has not indicated that it will be investigating more than sixty-
18 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
19 to remedy the allegations set forth above, Plaintiff, as representatives of the State of California,
20 seek any and all penalties otherwise capable of being collected by the Labor Commission, the
21 LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of
22 the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
23 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

24 36. Plaintiff is informed and believes that Defendants have violated, and continues to
25 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
26 minimum wages and overtime.

27 37. Plaintiff, as a representative of the State of California, seek to recover any and all
28 penalties for each and every violation shown to exist or to have occurred during the Relevant

1 Time Period, in an amount according to proof, as to those penalties that are otherwise only
2 available to public agency enforcement actions. Funds recovered will be distributed in accordance
3 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
4 reimbursed to the LWDA.

5 38. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
6 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
7 interest.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR** 10 **PREMIUM COMPENSATION IN LIEU THEREOF**

11 **(Labor Code Sections 226.7 and 512)**

12 **(Plaintiff against All Defendants)**

13 39. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
14 fully set forth herein.

15 40. Labor Code sections 226.7 and 512 and IWC Wage Order 1-2001, Sect. 11
16 provides that no employer shall employ any person for a work period of more than five (5) hours
17 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
18 or employ any person for a work period of more than ten (10) hours without a second meal period
19 of not less than thirty (30) minutes.

20 41. Labor Code section 226.7 provides that if an employer fails to provide an
21 employee a meal period in accordance with this section, the employer shall pay the employee one
22 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
23 period is not provided in accordance with this section. Plaintiff alleges that Defendant failed to
24 provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or
25 not relieving employees from all work duties during meal periods thereby preventing employees
26 from taking legally compliant meal periods.

27 42. Industrial Welfare Commission (IWC) Wage Order No. 1-2001 ("Wage Order 1")
28 section 11(A) states, "Unless the employee is relieved of all duty during a thirty (30) minute meal

1 period, the meal period shall be considered an “on duty” meal period and counted as time worked.
2 An “on duty” meal period shall be permitted only when the nature of the work prevents an
3 employee from being relieved of all duty and when by written agreement between the parties an
4 on-the-job paid meal period is agreed to. The written agreement shall state that the employee may,
5 in writing, revoke the agreement at any time.”

6 43. The burden to prove that a meal or rest period violation has occurred normally
7 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th
8 1138, 1159-60, where an employer fails to keep accurate records of meal and rest periods, a
9 presumption of meal and rest period violations is created, shifting the burden to the employer to
10 prove that meal and rest period violations did not occur.

11 44. Defendant failed to schedule non-exempt employees in an adequately overlapping
12 manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take and/or receive
13 such meal periods within the statutory timeframe. Further, Defendants obligated Plaintiff and
14 Aggrieved Employees to work through meal periods while off-the-clock. Defendants denied
15 Plaintiff and Aggrieved Employees duty-free meal periods, as a result, Plaintiff and Aggrieved
16 Employees were often forced to forego meal periods and/or work during their meal periods. In so
17 doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Aggrieved
18 Employees in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

19 45. Defendants failed to keep accurate records of the meal periods taken by Plaintiff
20 and Aggrieved Employees.

21 46. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
22 than five (5) hours in a workday.

23 47. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
24 worked more than ten (10) hours in a workday.

25 48. At all times relevant hereto, Defendant, failed offer or to schedule non-exempt
26 positions in a manner so as to reasonably provide meal and/or work free meal period as required
27 by Labor Code sections 226.7 and 512.

28 49. Defendant’s failure to schedule Plaintiff and Aggrieved Employees in such a way

1 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
2 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
3 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
4 ascertained according to proof at trial.

5 50. Further, Defendant's failure to maintain accurate records of the meal periods taken
6 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
7 and shifts the burden to Defendants to prove they did not occur.

8 51. Plaintiff individually, and the Aggrieved Employees, request recovery of any civil
9 penalties against Defendants, and each of them, in a sum as provided by the Labor Code.

10 52. Since the LWDA has not indicated that it will be investigating and sixty-five (65)
11 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action
12 to remedy the allegations set forth above, Plaintiff, as representatives of the people of the State of
13 California, seek any and all penalties otherwise capable of being collected by the Labor
14 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
15 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
16 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7
17 and 512.

18 53. Plaintiff are informed and believes that Defendants have violated and continues to
19 violate provisions of the Labor Code and applicable Wage orders related to the payment of
20 minimum wages, including overtime.

21 54. Plaintiff, as representatives of the State of California, seek to recover any and all
22 penalties for each and every violation shown to exist or to have occurred during the Relevant
23 Time Period, in an amount according to proof, as to those penalties that are otherwise only
24 available to public agency enforcement actions. Funds recovered will be distributed in accordance
25 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
26 reimbursed to the LWDA.

27 55. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
28 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

THIRD CAUSE OF ACTION

**VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF**

(Labor Code Sections 226.7 and 512)

(Plaintiff against All Defendants)

**VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF**

(Labor Code Sections 226.7 and 512)

(Plaintiff against All Defendants)

56. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

57. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

58. Labor Code section 226.7, subdivision (b), provides that if an employer fails to provide an employee rest period in accordance with this section, 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.

59. Defendants, and each of them, failed and or refused to implement a relief system by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest periods. Defendants denied Plaintiff and Aggrieved Employees duty free rest periods by interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions, Defendants intentionally and improperly denied duty free rest periods to the Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

60. Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all together in violation of Labor Code section 226.7 and 512.

61. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and Aggrieved Employees.

62. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked more than four (4) hours in a workday.

63. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and

1 Aggrieved Employees have suffered, and will continue to suffer damages.

2 64. Plaintiff, by virtue of his employment with Defendants, and Defendants' failure to
3 provide Plaintiff and Aggrieved Employees with rest breaks, requiring Plaintiff and Aggrieved
4 Employees to work through their rest periods without receiving compensation in lieu thereof, is
5 an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied
6 all prerequisites to serve as a representative of the general public to enforce California's labor
7 laws, and the penalty provisions identified in Labor Code section 2699.5.

8 65. Plaintiff individually, and the Aggrieved Employees, as a representative of the
9 State of California, seek any and all penalties otherwise capable of being collected by the Labor
10 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
11 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
12 alleged violation of the following provisions: 226.7 and 512.

13 66. Plaintiff, as representative of the State of California, seek to recover any and all
14 penalties for each and every violation shown to exist or to have occurred during the Relevant
15 Time Period, in an amount according to proof, as to those penalties that are otherwise only
16 available to public agency enforcement actions. Funds recovered will be distributed in accordance
17 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
18 reimbursed to the LWDA.

19 67. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
20 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

21 **FOURTH CAUSE OF ACTION**

22 **VIOLATION OF PAGA FOR FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
23 **AND TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(Labor Code Sections 1174 and 226, subdivision (A), (E))**

25 **(Plaintiff against All Defendants)**

26 68. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
27 preceding paragraphs of this complaint as if fully set forth herein.

28 69. Labor Code section 1174, subdivision (d), requires an employer to keep at a central

1 location in California or at the plant or establishment at which the employees are employed,
2 payroll records showing the hours worked daily, and the wages paid to each employee. Plaintiff
3 is informed and believes, based thereon alleges, that Defendants willfully failed to make or keep
4 accurate records for Plaintiff and similarly-aggrieved employees.

5 70. Labor Code section 226, subdivision (a), states in pertinent part that, "every
6 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
7 employees, either as a detachable part of the check, draft, or voucher paying the employee's
8 wages, or separately when wages are paid by personal check or cash, an accurate itemized
9 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
10 . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
11 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
12 only the last four digits of his or her social security number or an employee identification number
13 other than a social security number; (8) the name and address of the legal entity that is the
14 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
15 number of hours worked at each hourly rate by the employee..." (Lab. Code, § 226.)

16 71. Defendants knowingly and intentionally failed to provide timely and accurate
17 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
18 section 226, subdivision (a), by failing to record the accurate number of hours worked, due to its
19 rounding polices among other things, the accurate rate of pay for each hour worked, the accurate
20 amount of premiums wages earned, the accurate net pay, the accurate gross pay, as well as state
21 the legal entity's legal address. Such failure caused injury to Plaintiff and Aggrieved Employees.

22 72. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
23 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
24 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
25 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

26 73. Plaintiff, as a personal representative of the general public, will and does seek to
27 recover any and all penalties for each and every violation shown to exist or to have occurred
28 during the Relevant Time Period, in an amount according to proof, as to those penalties that are

1 otherwise only available to public agency enforcement actions. Funds recovered will be
2 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
3 recovered being reimbursed to the LWDA.

4 74. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
5 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

6 **FIFTH CAUSE OF ACTION**

7 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**
8 **TERMINATION OF EMPLOYMENT**

9 **(Labor Code Sections 201, 202 and 203)**

10 **(Plaintiff against All Defendants)**

11 75. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
12 preceding paragraphs of this complaint as if fully set forth herein.

13 76. Labor Code section 201 provides that an employer is required to pay an employee
14 whose employment is terminated by the employer all wages earned and unpaid immediately upon
15 termination.

16 77. Labor Code section 202 required an employer pay to an employee who quits his
17 or her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

18 78. Labor Code section 203 provides that an employer who fails to pay all wages
19 earned and due to an employee, who is discharged or who quits within the timeframe set forth in
20 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
21 the same rate of pay until paid, but no more than thirty (30) days.

22 79. Plaintiff is informed and believes that certain members of the Aggrieved
23 Employees who ended their employment with Defendants during the Relevant Time Period, were
24 entitled to be promptly paid both minimum wage and lawful overtime compensation and other
25 premiums, as required by Labor Code sections 201, 202 and 203.

26 80. Defendants refused and/or failed to promptly compensate Aggrieved Employees
27 wages owed as a result of Defendants' failure to provide meal and/or rest periods as well as pay
28 both minimum and overtime compensation owed for work performed for Defendant.

1 87. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for
2 necessary expenditures as a direct consequence of the discharge of their duties.

3 88. Defendants knowingly, willingly and intentionally attempted to offset the cost of
4 doing business on the Plaintiff and Aggrieved Employees.

5 89. Defendants had a policy and practice of requiring Plaintiff and Aggrieved
6 Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse
7 Plaintiff and Aggrieved Employees for necessary business expenditures. Specifically, Plaintiff
8 and other Aggrieved Employee were required to routinely use their personal cellphones to
9 communicate with supervisors, among other things. However, despite the foregoing, Defendant
10 failed to reimburse Plaintiff and Aggrieved Employees with a reasonable percentage of their
11 cellular phone bills.

12 90. The Industrial Welfare Commission Order No. 1-2001, section (8)(B) provides,
13 "[w]hen the employer requires the use of tools or equipment or they are necessary for the
14 performance of a job, such as tools and equipment, it shall be provided and maintained by the
15 employer, except that an employee whose wages are at least two (2) times the minimum wage
16 may provide and maintain hand tools and equipment customarily required by the particular trade
17 or craft in conformity with Labor Code section 2802. According to California Department of
18 Industrial Relations, at all relevant times in 2017, 2018, 2019, 2020, and 2021 the legal minimum
19 wage in California for employers who employed twenty-six (26) employees or more was ten
20 dollars and fifty-cents (\$10.50). At all relevant times in 2017, the legal minimum wage in
21 California for employers who employed twenty-six (26) employees or more was ten dollars and
22 fifty-cents (\$10.50). At all relevant times in 2018, the legal minimum wage in California for
23 employers who employed twenty-six (26) employees or more was eleven dollars (\$11.00). At all
24 relevant times in 2019, the legal minimum wage in California for employers who employed
25 twenty-six (26) employees or more was twelve dollars (\$12.00). At all relevant times in 2020, the
26 legal minimum wage in California for employers who employed twenty-six (26) employees or
27 more was twelve dollars (\$13.00). At all relevant times in 2021, the legal minimum wage in
28 California for employers who employed twenty-six (26) employees or more was twelve dollars

1 (\$14.00). Plaintiff and Aggrieved Employees' wages were not two (2) times the min wage.
2 Nonetheless, Defendant did not have a policy in place to provide Plaintiff and Aggrieved
3 Employees with the tools that they required to execute their job duties. As a result, Plaintiff and
4 Aggrieved Employees were required to purchased their own tools, which include without
5 limitation, razor blades, gloves, measuring tapes, etc. in order to execute their job duties.
6 Defendant failed to reimburse Plaintiff and Aggrieved Employees for said expenditures.
7 Defendant's failure to provide reimbursement to Plaintiff and Aggrieved Employees for
8 expenditures herein mentioned is in violation of the Labor Code.

9 91. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
10 "necessary expenditures or losses" which shall include all reasonable costs, including, but not
11 limited to, attorney's fees and interest.

12 92. Plaintiff by virtue of his employment with Defendants and the Defendants' policy
13 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendants' cost of
14 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
15 expenditures, is an aggrieved employee with standing to bring an action under the PAGA.
16 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce
17 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

18 93. Plaintiff, as a representative of the people of the State of California, will seek any
19 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
20 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
21 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
22 201-203, 226, 226.7, 510, 512, 1174, and 1194.

23 94. Plaintiff, as a personal representative of the general public, will and does seek to
24 recover any and all penalties for each and every violation shown to exist or to have occurred
25 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
26 otherwise only available to public agency enforcement actions. Funds recovered will be
27 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
28 recovered being reimbursed to the LWDA.

1 95. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
2 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest

3 **PRAYER FOR RELIEF**

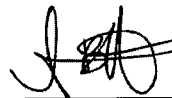
4 **WHEREFORE**, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 5 1. For civil penalties for each violation for Plaintiff and each Aggrieved
6 Employee as provided by law, including, but not limited to, those civil
7 penalties provided by statute, provided by PAGA;
8 2. For costs of suit and expenses incurred herein pursuant to Labor Code section
9 2699, subdivision (g), and any other statutory basis or pursuant to the
10 California Rules of Court;
11 3. For reasonable attorneys' fees pursuant to Labor Code section 2699,
12 subdivision (g), and any other statutory basis; and
13 4. For all such other and further relief as the Court may deem just and proper.
14

15 Dated: September 14, 2021

MAHONEY LAW GROUP, APC

16
17
18 By:



19 Berkeh Alemzadeh, Esq.
20 Attorneys for Plaintiff JACOB REYES, as an
21 individual and all others similarly situated
22
23
24
25
26
27
28

EXHIBIT A

WL WORK LAWYERS PC

Helping California Workers

Berkeh Alemzadeh, Esq.
Phone : (424) 355-8535
Facsimile : (213) 784-0032
beyonca@caworklawyer.com

July 7, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL

#7020 2450 0002 0253 6497
Trek Bicycle, Corp.
5100 Shea Center Drive
Ontario CA 91761

VIA U.S. MAIL & CERTIFIED MAIL

#7020 2450 0002 0253 6480
Trek Bicycle, Corp.
Attn.: Agent for Service: C T Corporation System
330 N Brand Blvd
Glendale, CA 91203

VIA U.S. MAIL & CERTIFIED MAIL

#7020 2450 0002 0253 6503
Trek Bicycle, Corp.
801 West Madison Street
Waterloo, WI 53594

Re: Jacob Reyes v. Trek Bicycle, Corp.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Trek Bicycle, Corp.

From: Jacob Reyes, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Work Lawyers PC, represents the interests of Mr. Jacob Reyes ("Mr. Reyes" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Trek Bicycle, Corp, a Wisconsin corporation (hereinafter "Employer" or "TBC" is a bicycle and cycling product manufacturer and distributor, manufacturing and distributing bicycles and cycling products throughout the state of California, including San Bernardino County. Mr. Reyes began his employment with Employer on or around May 15, 2019, as an hourly, non-exempt employee, where he remained employed until August 13, 2020.

Mr. Reyes alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802 by failing to provide Mr. Reyes and all other aggrieved employees with meal and rest periods or premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, failing to provide all wages earned at end of employment, and for failing to reimburse for necessary business expenditures. Mr. Reyes and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the Liability Period of one (1) year plus sixty-five (65) days prior to the filing of a complaint alleging a PAGA cause of action.

A. TBC Failed to Provide Mr. Reyes and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Mr. Reyes alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Mr. Reyes and other aggrieved employees allege that they did not always receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) When employees failed to receive their meal break, they did not always receive premium pay as compensation for the missed meal break.

Mr. Reyes further alleges that she and other aggrieved employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Reyes and other aggrieved employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Mr. Reyes and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium

pay for the missed rest break.

Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512, and Wage Order 1.

B. TBC Failed to Pay Mr. Reyes and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employer failed to pay Mr. Reyes and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. As can be seen from Mr. Reyes' wage statements, Employer rounded the hours worked by Mr. Reyes and other aggrieved employees to a factor of fifteen (15) minutes. Mr. Reyes alleges that on average, this rounding favored Employer and therefore resulted in lost wages to Mr. Reyes and other aggrieved employees. As a result, Employer failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code. Employer's failure to provide Mr. Reyes and other aggrieved employees pay for all hours worked is a violation of California's minimum wage laws, as Mr. Reyes and other aggrieved employees should have been provided at least the applicable minimum wage for all hours worked.

Further, to the extent that Mr. Reyes and other aggrieved employees worked shifts of at least eight (8) hours per day, or forty (40) hours per week, all unpaid wages described above in excess of the hours specified herein were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay. To the extent such hours exceeded twelve (12) in one day or eight (8) on the seventh consecutive day worked, such hours were required to be compensated at a rate of at least two times each employee's base rate of pay.

During the Liability Period, Mr. Reyes' and other aggrieved employees received non-discretionary bonuses. However, Employer failed to include in the regular rate of pay the non-discretionary bonuses for purposes of calculating Mr. Reyes' and other aggrieved employees' overtime rate of pay. The incorrect overtime rate resulted in lost wages to Mr. Reyes and other aggrieved employees.

Employer's failure conduct is actionable under PAGA as a violation of Labor Code sections 227.3, 510 and 1194, and Wage Order 1.

C. TBC Failed to Provide Mr. Reyes and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

By failing to include on Mr. Reyes' and other aggrieved employees' pay stubs all meal and rest break premium wages and full compensation for all regular hours and overtime hours worked, Employer failed to keep accurate payroll records and failed to provide Mr. Reyes and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and Wage Order 1, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203, and 204, and Wage Order 1, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. TBC Failed to compensate Mr. Reyes and Other Aggrieved Employees for All Necessary Business Expenditures Incurred During their Employment

Pursuant to Labor Code section 2802(a) "[a]n employer shall indemnify his or her employee for all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." The purpose of this statute is to "prevent employers from passing their operating expenses on to their employee," *Gattuso v. Harte-Hanks Shoopers, Inc.*, 42 Cal 4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Under Labor Code section 2802, "necessary" is defined to include all "reasonable" expenses.

The employer's obligation to reimburse business related expense arises when the employer "knew or should have known: that its employees have incurred business related expenses. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the "knew or should have known standard" standard from RadioShack.)

i. TBC Failed to Reimburse Mr. Reyes and Other Aggrieved Employees for Using Their Personal Cellphones

Under Labor Code section 2802, employers must reimburse employees for required work-related use of personal cellphones – regardless of whether they incur any additional out of pocket expense from that work-related use. *See, Cochran v. Schwan's Home Service, Inc.* 228 Cal App. 4th 1137 (August 12, 2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that "[i]f an employee is required to use personal cellphone to carry out work related duties, then he or she is incurring an expense for the purpose of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans to accommodate work related cellphone usage...To show liability under section 2802, an employee need only show that he or she was required to use a personal cellphone to carry out work related duties, and he or she was not reimbursed." *Id.* At 1144-45 (emphasis added.)

Mr. Reyes and other aggrieved employees were required to regularly use their personal cellphones to carry out their work-related duties, including, without limitation, communicate with supervisors, provide status reports, retrieve wage statements as well as send/receive text messages regarding scheduling. However, despite the foregoing, Employer failed to reimburse Mr. Reyes and Aggrieved Employees with a reasonable percentage of their cellular phone bills.

Employer's failure to provide complete compensate for all necessary business expenditures incurred by Mr. Reyes and other aggrieved employees in direct consequence of their duties to

July 7, 2021

Page 5 of 5

Employer is actionable under PAGA as a violation of Labor Code section 2802, and Wage Order 1.

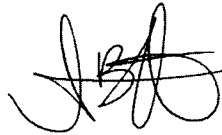
E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Reyes becomes aware of additional compensation owed or losses incurred by Mr. Reyes or by any other aggrieved employee of the Employer, Mr. Reyes expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

WORK LAWYERS PC
Berkeh Alemzadeh, Esq
22939 Hawthorne Blvd., Suite 202
Telephone: (424) 355-8535
Facsimile: (213) 784-0032
Email: beyonca@caworklawyer.com

Sincerely,

A handwritten signature in black ink, appearing to be 'Berkeh Alemzadeh', written over a horizontal line.

Berkeh Alemzadeh, Esq.
WORK LAWYERS PC