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

MAR 16 2022



Attorneys for Plaintiff and the Proposed Class

Brenda Matsumura

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

VICKI FLORES, an individual, on behalf of
herself and others similarly situated

PLAINTIFF,

v.

HERITAGE BAG COMPANY; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2023373

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Failure to Pay Timely Wages Pursuant to Labor Code § 204
6. Penalties Pursuant to Labor Code §§ 201-203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq.



1 Plaintiff VICKI FLORES, an individual, on behalf of herself and all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant HERITAGE BAG COMPANY (“Defendant”) and Does 1 through 50,
5 and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by Heritage Bag Company in the State of California who
12 worked one or more pay periods since four (4) years prior to the
filing of this action to the present (“Proposed Class”).

13 2. From at least four (4) years prior to the filing of this action continuing to the present,
14 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
15 Members at the legal rate of pay when they work more than eight hours in one day or forty hours
16 in one week. Plaintiff and other members of the Proposed Class were not properly compensated
17 for overtime at the appropriate rate of pay because Defendant failed to blend shift differential
18 and/or other non-discretionary bonuses into their regular rate of pay for the purposes of
19 determining the appropriate overtime rate. As such, Plaintiff and the Proposed Class were paid at
20 a regular rate less than the rate required under California law.

21 3. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendant has had a consistent policy of failing to properly pay Proposed Class Members
23 one (1) hour of pay at the employees’ regular rate of compensation for each workday that a meal
24 period was not provided, was not provided in full, or was not provided in a timely manner, as
25 required by California state wage and hour laws, again because Defendant failed to blend shift
26 differential and/or other non-discretionary bonuses into the employee’s regular rate of pay.

27 4. From at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using

1 their personal cell phones and tools for business related purposes. Defendant required that Plaintiff
2 and the Proposed Class Members purchase tools/equipment to perform their job duties. Defendant
3 failed to reimburse Plaintiff and the Proposed Class Members for the costs associated with these
4 purchases.

5 5. For at least one (1) year prior to the filing of this action continuing to the present,
6 Defendant has failed to provide accurate itemized wage statements in compliance with Labor Code
7 §226(a) to Plaintiff and Proposed Class Members. Defendant failed to accurately show total hours
8 worked by the employee in violation of Labor Code § 226(a)(2) and failed to accurately show the
9 applicable hourly rates in effect for shift differential pay, and other non-discretionary bonuses, and
10 overtime pay as required and the corresponding number of hours worked at each hourly rate in
11 violation of Labor Code § 226(a)(9).

12 6. For at least three (3) years prior to the filing of this action continuing to the present,
13 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
14 the Proposed Class in violation of Labor Code §§201-203.

15 7. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
16 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174.5,
17 1182.12, 1194, 1197, 1197.1, 1198,1199, and 2802; Wage Order 7-2001; and California Code of
18 Regulations, Title 8, Section 11070, seeking unpaid wages/overtime, meal period penalties,
19 expense reimbursement, accurate itemized wage statements, other penalties, injunctive and other
20 equitable relief, and reasonable attorneys' fees and costs.

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

24 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
25 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
26 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
27 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved
28 employees presently or formerly employed by Defendant during the liability period as defined in

1 her PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code
2 §2699, et seq. seeking penalties for Defendant’s failure to pay all wages and/or overtime, failure
3 to provide lawful meal periods, failure to provide accurate itemized wage statements, and failure
4 to pay all wages due at the time of termination.

5 **II.**

6 **JURISDICTION AND VENUE**

7 10. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
10 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
11 State of California or is subject to adjudication in the courts of the State of California.

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

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

20 13. Upon information and believe, the value of Plaintiff’s individual claim is less than
21 \$75,000.00 and the value of the claims of the Proposed Class, in the aggregate, are less than
22 \$5,000,000.00.

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

28 **III.**

1 **PARTIES**

2 **A. PLAINTIFF**

3 15. Plaintiff VICKI FLORES is a resident of California.

4 16. Plaintiff and all Proposed Class Members were regularly required to:

5 a. Work without being paid for all hours at the appropriate rate;

6 b. Work without being paid proper meal period premiums;

7 c. Work without being reimbursed for their out of pocket expenses; and

8 d. Work without being provided accurate itemized wage statements as
9 required by California law.

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

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

14 19. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA
15 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
16 §2699(c).)

17 **B. DEFENDANTS**

18 20. Defendant heritage bag company is believed to be a Texas corporation operating
19 within the State of California. Defendant’s corporate address is believed to be 101 E. Carolina,
20 Ave., Hartsville, SC 29550 and the location where it employed Plaintiff is believed to be 12320
21 Fourth Street, Rancho Cucamonga, CA 91730. Upon information and belief, Defendant employed
22 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
23 and does business throughout the State of California.

24 21. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
26 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
27 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
28 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred

1 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
2 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

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

13 IV.

14 FACTUAL BACKGROUND

15 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
16 classified as non-exempt employees by Defendant. Defendant hires employees who work as
17 hourly employees who are paid on an hourly basis.

18 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
19 California Industrial Welfare Commission Occupational Wage Order No. 7-2001 (Title 8 Cal.
20 Code of Regs. § 11070).

21 26. On a regular and consistent basis, Defendant has failed to properly compensate
22 Plaintiff and all Proposed Class Members for overtime at the appropriate rate of pay by failing to
23 include shift differentials and other non-discretionary bonuses when calculating their regular rate
24 in workweeks where they earned such pay and worked overtime. As such, Plaintiff and the
25 Proposed Class were paid at an overtime rate less than the rate required under California law.

26 27. Defendant had a consistent policy of failing to pay one (1) hour of pay at the
27 employees' regular rate of compensation for each workday that a meal period was not provided,
28 was not provided in full, or was not provided in a timely manner. When Defendant paid meal

1 period premiums to Plaintiff and other members of the Proposed Class, it did so at a rate below
2 the employee's regular rate of compensation.

3 28. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of
4 using their personal cell phones and tools for business related purposes. Defendant required that
5 Plaintiff and the Proposed Class Members purchase tools/equipment to perform their job duties.
6 Defendant failed to reimburse Plaintiff and the Proposed Class Members for the costs associated
7 with these purchases.

8 29. On a regular and consistent basis, Defendant has failed to provide Plaintiff and the
9 and the Proposed Class Members with itemized wage statements that comply with Labor Code §
10 226(a). Defendant failed to accurately show total hours worked by the employee in violation of
11 Labor Code § 226(a)(2) and failed to accurately show the applicable hourly rates in effect for shift
12 differential pay, and other non-discretionary bonuses, and overtime pay as required and the
13 corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

14 30. Based on the above allegations, Defendant willfully failed to pay wages and
15 compensation when Plaintiff and all Proposed Class Members quit or were discharged. This
16 failure was willful, without legal justification, and interfered with Plaintiff's and Class Members'
17 rights.

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

19 **V.**

20 **CLASS ACTION ALLEGATIONS**

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

24 All persons who are employed or have been employed as an hourly
25 employee by Heritage Bag Company in the State of California who
26 worked one or more pay periods since four (4) years prior to the
filing of this action to the present ("Proposed Class").

27 33. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
28 amend or modify the class description with greater specificity, by division into subclasses, or by

1 limitation to particular issues.

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

5 **A. NUMEROSITY**

6 35. The potential members of the Proposed Class as defined are so numerous that
7 joinder of all the members of the Proposed Class is impracticable. While the precise number of
8 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
9 that Defendant currently employ, and during the relevant time periods employed over 50 members
10 of the Proposed Class.

11 36. Plaintiff alleges that Defendant's employment records would provide information
12 as to the number and location of all Proposed Class Members. Joinder of all members of the
13 Proposed Class is not practicable.

14 **B. COMMONALITY**

15 37. There are questions of law and fact common to the Proposed Class that predominate
16 over any questions affecting only individual Proposed Class Members. These common questions
17 of law and fact include, without limitation:

18 a. Whether Defendant failed to pay wages and/or overtime compensation as
19 required by the Labor Code and Wage Orders under Labor Code §§ 510, 558, 1182.12, 1194, 1197,
20 1198 and 1199;

21 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 7-
22 2001 or other applicable IWC Wage Orders, by failing to properly pay one (1) hour of pay at the
23 employees' regular rate of compensation for each workday that a meal period was not provided,
24 was not provided in full, or was not provided in a timely manner, as required by California state
25 wage and hour laws;

26 c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 7-
27 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses;

28 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 7-2001

1 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by failing to
2 provide accurate and complete itemized wage statements to Plaintiff and the Proposed Class
3 Members;

4 e. Whether Defendant violated §§ 201-204 and 210 of the Labor Code by
5 failing to timely pay compensation, including compensation due and owing at the time that any
6 Proposed Class Member's employment with Defendant terminated;

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

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

11 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
12 acts alleged herein.

13 **C. TYPICALITY**

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

18 **D. ADEQUACY OF REPRESENTATION**

19 39. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the proposed Class. Counsel who represent Plaintiff and the Proposed Class are
21 competent and experienced in litigating large employment class actions.

22 **E. SUPERIORITY OF CLASS ACTION**

23 40. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
25 practicable, and questions of law and fact common to the Proposed Class predominate over any
26 questions affecting only individual members of the Proposed Class. Each member of the Proposed
27 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
28 practice of failing to pay all wages due, failing to properly pay meal period premiums, failing to

1 provide accurate itemized wage statements, and failing to pay all wages upon resignation or
2 termination.

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

7 **VI.**

8 **FIRST CAUSE OF ACTION**

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

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

11 **LABOR CODE §§ 510, 558, 1182.12, 1194, 1194.2, 1197, 1198 AND 1199**

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

14 43. Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, 1198 and 1199 require an
15 employer to pay its employees the legal minimum wage and the legal overtime compensation
16 applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any
17 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
18 workweek must be compensated at the rate of no less than one and one-half times the regular rate
19 of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the
20 rate of no less than twice the regular rate of pay. California law also requires that any
21 compensation, including a shift differential or other pay, must be included in the regular rate of
22 pay.

23 44. Plaintiff and the Proposed Class were forced to work on a regular and consistent
24 basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff
25 and the Proposed Class were not paid at the proper overtime rate when they worked more than
26 eight (8) hours in one day or forty (40) hours in one week because Defendant failed to blend shift
27 differentials and other non-discretionary bonuses when calculating their regular rate in workweeks
28 where they earned such pay and worked overtime. As such, Plaintiff and members of the Proposed

1 Class were paid at an overtime rate less than the rate required under California law.

2 45. By their policy of requiring Plaintiff and members of the Proposed Class to work
3 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without properly
4 compensating them at the rate of one-half (1 ½) times their regular rate of pay, Defendant willfully
5 violated the provisions of Labor Code §§ 510, 558, 1182.12, 1194, 1194.2, 1197, 1198 and 1199.

6 46. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
7 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
8 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
9 costs.

10 **VII.**

11 **SECOND CAUSE OF ACTION**

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

13 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

14 **LABOR CODE § 226.7 AND LABOR CODE § 512**

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

17 48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
18 compensation for each meal period the employer fails to provide. Employees are entitled to a first
19 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
20 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
21 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
22 no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff
23 and the Proposed Class of these rights.

24 49. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

25 50. Defendant had a consistent policy of failing to pay one (1) hour of pay at the
26 employees' regular rate of compensation for each workday that a meal period was not provided,
27 was not provided in full, or was not provided in a timely manner. When Defendant paid meal
28 period premiums to Plaintiff and other members of the Proposed Class, it did so at a rate below

1 the employee's regular rate of compensation.

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

5 **VIII.**

6 **THIRD CAUSE OF ACTION**

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

8 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

9 **LABOR CODE § 2802**

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

12 53. Labor Code § 2802 requires employers to indemnify employees for all necessary
13 expenditures incurred by employees in the discharge of their duties.

14 54. Defendants have failed to reimburse Plaintiff and the Proposed Class for the cost
15 of business-related expenses necessary for the performance of Plaintiff's job duties.

16 55. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
17 been deprived of reimbursement in the amounts to be determined at trial, and is entitled to recovery
18 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

19 **IX.**

20 **FOURTH CAUSE OF ACTION**

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

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

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

25 57. Labor Code § 226(a) requires employers to issue an accurate itemized statement in
26 writing showing total hours worked by the employee and accurately show all applicable hourly
27 rates in effect during the pay period and the corresponding number of hours worked at each hourly
28 rate by the employee. (Labor Code §§ 226(a)(2), (9).)

58. IWC Wage Orders 7-2001(7), 7-2000(7), 7-1998(7) require Defendant to maintain accurate records that include “total hours worked in the payroll period and applicable rates of pay” for all hours worked. Defendant failed to keep such accurate records as required.

59. Plaintiff and the Proposed Class Members are issued wage statements that do not accurately show total hours worked by the employee. In addition, Plaintiff and the Proposed Class Members are issued wage statements that do not accurately show the overtime and shift differential rates and/or other non-discretionary bonuses in effect during the pay period and the corresponding number of hours worked at the accurate rates by Plaintiff and all Proposed Class Members.

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

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

X.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UNDER LABOR CODE §§ 204 AND 210

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

63. Plaintiff repeats, re-alleges, and incorporates by reference, as though set forth in full herein, all previous paragraphs.

64. Labor Code § 204(d) requires that employees paid on a weekly, biweekly, or semimonthly basis be paid no later than seven (7) calendar days after the payroll period ends.

65. By failing to pay Plaintiff and the Proposed Class at the appropriate rate of pay, Defendants have failed to timely pay wages within the statutory time limit following close of the payroll period in which overtime was paid. Thus, Defendants' practice violates Labor Code §§

204(d) and 210.

66. As a proximate result of Defendants' violations of Labor Code § 204, Plaintiff and the Proposed Class have been damaged in an amount according to proof at the time of trial.

XI.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 201-203

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

68. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

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

70. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §§ 201-203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class Members' daily wage multiplied by thirty (30) days.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

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

72. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
2 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
3 interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

9 75. California’s wage and hour laws express fundamental public policies. Providing
10 employees with proper wages and compensation are fundamental public policies of this State and
11 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
12 vigorously minimum labor standards, to ensure that employees are not required or permitted to
13 work under substandard and unlawful conditions, and to protect law-abiding employers and their
14 employees from competitors who lower their costs by failing to comply with minimum labor
15 standards.

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

22 77. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 78. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
25 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
26 § 17200, *et seq.* of the Business & Professions Code.

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

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

XIII.

EIGHTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

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

43. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§ 201-204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802 ; IWC 7-2001; and California Code of Regulations, Title 8, Section 11070, which call for civil penalties.

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

- a. \$100 for the initial violation per employee per pay period.
- b. \$200 for each subsequent violation per employee per pay period.

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

46. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant HERITAGE BAG COMPANY's

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

entity address, which is 101 E. Carolina Ave., Hartsville, SC 29550, as proscribed by the Code on August 12, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2 and 1199. (see Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

47. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a second notice letter to the LWDA and mailed a letter by certified mail to Defendant HERITAGE BAG COMPANY's entity address, which is 101 E. Carolina Ave., Hartsville, SC 29550, as proscribed by the Code on January 3, 2022, describing Defendant's conduct in violation of Labor Code §§ 201-204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802 (see Exhibit "3.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "4").

48. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days from her initial letter and she does not anticipate response from her amended notice, Plaintiff is commencing a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately upon filing.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of one hour of Plaintiff's and each Proposed Class Member's full regular rate of compensation for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For the cost of all unreimbursed expenses under Labor Code § 2802;

4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one

1 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
2 an aggregate penalty of four thousand dollars (\$4,000) to Plaintiff and each Proposed Class
3 Member from at least one (1) year prior to the filing of this action to the present as may be proven;

4 5. For penalties pursuant to Labor Code § 210 for violation of Labor Code § 204 in
5 the amount of one hundred dollars (\$100) for the initial pay period in which a violation occurs and
6 two hundred dollars (\$200) for each violation in a subsequent pay period, plus 25 percent of the
7 amount unlawfully withheld;

8 6. For penalties pursuant to Labor Code § 203 for all employees who were terminated
9 or resigned equal to their daily wage times thirty (30) days;

10 7. For an award of prejudgment and post judgment interest;

11 8. For an order enjoining Defendant and its agents, servants, and employees, and all
12 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
13 overtime, meal period premiums, accurate itemized wage statements, and wages upon
14 termination/resignation pursuant to Labor Code §§ 201-204, 210, 226(a), 226.3, 226.7, 510, 512,
15 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802 , and IWC Wage Order 7-2001;

16 9. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

18 10. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
19 Code §§ 201-204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1,
20 1198, 1199, and 2802, and IWC Wage Order 7-2001;

21 11. For an award providing for payment of costs of suit;

22 12. For an award of attorneys' fees; and

23 13. For such other and further relief as this Court may deem proper and just.

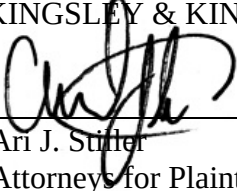
24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.
26
27
28

1 DATED: March 16, 2022

KINGSLEY & KINGSLEY, APC

2
3 By:


Ari J. Stiller

Attorneys for Plaintiff VICKI FLORES and the
Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 12, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Heritage Bag Company
101 E. Carolina Ave.
Hartsville, SC 29550

Certified Mailing: 7019 1640 000 8115 0775

Re: *Vicki Flores v. Heritage Bag Company*
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents VICKI FLORES (“Plaintiff”) and a proposed group of current and former employees working for HERITAGE BAG COMPANY (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and other aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by HERITAGE BAG COMPANY in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the time of trial (“aggrieved employees”).

Defendant has violated Labor Code §§ 226(a), 510, 1194, 1194.2 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must 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*. California law also requires that any compensation, including shift differential or other pay, must be included in the regular rate of pay.

Here, Defendant violated these statutes by failing to properly compensate aggrieved employees for overtime at the appropriate rate of pay. Specifically, Defendant failed to blend shift differentials and other non-discretionary bonuses when calculating an employee’s regular rate of pay in

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 12, 2021

Page 2 of 3

workweeks where the employee earned such pay and worked overtime. As such, Plaintiff and all aggrieved employees were paid at an overtime rate less than the rate required under California law.

Additionally, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code §226(a).

Labor Code §226(a)(2) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued Plaintiff and the aggrieved employees itemized wage statements that fail to accurately show the total hours worked and the applicable hourly rates in effect. Specifically, whenever Plaintiff and the aggrieved employees earned meal period premiums, the extra hour of pay was added to total hours worked. Moreover, Defendant failed to accurately list total overtime hours worked and the corresponding number of hours worked at each hourly rate when an employee earns shift differential pay or other bonuses and works overtime.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Likewise, the Wage Orders (7-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (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. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant had a consistent policy of failing to pay one (1) hour of pay at the employees' regular rate of compensation for each workday that a meal period was not provided, was not provided in full, or was not provided in a timely manner. When Defendant paid meal period premiums to Plaintiff and other aggrieved employees in the same pay periods when shift differential was earned, it paid such premiums at a rate below the employee's regular rate of compensation. (See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

Finally, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 12, 2021

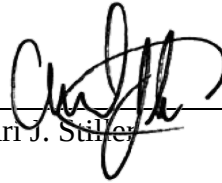
Page **3** of **3**

from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff was not paid all wages due upon her separation from Defendant’s employ. Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2 and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By:  _____
Ari J. Stiller

AJS

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/207>
 2. Lonnie D. Giamela, Anet Drapalski, Fisher & Phillips LLP, 444 S. Flower Street, Suite 1500, Los Angeles, California 90071, lgiamela@fisherphillips.com

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Ariel

Your Last Name *

Stiller-Shulman

Firm Name (if any) *

Kingsley & Kingsley APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Ste 12

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Vicki Flores

Plaintiff/Aggrieved Employee Occupation *

inspector/packer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

HERITAGE BAG COMPANY

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

101 E. CAROLINA AVE

Employer City *

HARTSVILLE

Employer State *	Employer Zip/Postal Code *
California ▼	29550
Employer Industry *	Employer Industry for "Other" *
Other ▼	Premier Can Liners, Bags a

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter-... Company.pdf

Other Attachment - (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, August 12, 2021 3:15:13 PM

8/12/2021

LWDA Case No. LWDA-CM-841204-21
Law Firm : Kingsley & Kingsley APC
Plaintiff Name : Vicki Flores
Employer: HERITAGE BAG COMPANY
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Thursday, August 12, 2021 3:15:23 PM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-841204-21

Order Number: ORD-000130799

Total:\$75.00

Card Type: Master Card

Date: 8/12/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd Ste 1200

Encino, California

91436

EXHIBIT "3"

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 3, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Heritage Bag Company
101 E. Carolina Ave.
Hartsville, SC 29550

Certified Mailing: 7020 0640 0002 1450 2425

Re: *Vicki Flores v. Heritage Bag Company*
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents VICKI FLORES (“Plaintiff”) and a proposed group of current and former employees working for HERITAGE BAG COMPANY (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and other aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by HERITAGE BAG COMPANY in the State of California (“aggrieved employees”).

Defendant has violated Labor Code §§ 201–204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must 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*. California law also requires that any compensation, including shift differential or other pay, must be included in the regular rate of pay.

Here, Defendant violated these statutes by failing to properly compensate aggrieved employees for overtime at the appropriate rate of pay. Specifically, Defendant failed to blend shift differentials and other non-discretionary bonuses when calculating an employee’s regular rate of pay in workweeks where the employee earned such pay and worked overtime. As such, Plaintiff and all

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 3, 2022

Page 2 of 3

aggrieved employees were paid at an overtime rate less than the rate required under California law. This resulted in violations of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1197, 1198, and 1199.

Additionally, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code §226(a).

Labor Code § 226(a)(2) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued Plaintiff and the aggrieved employees itemized wage statements that fail to accurately show the total hours worked and the applicable hourly rates in effect. Specifically, whenever Plaintiff and the aggrieved employees earned meal period premiums, the extra hour of pay was added to total hours worked. Moreover, Defendant failed to accurately list total overtime hours worked and the corresponding number of hours worked at each hourly rate when an employee earns shift differential pay or other bonuses and works overtime. Accordingly, Defendant also failed to maintain records pursuant to Section 1174.5.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Likewise, the Wage Orders (7-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (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. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant had a consistent policy of failing to pay one (1) hour of pay at the employees' regular rate of compensation for each workday that a meal period was not provided, was not provided in full, or was not provided in a timely manner. When Defendant paid meal period premiums to Plaintiff and other aggrieved employees in the same pay periods when shift differential was earned, it paid such premiums at a rate below the employee's regular rate of compensation. (See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 3, 2022

Page 3 of 3

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of purchasing boots and protective eyewear to perform their job duties.

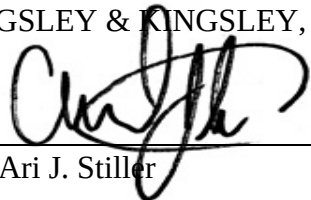
Finally, Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff was not paid all wages due upon her separation from Defendant’s employ. Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

Given these allegations, Plaintiff requests that Defendant pay back any wages owed from one year prior to the date of this letter to the present, pursuant to Labor Code § 558.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201–204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Ari J. Stiller

AJS

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/310>
 2. Lonnie D. Giamela, Anet Drapalski, Fisher & Phillips LLP, 444 S. Flower Street, Suite 1500, Los Angeles, California 90071, lgiamela@fisherphillips.com

EXHIBIT "4"



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☒ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☐ Other (please specify)

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages

Provide Details of Other Violation *

Violation of Labor Code Sections 204 and 210

Other(Maybe Multiple)

☒ Other Violation

Provide Details of Other Violation *

Violation of Labor Code Section 558

Other(Maybe Multiple)

☒ Other Violation

Provide Details of Other Violation *

Violation of Labor Code Sections 226.3, 1174.5, 1182.12, 1197, 1197

PAGA Claim Type – Check All that Apply *

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Amended Notice

Amended Notice *

PAGA Letter – ...ettlement.pdf

Other Attachment (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

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Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

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<lwdadonotreply@dir.ca.gov>
Sent: Monday, January 3, 2022 1:06 PM
To: Service Email
Subject: Thank you for your Amended PAGA Claim Notice Submission.

External Email!

01/03/2022 01:05:20 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

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