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10 LEE ANKOMA

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 LEE ANKOMA, an individual, for the real
14 party in interest, the State of California,

15 Plaintiff,

16 vs.

17 AMERICAN BUILDERS AND
18 CONTRACTORS SUPPLY CO. INC.; and
19 DOES 1 through 50;

20
21 Defendants.
22

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/15/2021 at 11:14:17 AM
Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

Case No. 37-2021-00044057-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code Section 2698 et seq.)**

1 Plaintiff LEE ANKOMA (“Plaintiff”), in his capacity as the State of California’s designated
2 proxy under the Private Attorneys General Act, and on behalf of other current and former California
3 employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendant AMERICAN
7 BUILDERS AND CONTRACTORS SUPPLY CO. INC. (“ABC Supply”) and DOES 1 through 50
8 (all defendants are hereinafter collectively referred to as “Defendants”) for wage and hour violations
9 of the California Labor Code and the applicable Industrial Welfare Commission Wage Order (the
10 “IWC Wage Order”).

11 2. Pursuant to Labor Code section 2699 *et seq.*, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
13 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees
14 for violation of the code may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
16 to the procedures specified in Labor Code section 2699.3.

17 3. Through this representative action, Plaintiff seeks to recover civil penalties under the
18 PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46 Cal.4th 969.)

19 **JURISDICTION AND VENUE**

20 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
21 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California
22 because Plaintiff alleges claims arising under California law.

23 5. This Court has jurisdiction over Defendants because each is believed to be an
24 association, corporation, business entity, or individual that conducts substantial business in the State
25 of California, County of San Diego.

26 6. Defendants do business in the County of San Diego, State of California.

27 7. This Court has jurisdiction over Plaintiff’s claim for civil penalties under PAGA.

28 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in the

1 Superior Court of California for the County of San Diego because this is where Plaintiff was employed
2 and where the wrongful misconduct alleged herein occurred.

3 **THE PARTIES**

4 9. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins Int'l*
5 *California, Inc.* (2020) 9 Cal.5th 73, 81. [The “government entity on whose behalf the plaintiff files
6 suit is always the real party in interest.”].)

7 10. Plaintiff is an “aggrieved employee” because he was employed by Defendants and had
8 one or more of the alleged violations committed against him, and therefore is properly suited to act
9 on behalf the state, and collect civil penalties for all violations committed against the Represented
10 Employees, who are also aggrieved employees as defined by Labor Code section 2699(c).

11 11. Plaintiff worked for Defendants during which time he was paid hourly and was
12 considered non-exempt.

13 12. Defendants are the owner and operator of a roofing supply company in California.

14 13. The true names and capacities, whether individual, corporate, associate or otherwise of
15 the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time. Plaintiff
16 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil
17 Procedure section 474. Plaintiff will seek leave to amend the operative complaint (“Complaint”) to
18 allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff
19 is informed and believes, and based thereon allege, that each of the DOE Defendants is in some
20 manner liable to Plaintiff for the events and actions alleged herein.

21 14. Plaintiff is informed and believes, and based thereon allege, that at all times, each
22 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the
23 other defendants and each were co-conspirators with respect to the acts and the wrongful conduct
24 alleged herein so that each is responsible for the acts of the other in connection with the conspiracy
25 and in proximate connection with the other defendants.

26 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
27 acting partly within and partly without the scope and course of their employment, and was acting with
28 the knowledge, permission, consent, and ratification of every other Defendant.

1 16. At all material times, Defendants were and/or are Represented Employees' employers
2 or persons acting on behalf of Represented Employees' employer, under California law, the IWC
3 Wage Order, and Labor Code sections 558 and 558.1 and thus are jointly and severally liable for the
4 violations alleged herein and any amounts awarded and/or recoverable as a result of this action.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 17. On August 9, 2021, Plaintiff, via counsel, sent the statutorily required notice to the
7 LWDA, indicating that Plaintiff intends to pursue claims against Defendants for violations of the
8 Labor Code.

9 18. On August 9, 2021, Plaintiff, via counsel, sent a copy of the August 9, 2021 notice to
10 Defendant ABC Supply.

11 19. The statutory period expired since Plaintiff sent the August 9, 2021 notice to the
12 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the
13 applicable penalty claims and did not provide notice as set forth in Labor Code section
14 2699.3(a)(2)(A).

15 20. Therefore, Plaintiff has exhausted the administrative requirements under the PAGA.

16 **THE PAGA REPRESENTATIVE ACTION CLAIMS**

17 21. On information and belief, current and former employees of Defendants were subject
18 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
19 sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.7, 227.3, 246, 246(l), 510, 512, 1194, 1198,
20 2698, and 2699 et seq.

21 22. California law provides that an aggrieved employee may file a representative action
22 under the PAGA against an employer for civil penalties in connection with violations of the Labor
23 Code and IWC Wage Order.

24 23. Plaintiff brings this representative action against Defendants under the PAGA on behalf
25 of the state, who is the real party in interest.

26 24. The Causes of Action alleged in this Complaint are appropriately suited for a
27 Representative Action under the PAGA because:

28 a. Their action involves allegations of violations of provisions of the California Labor

Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

- b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him; and
- c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set forth above.

25. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties under the PAGA for violations of the following Labor Code provisions:

- a. failure to provide accurate sick pay wages in violation of Labor Code section 246;
- b. failure to provide overtime wages in violation of Labor Code sections 510, 1194, 1198, and the IWC Wage Order;
- c. failure to provide accurate itemized wage statements in violation of Labor Code sections 226(a), 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9);
- d. failure to provide meal periods in violation of Labor Code sections 512, 226.7, and IWC Wage Order;
- e. failure to pay meal premiums at the regular rate of pay in violation of Labor Code sections 226.7, 226.7(c);
- f. failure to pay earned wages in violation of Labor Code section 204;
- g. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203; and
- h. failure pay all vacation hours in violation of Labor Code sections 227.3.

FIRST CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 246 and 246(l) against all Defendants)

26. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

27. Under Labor Code sections 246 and 246(l), employers in California must provide employees with paid sick leave.

28. Plaintiff and the Represented Employees were entitled to paid sick leave.

29. Upon information and belief, Defendants failed to properly provide Plaintiff and the

1 Represented Employees with paid sick leave.

2 30. Upon information and belief, Defendants failed to compensate Plaintiff and the
3 Represented Employees for use of their sick leave at the correct rate of pay as mandated by Labor
4 Code section 246(l)(1)-(3).

5 31. By way of example, Defendants failed to compensate sick leave at the correct rate of
6 pay under Labor Code section 246(l) because it failed to account for all compensation earned
7 including, but not limited to, incentives and nondiscretionary bonuses.

8 32. By way of another example, Defendants failed to compensate sick leave at the correct
9 rate of pay under Labor Code section 246(l) because they included, in their calculation, hours that are
10 not considered “hours worked” under California law.

11 33. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
12 Labor Code section 246.

13 34. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
14 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
15 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
16 all Labor Code provisions for which a civil penalty is not specifically provided.

17 35. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
18 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
19 amount to be shown according to proof.

20 36. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiff seeks to recover
21 attorney’s fees, costs, equitable relief in the form of civil penalties, in an amount to be shown
22 according to proof.

23 37. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
24 reasonable attorney’s fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
25 shown according to proof.

26 **SECOND CAUSE OF ACTION**
27 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
28 **Sections 510, 1194, and 1198 and IWC Wage Order against all Defendants)**

38. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though

1 set forth herein.

2 39. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in
3 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on
4 the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one-
5 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
6 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
7 (Labor Code § 510 and IWC Wage Order.)

8 40. Upon information and belief, Defendants failed to properly provide Plaintiff and
9 the Represented Employees with overtime pay for hours worked in excess of eight hours in a workday
10 and/or hours worked in excess of 40 hours in one workweek.

11 41. Upon information and belief, Plaintiff and the Represented Employees would
12 regularly receive additional compensation, including but not limited to, incentives and
13 nondiscretionary bonuses.

14 42. Upon information and belief Plaintiff and the Represented Employees were not
15 paid proper overtime when they worked overtime hours because Defendants failed to include all
16 compensation earned during a given period when determining the regular rate of pay, resulting in the
17 underpayment of overtime wages.

18 43. Upon information and belief, during all times relevant to this action, Defendants
19 violated Labor Code sections 510, 1194, 1198, and the IWC Wage Order.

20 44. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties
21 of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
22 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
23 Code provisions for which a civil penalty is not specifically provided.

24 45. Pursuant to Labor Code section 558, any employer or other person acting on behalf
25 of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any
26 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
27 be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each
28 of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial

1 violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent
2 violations.

3 46. Plaintiff is seeking civil penalties against Defendants, including Labor Code
4 sections 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing
5 recovery of civil penalties under the PAGA in an amount to be shown according to proof.

6 47. Pursuant to Labor Code section 1194, Plaintiff seeks to recover reasonable
7 attorney's fees, costs, interest, and civil penalties in an amount to be shown according to proof.

8 48. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
9 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
10 amount to be shown according to proof.

11 **THIRD CAUSE OF ACTION**
12 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
13 **Section 226(a)(1) against all Defendants)**

14 49. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though
15 set forth herein.

16 50. Labor Code section 226(a)(1) requires that wage statements that an employer
17 issues to its employees accurately state the gross wages earned.

18 51. Defendants failed to accurately state the proper gross on the wage statements in
19 violation of Labor Code section 226(a)(1). By way of one example, the wage statements issued to
20 Plaintiff and the Represented Employees failed to include the accurate amount of gross wages because
21 it failed to include the proper amount of sick pay wages, overtime wages, and meal premium wages.

22 52. All other claims alleged in this complaint have also resulted in a derivative claim
23 of an inaccurate itemized wage statement.

24 53. The PAGA imposes upon Defendants, and each of them, penalties for violating
25 Labor Code section 226(a)(1).

26 54. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
28 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
all Labor Code provisions for which a civil penalty is not specifically provided.

55. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

56. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

57. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FOURTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(5) against all Defendants)

58. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

59. Labor Code section 226(a)(5) requires that wage statements that an employer issues to its employees accurately state the net wages earned.

60. Defendants failed to accurately state the proper net on the wage statements in violation of Labor Code section 226(a)(5). By way of one example, the wage statements issued to Plaintiff and the Represented Employees failed to include the accurate amount of net wages because it failed to include the proper amount of sick pay wages, overtime wages, and meal premium wages.

61. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement.

62. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a)(5).

63. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

64. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

65. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

66. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FIFTH CAUSE OF ACTION
**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(2) against all Defendants)**

67. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

68. Labor Code section 226(a)(2) requires that wage statements that an employer issues to its employees accurately state the total hours worked.

69. Defendants failed to accurately state the total hours worked on the wage statements in violation of Labor Code section 226(a)(2). By way of one example, Defendants inaccurately included the time paid for meal period premiums as hours worked.

70. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement.

71. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a)(2).

72. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

73. With respect to violations of Labor Code section 226, Labor Code section 226.3

1 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
2 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
3 employee for each pay period.

4 74. Plaintiff is seeking civil penalties against Defendants, including Labor Code
5 section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under
6 the PAGA in an amount to be shown according to proof.

7 75. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
8 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
9 amount to be shown according to proof.

10 **SIXTH CAUSE OF ACTION**
11 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
12 **Section 226(a)(9) against all Defendants)**

13 76. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
14 though set forth herein.

15 77. Labor Code section 226(a)(9) requires that the employer's wage statements
16 accurately state all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.

18 78. Defendants failed to provide the applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee in violation
20 of Labor Code section 226(a)(9).

21 79. By way of one example, the rates for sick pay, overtime, and meal premiums are
22 inaccurately itemized.

23 80. All other claims alleged in this complaint have also resulted in a derivative claim
24 of an inaccurate itemized wage statement.

25 81. The PAGA imposes upon Defendants, and each of them, civil penalties for
26 violating Labor Code section 226(a)(9).

27 82. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
28 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for

1 all Labor Code provisions for which a civil penalty is not specifically provided.

2 83. With respect to violations of Labor Code section 226, Labor Code section 226.3
3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
4 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
5 employee for each pay period.

6 84. Plaintiff is seeking civil penalties against Defendants, including Labor Code
7 section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under
8 the PAGA in an amount to be shown according to proof.

9 85. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
10 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
11 amount to be shown according to proof.

12 **SEVENTH CAUSE OF ACTION**
13 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
14 **Section 226(a) against all Defendants)**

14 86. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
15 though set forth herein.

16 87. Under Labor Code section 226(a) an employer must either keep a duplicate of the
17 wage statement provided to an employee or a computer-generated record that accurately shows all of
18 the information required under 226(a)(1) through (a)(9).

19 88. Upon information and belief, during all times relevant to this action, Defendants
20 failed to keep records required under Labor Code section 226(a). By way of example, the copies of
21 the wage statements that Defendants kept do not include the accurate gross and net wages, total hours
22 worked, all applicable hourly rates and corresponding hours worked as described herein and in the
23 aforementioned paragraphs.

24 89. The PAGA imposes upon Defendants, and each of them, civil penalties for
25 violating Labor Code section 226(a).

26 90. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
28 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for

1 all Labor Code provisions for which a civil penalty is not specifically provided.

2 91. With respect to violations of Labor Code section 226, Labor Code section 226.3
3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
4 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
5 employee for each pay period.

6 92. Plaintiff is seeking civil penalties against Defendants, including Labor Code
7 section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under
8 the PAGA in an amount to be shown according to proof.

9 93. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
10 recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an
11 amount to be shown according to proof.

12 **EIGHTH CAUSE OF ACTION**
13 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
14 **Sections 512, 226.7 and the IWC Wage Order against all Defendants)**

14 94. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
15 though set forth herein.

16 95. Under Labor Code section 512 and the IWC Wage Order, an employer must
17 provide a meal period of at least thirty minutes if the employee works more than five hours. California
18 Labor Code section 512 "requires a first meal period no later than the end of an employee's fifth hour
19 of work [...]" (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

20 96. Labor Code section 226.7 prohibits an employer from requiring an employee to
21 work during a meal period and provides that an employee must be paid a wage for doing so.

22 97. Upon information and belief, during all times relevant to this action, Defendants
23 failed to provide Plaintiffs and the Represented Employees with compliant meal periods in violation
24 of Labor Code sections 512, 226.7, and the IWC Wage Order.

25 98. The PAGA imposes upon Defendants, and each of them, civil penalties for
26 violating Labor Code sections 512, 226.7 and the IWC Wage Order.

27 99. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
28 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,

1 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
2 all Labor Code provisions for which a civil penalty is not specifically provided.

3 100. Pursuant to Labor Code section 558, any employer or other person acting on behalf
4 of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any
5 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
6 be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and
7 each of them, penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial
8 violations, and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent
9 violations.

10 101. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
11 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of
12 civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

13 102. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
14 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
15 be shown according to proof.

16 **NINTH CAUSE OF ACTION**
17 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
18 **Sections 226.7, 226.7(c), and the IWC Wage Order against all Defendants)**

19 103. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
20 though set forth herein.

21 104. Under Labor Code section 226.7(c), if an employer fails to provide an employee
22 with a proper meal period, the employer shall pay the employee one hour of pay at the employee's
23 regular rate of compensation for each workday that the meal period is not provided.

24 105. At minimum, Plaintiff and the Represented Employees should have been paid a
25 meal break premium for each and every missed, delayed, or shortened meal period in an amount that
26 was equivalent to their regular rate of pay for the pay period. Because Defendants failed to issue such
27 meal premiums at the regular rate of pay for the pay period, Defendants violated Labor Code section
28 226.7(c). (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

106. The PAGA imposes upon Defendants, and each of them, civil penalties for

1 violating Labor Code sections 226.7, 226.7(c) and the IWC Wage Order.

2 107. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
3 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
4 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
5 all Labor Code provisions for which a civil penalty is not specifically provided.

6 108. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
7 2699(f), 226.7, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil
8 penalties under the PAGA as alleged herein in an amount to be shown according to proof.

9 109. Pursuant to the. PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
10 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
11 be shown according to proof.

12 **TENTH CAUSE OF ACTION**
13 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
14 **Section 204 against all Defendants)**

14 110. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
15 though set forth herein.

16 111. Pursuant to Labor Code section 204, Wages must be paid at least twice monthly on
17 days designated in advance by the employer. Wages earned between the 1st and the 15th of each
18 month must be paid by no later than the 26th of that month. (Labor Code § 204.) Wages earned
19 between the 16th and the last day of each month must be paid no later than the 10th day of the
20 following month. (*Id.*)

21 112. Defendants violated Labor Code section 204 because they failed to timely pay
22 Plaintiff and the Represented Employees all earned wages during an applicable pay period.

23 113. The PAGA imposes upon Defendants, and each of them, civil penalties for
24 violating Labor Code section 204.

25 114. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
26 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
27 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
28 all Labor Code provisions for which a civil penalty is not specifically provided.

115. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

116. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code Sections 201, 202, and 203 against all Defendants)

117. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

118. Under Labor Code section 201, if an employee is discharged by his/her employer, the wages earned and unpaid at the time of discharge are due and payable immediately.

119. Under Labor Code section 202, if on the other hand, “an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

120. Labor Code section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... 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 therefore is commenced; but the wages shall not continue for more than 30 days. ...”

121. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and the Represented Employees were owed sick pay wages, overtime wages, and meal premium wages. To this date, Defendants have not paid those wages.

122. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 201, 202, and 203.

123. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

124. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

125. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

TWELFTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 227.3 against all Defendants)

126. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

127. Under Labor Code section 227.3, “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served [...].”

128. Defendants violated Labor Code section 227.3. Upon information and belief, Defendant would provide Plaintiff and the Represented Employees with an accrual rate less than what they were legally entitled to. As a result of such conduct, Plaintiff and the Represented Employees did not receive all of their vested vacation hours upon cessation from employment.

129. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 227.3.

130. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for

1 all Labor Code provisions for which a civil penalty is not specifically provided.

2 131. Plaintiff is seeking civil penalties against Defendants under Labor Code section
3 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
4 an amount to be shown according to proof.

5 132. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute,
6 Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil
7 penalties in an amount to be shown according to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 10 1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
11 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant
12 to the PAGA, California Labor Code section 2699(g) and/or other applicable law;
13 3. Post-judgment interest as provided by law; and
14 4. Such other and further relief that the Court may deem just and proper.

15 Dated: October 15, 2021

MASHIRI LAW FIRM, APC

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17 By: 
18 Alex Asil Mashiri, Esq.
19 Attorney for Plaintiff
20 LEE ANKOMA
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