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on behalf of herself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CECILIA MATA, on behalf of herself and all
other aggrieved employees,

PLAINTIFF,

vs.

DISGUISE, INC., a California corporation;
JAKKS SALES LLC, a limited liability
company; JAKKS PACIFIC, INC., a California
corporation; and DOES 1 through 10, inclusive,

DEFENDANTS.

CASE NO.: **21STCV47518**

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *et seq.***

1 Plaintiff Cecilia Mata (“PLAINTIFF”), on behalf of herself and all other aggrieved employees
2 (“Aggrieved Employees”), alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of herself and all other Aggrieved Employees
5 of DEFENDANTS DISGUISE, INC., JAKKS SALES LLC, JAKKS PACIFIC, INC., and DOES 1
6 through 10, inclusive (collectively, “DEFENDANTS”) to recover civil penalties arising from unpaid
7 wages earned and due, including but not limited to unpaid minimum wages, failure to pay all wages due
8 to discharged or quitting employees, failure to maintain required records, failure to provide accurate
9 itemized wage statements, and failure to timely pay wages during employment.

10 **THE PARTIES**

11 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
12 PLAINTIFF was employed by DEFENDANTS in the State of California as an hourly, non-exempt
13 employee.

14 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DISGUISE,
15 INC. (“DISGUISE”) is, and all times relevant to this action was a corporation organized and existing
16 under the laws of the State of California. PLAINTIFF is informed and believes, and based thereon
17 alleges, that Defendant DISGUISE is authorized to transact and conduct business in the State of
18 California and does transact and conduct business in the State of California and in the County of Los
19 Angeles.

20 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant JAKKS
21 SALES LLC (“JAKKS SALES”) is, and all times relevant to this action was a limited liability company
22 organized and existing under the laws of the State of California. PLAINTIFF is informed and believes,
23 and based thereon alleges, that Defendant JAKKS SALES is authorized to transact and conduct business
24 in the State of California and does transact and conduct business in the State of California and in the
25 County of Los Angeles.

26 5. PLAINTIFF is informed and believes, and thereon alleges, that Defendant JAKKS
27 PACIFIC, INC. (“JAKKS PACIFIC”) is, and all times relevant to this action was a corporation
28 organized and existing under the laws of the State of California. PLAINTIFF is informed and believes,

1 and based thereon alleges, that Defendant JAKKS PACIFIC is authorized to transact and conduct
2 business in the State of California and does transact and conduct business in the State of California and
3 in the County of Los Angeles.

4 6. PLAINTIFF is informed and believes that DEFENDANTS are engaged in the business
5 of manufacturing and selling consumer products.

6 7. DEFENDANTS employed PLAINTIFF and other aggrieved persons in the State of
7 California.

8 8. At this time, the true names and capacities of DOES 1 through 10, inclusive, are unknown
9 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.
10 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is
11 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other
12 Aggrieved Employees' injuries and damages were proximately caused by the conduct of said DOE
13 defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names
14 and capacities of said DOE defendants when such information is ascertained.

15 9. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
16 times, DEFENDANTS were joint employers of PLAINTIFF and other Aggrieved Employees.
17 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action,
18 DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
19 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners,
20 joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated
21 by his, her, or its codefendants, and each was the alter ego of the other.

22 10. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the
23 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
24 furtherance of, their policies and practices of not paying PLAINTIFF and other Aggrieved Employees
25 all wages earned and due, through methods and schemes which include, but are not limited to: failing to
26 pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records;
27 failing to provide accurate itemized statements for each pay period; failing to timely pay wages during
28 employment; and requiring, permitting, or suffering the employees to work off the clock, in violation of

1 the California Labor Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”)
2 Wage Order(s).

3 11. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
5 each acting as agents and/or employees, and/or under the direction and control of, each of the other
6 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,
7 employment, and/or direction and control.

8 12. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
9 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
10 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
11 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 1193.6,
12 or 1194.

13 **JURISDICTION AND VENUE**

14 13. The Superior Court of the State of California has jurisdiction in this matter because
15 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
16 California and regularly conduct business in the State of California.

17 14. No federal question is at issue because the claims are based exclusively on California
18 state law.

19 15. Venue is proper in this judicial district and the County of Los Angeles, California because
20 among other things, PLAINTIFF and the other Aggrieved Employees performed work for
21 DEFENDANTS in the County of Los Angeles; DEFENDANTS maintain grounds, facilities, and
22 offices, and transact business in the County of Los Angeles; DEFENDANTS’ unlawful policies,
23 procedures, and practices, which are the subject of this action were applied, at least in part, to
24 PLAINTIFF and other Aggrieved Employees in the County of Los Angeles; and DEFENDANTS’
25 unlawful acts and omissions occurred in the County of Los Angeles.

26 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

27 16. In accordance with Labor Code Section 2699.3, on or about September 10, 2021,
28 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency

1 (“LWDA”), by filing a PAGA Notice online, a copy of which was sent by certified mail to
2 DEFENDANTS notifying them of the specific provisions of the Labor Code and applicable Industrial
3 Welfare Commission (“IWC”) Wage Order(s) alleged to have been violated, including the facts and
4 theories to support the alleged violations. PLAINTIFF’S PAGA Notice was sent by certified mail to
5 DEFENDANTS on September 10, 2021. On or about December 17, 2021, PLAINTIFF filed an
6 amended PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying
7 them of the specific provisions of the Labor Code and applicable Industrial Welfare Commission
8 (“IWC”) Wage Order(s) alleged to have been violated, including the facts and theories to support the
9 alleged violations.

10 17. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
11 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF’S PAGA Notice.
12 Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of PLAINTIFF’s
13 PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements
14 set forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

15 18. California Judicial Council Emergency rule 9 related to COVID-19 tolled the statute of
16 limitations applicable to this action for five months and 25 days from April 6, 2020 to October 1, 2020.
17 “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that
18 exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” PAGA’s statute of limitations
19 is governed by the Code of Civil Procedure Section 340 and thus is subject to modification by the
20 California Judicial Council.

21 19. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
22 Code Sections 2698-2699.5, PLAINTIFF brings this action on behalf of herself and all current and
23 former non-exempt Aggrieved Employees of DEFENDANTS in the State of California beginning
24 from March 16, 2020 and ending at the time this action settles or proceeds to final judgment (the
25 “PAGA PENALTY PERIOD”).

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1 Section 1194.

2 26. As a result of DEFENDANTS' policy and practices described above, DEFENDANTS
3 regularly failed to pay PLAINTIFF and all Aggrieved Employees for all hours worked.

4 27. DEFENDANTS also maintained a practice of unevenly rounding employee time, thereby
5 depriving PLAINTIFF and the other Aggrieved Employees of wages earned. Because PLAINTIFF and
6 other Aggrieved Employees regularly work in excess of eight (8) hours in a day and/or forty (40) hours
7 in a workweek, much of this uncompensated time qualified as overtime that should have been paid at
8 one- and one-half times the regular rate of pay or double time that should have been paid at two times
9 the regular rate of pay. DEFENDANTS further failed to pay all overtime owed by failing to include all
10 remuneration, including but not limited to nondiscretionary bonuses, in the regular rate of pay for
11 purposes of calculating the overtime rate of pay.

12 **Failure to Provide Meal Periods or Appropriate Premium Pay in Lieu Thereof**

13 28. California law requires employers to provide employees a duty-free and uninterrupted
14 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and the
15 meal period must begin before the end of the fifth hour of work. Labor Code § 512; § 11 of IWC Wage
16 Orders 1-2001 and 7-2001; *Brinker Restaurant Corp. v. Superior Court* 53 Cal.4th 1004 (2012).
17 Employers must also provide employees with a second duty-free and uninterrupted thirty (30) minute
18 meal period when an employee works more than (10) hours in a workday, and the second meal period
19 must begin before the end of the tenth hour of work. *Ibid*.

20 29. Employers have an obligation to both relieve their employees for at least one meal period
21 for shifts over five hours and to record having done so. If the employer fails to properly record a valid
22 meal period, it is presumed that no meal period was provided. § 7(A)(3) of IWC Wage Orders 1-2001
23 and 7-2001 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-53 ("If
24 an employer's records show no meal period for a given shift over five hours, a rebuttable presumption
25 arises that the employee was not relieved of duty and no meal period was provided.")

26 30. Employers must pay an employee an additional hour of wages at the employee's regular
27 rate of pay for each workday in which the employee receives one or more noncompliant meal periods.
28 Labor Code § 226.7; § 11(B) of IWC Wage Orders 1-2001 and 7-2001 ("If an employer fails to provide

1 an employee a meal period in accordance with the applicable provisions of this order, the employer shall
2 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
3 that the meal period is not provided.”)

4 31. DEFENDANTS failed to maintain or implement a meal period policy compliant with
5 California law and failed to provide PLAINTIFF and other Aggrieved Employees with proper meal
6 periods. PLAINTIFF and other Aggrieved Employees regularly worked shifts in excess of five (5)
7 hours, yet they were often not provided the opportunity to take a timely, fully 30-minute meal period,
8 instead often receiving late, short, and/or interrupted meal periods, or no meal periods at all, in order to
9 meet the demands of DEFENDANTS' business operations. PLAINTIFF and other Aggrieved
10 Employees were also sometimes required to clock-out to create the appearance of a legally complaint
11 meal period that was not in fact provided. PLAINTIFF and other Aggrieved Employees were also often
12 unlawfully required to remain on DEFENDANTS' premises and “on-call” during meal periods.
13 *Augustus v. ABM Sec. Servs., Inc.* 2 Cal.5th 257 (2016).

14 32. Further, even when DEFENDANTS did pay PLAINTIFF and other Aggrieved
15 Employees premiums for meal period violations, these premiums were improperly paid at the straight
16 time rate of pay, as opposed to the regular rate of pay, because DEFENDANTS failed to properly
17 calculate all remuneration, including but not limited to nondiscretionary bonuses, into the regular rate
18 of pay for purposes of calculating the premium. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858,
19 863 (2021) (“We hold that the terms are synonymous: ‘regular rate of compensation’ under section
20 226.7(c), like ‘regular rate of pay’ under section 510(a) encompasses all nondiscretionary payments, not
21 just hourly wages.”)

22 33. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
23 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one
24 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
25 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
26 a violation occurs. As set forth above, DEFENDANTS failed to provide legally compliant meal periods.
27 Based upon these factual allegations, PLAINTIFF and the other Aggrieved Employees are entitled to
28 penalties under Labor Code § 2699.

**Failure to Authorize and Permit Rest Periods of Appropriate Premium Pay in Lieu
Thereof**

34. California law requires employers to authorize and permit duty-free and uninterrupted ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof. § 12(A) of IWC Wage Orders 1-2001 and 7-2001. Employers must pay an employee an additional hour of wages at the employee's regular rate of pay for each workday in which the employee is denied one or more compliant rest periods. § 12(B) of IWC Wage Orders 1-2001 and 7-2001 ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.")

35. DEFENDANTS failed to maintain or implement a rest period policy compliant with California law and failed to authorize and permit PLAINTIFF and Aggrieved Employees to take proper rest periods. PLAINTIFF and Aggrieved Employees regularly worked shifts in excess of three and a half (3.5) hours, yet they were often not authorized and permitted to take off-duty and uninterrupted 10-minute rest periods, instead often receiving short and/or interrupted rest periods, or no rest periods at all, in order to meet the demands of DEFENDANTS' business operations. PLAINTIFF and Aggrieved Employees were also often unlawfully required to remain on DEFENDANTS' premises and "on-call" during rest periods. *Augustus v. ABM Sec. Servs., Inc.* 2 Cal.5th 257 (2016).

36. Further, even when DEFENDANTS did pay PLAINTIFF and other Aggrieved Employees premiums for rest period violations, these premiums were improperly paid at the straight time rate of pay, as opposed to the regular rate of pay, because DEFENDANTS failed to properly calculate all remuneration, including but not limited to nondiscretionary bonuses, into the regular rate of pay for purposes of calculating the premium. *Ferra, supra*, 11 Cal.5th at 863 (2021).

37. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which a violation occurs. As set forth above, DEFENDANTS failed to authorize and permit legally compliant

1 rest periods. Based upon these factual allegations, PLAINTIFF and the other Aggrieved Employees are
2 entitled to penalties under Labor Code § 2699.

3 **Failure to Timely Pay Wages During Employment**

4 **(Labor Code § 204)**

5 38. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
6 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th
7 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that
8 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are
9 required to pay their nonexempt employees between the 1st and 10th day of the following calendar
10 month.

11 39. Labor Code Section 204 further provides that all wages earned for labor in excess of the
12 normal work period shall be paid no later than the payday of the next regular payroll period.

13 40. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
14 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and
15 other Aggrieved Employees all the wages for labor performed by the next regular payroll period as
16 required by Labor Code Section 204.

17 **Failure to Pay All Wages Due Upon Separation of Employment**

18 **(Labor Code §§ 201, 202, 203)**

19 41. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all
20 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if
21 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
22 are due and payable immediately.

23 42. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages
24 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72
25 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her
26 wages at the time of quitting.

27 43. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
28 with Labor Code Sections 201 and 202, any wages of an employee who is discharged or who quits, the

1 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
2 thirty (30) days.

3 44. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
4 PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully
5 failed to timely pay accrued wages and other compensation to PLAINTIFF and other Aggrieved
6 Employees who were discharged or who quit.

7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **(Labor Code § 226(a); IWC Wage Order Nos. 1-2001 and 7-2001, § 7)**

9 45. During the PAGA PENALTY PERIOD, DEFENDANTS failed and continue to fail to
10 provide PLAINTIFF and other Aggrieved Employees with timely and accurate itemized wage
11 statements in writing showing each employee's gross wages earned, total hours worked, the number of
12 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all
13 deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the
14 name of the employee and only the last four digits of his or her social security number or employee
15 identification number, the name and address of the legal entity or entities employing PLAINTIFF and
16 other Aggrieved Employees, and all applicable hourly rates in effect during each pay period and the
17 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,
18 subdivision (a) and IWC Wage Order Nos. 1-2001 and 7-2001, § 7.

19 46. As alleged above, PLAINTIFF is informed and believes, and based thereon alleges, that
20 during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and intentionally failed to pay
21 PLAINTIFF and all Aggrieved Employees all minimum wages associated with off-the-clock COVID-
22 19 temperature checks. Accordingly, all wage statements contained inaccurate information as to hours
23 worked and wages earned (since time spent on pre-shift COVID temperature checks were never
24 included).

25 47. As a result of DEFENDANTS' unlawful policies and practices and failure to pay all
26 earned wages, including minimum wages, DEFENDANTS knowingly and intentionally failed to
27 provide PLAINTIFF and other Aggrieved Employees with timely and accurate itemized wage
28 statements in accordance with Labor Code Section 226, subdivision (a).

1 48. During the PAGA PENALTY PERIOD, PLAINTIFF and other Aggrieved Employees
2 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
3 statements as PLAINTIFF and other Aggrieved Employees could not timely and easily determine from
4 the wage statements the actual and accurate total hours worked by the employees, the gross wages
5 earned, the net wages earned, since time spent on COVID-19 temperature checks, and waiting in line
6 was always done off the clock and pre-shift.

7 **Failure to Maintain Accurate Payroll Records**

8 49. Labor Code § 1174 requires employers to keep "accurate and complete" payroll records
9 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of IWC
10 Wage Orders 1-2001 and 7-2001 also require employers to keep time records reflecting the times during
11 which meal periods are provided each day.

12 50. DEFENDANTS have failed to keep the required time records. As set forth above,
13 DEFENDANTS unevenly rounded employee time, improperly calculated the overtime rate of pay by
14 failing to calculate all remuneration in the regular rate of pay, and required PLAINTIFF and other
15 Aggrieved Employees to work off-the-clock, in part performing COVID-19 temperature checks before
16 clocking in. DEFENDANTS also did not accurately maintain records showing when PLAINTIFF and
17 other Aggrieved Employees were provided meal periods or when PLAINTIFF and other Aggrieved
18 Employees performed work during meal periods.

19 51. Labor Code § 1174.5 provides that an employer who fails to maintain accurate and
20 complete payroll records as required by Labor Code § 1174 is subject to a civil penalty of five hundred
21 dollars (\$500) for each employee whose records the employer fails to accurately maintain.

22 52. DEFENDANTS' failure to maintain accurate and complete payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code § 1174 and § 7 of IWC Wage Orders
24 1-2001 and 7-2001. These violations subject Defendant to civil penalties under Labor Code § 1174.5.

25 **Failure to Provide Required Information Upon Hire**

26 53. Labor Code § 2810.5 requires employers to provide to each employee at time of hire,
27 (A) the employee's rates of pay and basis thereof, (B) allowances, if any, claimed as part of the
28 minimum wage, (C) the regular payday, (D) the name of the employer, including any DBA, (E) the

1 physical address of the employer's principal place of business, (F) the telephone number of the
2 employer, (G) the name, address, and telephone number of the employer's workers' compensation
3 insurance carrier, (H) that the employee may accrue and use sick leave and has a right to do so, and (I)
4 any other information that the Labor Commissioner deems material and necessary.

5 54. Based on information and belief, DEFENDANTS failed to provide the information to
6 PLAINTIFF and other Aggrieved Employees upon hire in violation of Labor Code § 2810.5.

7 55. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
8 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one
9 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
10 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
11 a violation occurs. As set forth above, DEFENDANTS failed to provide all required information to
12 PLAINTIFF and other Aggrieved Employees upon hire in violation of Labor Code § 2810.5. Based
13 upon these factual allegations, PLAINTIFF and other Aggrieved Employees are entitled to penalties
14 under Labor Code § 2699.

15 **Failure to Pay Accrued Vacation Pay**

16 56. Labor Code § 227.3 provides that "whenever a contract of employment or employer
17 policy provides for paid vacations, and an employee is terminated without having taken off his vested
18 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such
19 contract of employment or employer policy respecting eligibility or time served.

20 57. DEFENDANTS maintained a policy under which PLAINTIFF and other Aggrieved
21 Employees accrued vacation based on years of service. DEFENDANTS failed, however, to pay out
22 accrued and used vacation to PLAINTIFF and other Aggrieved Employees upon separation of
23 employment in violation of Labor Code § 227.3.

24 58. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
25 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one
26 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
27 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
28 a violation occurs. As set forth above, DEFENDANTS failed to pay accrued and used vacation to

1 PLAINTIFF and other Aggrieved Employees at separation of employment in violation of Labor Code
2 § 227.3. Based upon these factual allegations, PLAINTIFF and other Aggrieved Employees are entitled
3 to penalties under Labor Code § 2699.

4 **Failure to Reimburse Business Expenses**

5 59. Labor Code §§ 2800 and 2802 require an employer to reimburse employees “for all
6 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
7 or her duties, or of his or her obedience to the directions of the employer.”

8 60. DEFENDANTS failed to reimburse PLAINTIFF and other Aggrieved Employees for all
9 business expenses incurred in direct consequence of the discharge of their duties. These expenses
10 included, but were not limited to, the use of a personal cell phone of business-related tasks, and the
11 purchasing of supplies, uniforms, and shoes.

12 61. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
13 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one
14 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
15 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
16 a violation occurs. As set forth above, DEFENDANTS failed to reimburse PLAINTIFF and other
17 Aggrieved Employees for all business expenses incurred. Based upon these factual allegations,
18 PLAINTIFF and the other Aggrieved Employees are entitled to penalties under Labor Code § 2699.

19 **Multiple Violations of Labor Code § 432.5**

20 62. Labor Code § 432.5 provides that “No employer, or agent, manager, superintendent, or
21 officer thereof, shall require any employee or applicant to agree, in writing, to any term or condition
22 which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited
23 by law.”

24 63. Upon information and belief, DEFENDANTS required PLAINTIFF and other
25 Aggrieved Employees to execute an arbitration agreement as a condition of employment. Among other
26 things, the agreement contained a provision that prohibited PLAINTIFF and other Aggrieved
27 Employees from filing or participating in representative actions, thereby waiving their right to file or
28 participate in a representative action under the PAGA in violation of settled California law. *See, e.g.,*

1 *Iskanian v. CLS Transp. Los Angeles, LLC*, 259 Cal.4th 348, 384 (2014); *Juarez v. Wash Depot*
2 *Holdings, Inc.*, 24 Cal.App.5th 1197, 1202-03 (2018). Accordingly, DEFENDANTS violated Labor
3 Code § 432.5 by knowingly requiring PLAINTIFF and other Aggrieved Employees to agree to this
4 unlawful waiver of PAGA claims as a condition of employment.

5 64. Upon information and belief, DEFENDANTS also required PLAINTIFF and other
6 Aggrieved Employees to sign an acknowledgement of an Employee Handbook as a condition of
7 employment. Pursuant to the acknowledgment, employees agreed to follow all policies contained in the
8 Employee Handbook. The Handbook contained a confidentiality provision that prohibited employees
9 from discussing or disclosing wage rates or pay records, among other things, in violation of Labor Code
10 § 232. Accordingly, DEFENDANTS further violated Labor Code § 432.5 by knowingly requiring
11 PLAINTIFF and other Aggrieved Employees to agree not to discuss wage rates as a condition of
12 employment.

13 65. Upon information and belief, DEFENDANTS also required PLAINTIFF and other
14 Aggrieved Employees to sign a form granting DEFENDANTS ongoing consent to procure investigative
15 consumer reports at any time as a condition of employment. Requiring an individual to agree to ongoing
16 consent to the procurement of an investigative consumer report for employment purposes violates
17 California's Investigative Consumer Reporting Agencies Act ("ICRAA"), Cal. Civ. Code § 1786, *et*.
18 *seq.*, which in relevant part provides that "if, at any time, an investigative consumer report is sought for
19 employment purposes other than suspicion of wrongdoing or misconduct by the subject of the
20 investigation, the person seeking the investigative consumer report may procure the report, or causing
21 the report to be made, only if all the following apply... The person procuring or causing the report to be
22 made provides a clear and conspicuous disclosure in writing to the consumer... [and] The consumer has
23 authorized in writing the procurement of the report." Cal. Civ. Code § 1786.16(a)(2). Accordingly,
24 DEFENDANTS further violated Labor Code § 432.5 by knowingly requiring PLAINTIFF and other
25 Aggrieved Employees to provide ongoing consent to procurement of investigative consumer reports as
26 a condition of employment.

27 66. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
28 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one

1 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
2 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
3 a violation occurs. As set forth above, DEFENDANTS violated Labor Code § 432.5 by requiring
4 PLAINTIFF and other Aggrieved Employees to agree in writing as a condition of employment to (1)
5 waive their right to file or participate in PAGA lawsuits via the arbitration agreement, (2) keep
6 confidential their pay rates via an acknowledgement agreeing to follow all provisions of the Employee
7 Handbook, and (3) provide ongoing consent to procurement of investigative consumer reports. Based
8 upon these factual allegations, PLAINTIFF and the other Aggrieved Employees are entitled to penalties
9 under Labor Code § 2699 for each violation.

10 **Failure to Provide Suitable Seating**

11 67. Section 14 of IWC Wage Order Nos. 1-2001 and 7-2001 requires employers to provide
12 employees with “suitable seats when the nature of the work reasonably permits the use of seats.”

13 68. The nature of the work performed by PLAINTIFF and other Aggrieved Employees
14 reasonably permitted the use of seats for some or all of their workday, yet DEFENDANTS failed to
15 provide any seating in violation of Section 14 of IWC Wage Order Nos. 1-2001 and 7-2001.

16 **Failure to Provide at Least One Day’s Rest in Seven**

17 69. Labor Code § 551 provides that “[e]very person employed in any occupation of labor is
18 entitled to one day’s rest therefrom in seven.”

19 70. Defendants maintained a policy under which Plaintiff and other Aggrieved Employees
20 were required to work seven consecutive days without a day’s rest in violation of Labor Code § 551.

21 71. Labor Code § 2699, subdivision (f), provides for a default penalty for violations of the
22 Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation, one
23 hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2) for
24 each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in which
25 a violation occurs. As set forth above, Defendants failed to provide Plaintiff and Aggrieved Employees
26 with at least one day’s rest in seven, in violation of Labor Code § 551. Based upon these factual
27 allegations, Plaintiff and other Aggrieved Employees are entitled to penalties under Labor Code § 2699.

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1 **Failure to Pay Accrued Sick Pay**

2 72. Labor Code § 246(b) provides that “[a]n employee shall accrue paid sick days at the rate
3 of not less than one hour per every 30 hours worked.” Labor Code § 246(l) further provides that “[p]aid
4 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
5 the workweek in which the employee uses paid sick time, whether or not the employee actually works
6 overtime in that workweek.”

7 73. Defendants maintained a policy under which Plaintiff and other Aggrieved Employees
8 did not accrue sick days at the legal rate. Further, when Defendant did pay Plaintiff and other Aggrieved
9 Employees sick pay, it failed to do so at the regular rate of pay because it improperly excluded certain
10 nondiscretionary payments, including bonuses, in the regular rate of pay.

11 74. Labor Code § 2699, subdivision (f), provides for a default penalty for violations
12 of the Labor Code where a separate civil penalty is not set forth as follows: (1) for any initial violation,
13 one hundred dollars (\$100) for each employee for each pay period in which a violation occurs, and (2)
14 for each subsequent violation, two hundred dollars (\$200) for each employee for each pay period in
15 which a violation occurs. As set forth above, Defendants failed provide sick pay that accrued at the
16 appropriate rate and failed to pay Plaintiff and Aggrieved Employees sick pay at the regular rate of pay
17 in violation of Labor Code § 227.3. Based upon these factual allegations, Plaintiff and other Aggrieved
18 Employees are entitled to penalties under Labor Code § 2699.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

21 **(Labor Code §§ 2698 *et seq.*)**

22 **(AGAINST ALL DEFENDANTS)**

23 75. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
24 the allegations in paragraphs 1 through 74, above.

25 76. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section
26 2699, subdivision (c), and a proper representative to bring a civil action on behalf of herself and other
27 current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor
28 Code Section 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the

1 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY
2 PERIOD.

3 77. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
4 PAGA.

5 78. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
6 civil penalties from DEFENDANTS in a representative action for the violations set forth above which
7 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 210, 226,
8 subdivision (a), 226.7, 227.3, 246, 432.5, 510, 512, 551, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198,
9 1199, 2800, 2802, 2810.5 as well as sections 3, 7, 11, 12, and 14 of the applicable Wage Order.

10 79. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
11 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
12 provided which include, but are not limited to, the following:

13 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the
14 amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) per
15 employee for violations in subsequent pay periods for violations of Labor Code Section 204;

16 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the
17 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period
18 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for violations in
19 subsequent pay periods for violations of Labor Code Section 226, subdivision (a);

20 c. Under Labor Code Section 558, subdivision (a), "[a]ny employer or other person acting
21 on behalf of an employer who violates, or causes to be violated, a Section of this chapter or any provision
22 regulating hours and days of work in any order of the Industrial Welfare Commission," including Labor
23 Code Sections 510, shall be subject to a civil penalty, in addition to any other penalty provided by law,
24 of fifty dollars (\$50.00) for initial violations for each employee for each pay period for which the
25 employee was underpaid and one hundred dollars (\$100.00) for each subsequent violation for each
26 employee for each pay period for which the employee was underpaid; and

27 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
28 employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil

1 penalty as follows: for any initial violation that is intentionally committed, one hundred dollars
2 (\$100.00) for each underpaid employee for each pay period for which the employee is underpaid; and
3 for each subsequent violation of the same offense, two hundred fifty dollars (\$250.00) for each underpaid
4 employee for each pay period for which the employee is underpaid regardless of whether or not the
5 initial violation was intentionally committed.

6 80. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor
7 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,
8 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically
9 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
11 employee per pay period for each subsequent violation.

12 81. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,
13 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty
14 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 1194, 1197,
15 1198, and 2802.

16 82. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law
17 including under Labor Code Section 2699, subdivision (g)(1).

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other Aggrieved Employees,
20 prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

- 21 1. For civil penalties according to proof and all penalties authorized under the PAGA
22 including under Labor Code Sections 210, 226.3, 558, 1197.1, and 2699, subdivisions
23 (a) and (f);
- 24 2. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
25 Code Section 2699, subdivision (g) and any other applicable provisions providing for
26 attorneys' fees and costs; and

27 ///

28 ///

- 1 3. For such further and additional relief as allowed by law or which the Court deems just
2 and proper.

3
4 DATED: December 30, 2021

5 Respectfully submitted,

6 **ACKERMANN & TILAJEF, P.C.**

7 
8 _____
9 Craig J. Ackermann, Esq.
10 Co-Counsel for PLAINTIFF CECILIA
11 MATA, on behalf of herself and all other
12 Aggrieved Employees