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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CUITLAHUAC NINO, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

J.W. PETERSON PAINTING, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No.: **21CV003421**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff Cuitlahuac Nino (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants J.W. Peterson Painting, Inc. and
6 DOES 1 through 10 (J.W. Peterson Painting, Inc. and DOES 1 through 10 are collectively
7 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for
9 all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods,
10 failure to authorize and permit rest periods, failure to pay all earned wages twice per month,
11 failure to maintain accurate records of hours worked and meal periods, failure to timely pay final
12 wages, and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
23 action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved
26 Employees worked for Defendants as hourly-paid or non-exempt employees within the
27 applicable statutory period.

28 4. Plaintiff brings this action against Defendants seeking only to recover penalties on

1 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
2 California. Plaintiff does not seek to recover anything other than penalties as permitted by
3 California Labor Code Section 2699 at this time. To the extent that statutory violations are
4 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
5 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
6 declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by
7 the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including Alameda County. As such, and based
10 upon all the facts and circumstances incident to Defendants' business in California, Defendants
11 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
12 Commission ("IWC"), and the California Business & Professions Code.

13 6. On information and belief, Defendants, and each of them were on actual and
14 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
15 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
16 willful and deliberate.

17 7. At all relevant times, Defendants were and are legally responsible for all of the
18 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
19 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
20 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
21 the doctrine of "respondeat superior".

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1 **THE PARTIES**

2 **A. Plaintiff**

3 8. Plaintiff Cuitlahuac Nino is a resident of California who worked for Defendant in
4 Alameda, California as an hourly-paid, non-exempt employee from approximately September
5 2020 to approximately December 2020.¹

6 **B. Defendants**

7 9. Plaintiff is informed and believes, and based upon that information and belief
8 alleges, that Defendant J.W. Peterson Painting, Inc. is, and at all times herein mentioned, was:

9 (a) A corporation qualified to do business and actually conducting business in
10 numerous counties throughout the State of California, including Alameda
11 County; and,

12 (b) The former employer of Plaintiff, and the current and/or former employer
13 of the Aggrieved Employees because Defendant J.W. Peterson Painting,
14 Inc. suffered and permitted Plaintiff and the Aggrieved Employees to work,
15 and/or controlled their wages, hours, or working conditions.

16 10. Plaintiff does not know the true names or capacities of the persons or entities sued
17 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
18 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
19 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
20 set forth the true names and capacities of these Defendants when they have been ascertained,
21 together with appropriate charging allegations, as may be necessary.

22 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
23 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
24 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
25 California.

26 _____
27 ¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted
28 Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and repose for
civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff Cuitlahuac Nino worked for Defendants in Alameda, California from approximately September 2020 to approximately December 2020.² At all times, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

14. Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

15. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required

² In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.

1 to do so.

2 16. Labor Code § 510 provides that employees in California shall not be employed
3 more than eight hours in any workday or forty (40) hours in a workweek unless they receive
4 additional compensation beyond their regular wages in amounts specified by law.

5 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
6 be employed more than eight hours in any workday unless they receive additional compensation
7 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
8 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

9 18. Throughout the statutory period, Defendant maintained a policy and practice of
10 not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum,
11 straight time, and overtime wages. Defendant required Plaintiff and the Aggrieved Employees to
12 work “off-the-clock”, uncompensated, by, for example, requiring Plaintiff and the Aggrieved
13 Employees to work unpaid during legally required meal periods. Some of this unpaid work
14 should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also
15 failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

16 **B. Failure to Provide Meal Periods**

17 19. Under California law, employers have an affirmative obligation to relieve
18 employees of all duty in order to take their first 30-minute, duty-free meal period by the end of
19 their fifth hour of work in a workday, and to allow employees to take their second 30-minute,
20 duty-free meal period by the end of their tenth hour of work. Further, employees are entitled to
21 be paid one hour of additional wages for each workday they were not provided with a required
22 meal period(s).

23 20. Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff
24 and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-
25 free meal period. Plaintiff and the Aggrieved Employees routinely worked through meal periods
26 “off-the-clock,” and Defendant frequently paid Plaintiff and the Aggrieved Employees less than
27 all their work time. Much of this unpaid work should have been paid at the overtime rate. In
28 failing to pay for all hours worked, Defendant also failed to maintain accurate records of the

1 hours Plaintiff and the Aggrieved Employees worked. Defendant also regularly, but not always,
2 required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a
3 day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours
4 of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that
5 were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant
6 continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring,
7 or encouraging them to perform work tasks which could not be completed without working in
8 lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees
9 permission to take a meal period. Accordingly, Defendant's policy and practice was not to
10 provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California
11 law.

12 21. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
13 additional wages for each workday he or she was not provided with all required meal period(s).
14 Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the
15 additional wages to which they were entitled for meal periods that were not provided.

16 **C. Failure to Authorize and Permit Rest Periods**

17 22. Employers are required by California law to authorize and permit breaks of ten
18 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
19 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the
20 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
21 itself a violation of California's rest break laws.

22 23. Throughout the statutory period, Defendant has wrongfully failed to authorize and
23 permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant
24 regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive
25 hours a day without Defendant authorizing and permitting them to take a 10-minute,
26 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four
27 hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that
28 were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff

1 and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work
2 tasks which could not be completed without working in lieu of taking mandatory rest periods, or
3 by denying Plaintiff and the Aggrieved Employees permission to take a rest period.

4 Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the
5 Aggrieved Employees to take rest periods in compliance with California law.

6 24. Accordingly, Defendants' policy and practice was to not authorize and permit
7 Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

8 25. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
9 additional wages for each workday he or she was not authorized and permitted to take all
10 required rest periods. Defendants, however, regularly failed to pay Plaintiff and the Aggrieved
11 Employees the additional wages to which they were entitled for rest periods and that they were
12 not authorized and permitted to take.

13 **D. Failure to Pay All Earned Wages Twice Per Month**

14 26. Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as
15 discussed above, Defendants also violated Labor Code § 204.

16 27. Labor Code § 204 requires employers to pay employees all earned wages two
17 times per month. Throughout the statute of limitations period applicable to this cause of action,
18 employees were entitled to be paid twice a month at their regular rates, including all meal period
19 premium wages owed, rest period premium wages owed, and wages owed for overtime hours
20 worked. However, during all such times, Defendants systematically failed and refused to pay the
21 employees all wages due, and failed to pay those wages twice a month, in that employees were
22 not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods
23 not authorized and permitted by Defendants, and all wages for all hours worked. As a result,
24 Defendants owe employees the legally required wages not paid, and Plaintiff and the Aggrieved
25 Employees suffered damages in those amounts.

26 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

27 28. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to
28 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully

1 fails to maintain accurate and complete records required by California Labor Code § 1174 is
2 subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
3 employer shall keep time records showing when the employee begins and ends each work period.
4 Meal periods and total hours worked daily shall also be recorded

5 29. Defendants, however, failed to maintain accurate records of hours worked and all
6 meal periods taken or missed by Plaintiff and the Aggrieved Employees.

7 30. Defendants' failure to provide and maintain records required by the California
8 Labor Code and IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
9 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
10 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
11 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
12 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
13 Employees have suffered and continue to suffer, substantial losses related to the use and
14 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
15 to compel Defendants to fully perform its obligation under state law, all to their respective
16 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to
17 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the
18 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
19 understanding, and disputing the wage payments paid to them.

20 **F. Failure to Timely Pay All Wages at Termination**

21 31. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
22 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
23 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
24 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
25 two (72) hours previous notice of his or her intention to quit, in which case the employee is
26 entitled to his or her wages at the time of quitting.

27 32. Within the applicable statute of limitations, the employment of Plaintiff and many
28 other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the

1 employment of others will be terminated. However, during the relevant time period, Defendants
2 failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without
3 abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time
4 of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These
5 unpaid wages include wages for unpaid work time (including minimum, straight time, and
6 overtime wages), missed meal period premium wages, and missed rest period premium wages.

7 33. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
8 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
9 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
10 at the same rate until paid or until an action is commenced; but the wages shall not continue for
11 more than thirty (30) days.

12 34. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from
13 Defendants their additionally accruing wages for each day they were not paid, at their regular
14 hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

15 **G. Failure to Furnish Accurate Itemized Wage Statements**

16 35. Labor Code § 226(a) provides that every employer shall furnish each of his or her
17 employees an accurate itemized wage statement in writing showing nine pieces of information,
18 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
19 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
20 (4) all deductions, provided that all deductions made on written orders of the employee may be
21 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
22 which the employee is paid, (7) the name of the employee and the last four digits of his or her
23 social security number or an employee identification number other than a social security number,
24 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
25 rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate by the employee. An employee is presumed to suffer an injury if this information is
27 missing. (Labor Code § 226(e)(2)(B)(iii).)

28 36. The statute further provides: "An employee suffering injury as a result of a

1 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
2 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
3 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
4 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
5 to an award of costs and reasonable attorney's fees." (Labor Code § 226(e)(1).)

6 37. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
7 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
8 rates, and all gross and net wages earned (including correct hours worked, correct wages for meal
9 periods that were not provided in accordance with California law, and correct wages for rest
10 periods that were not authorized and permitted to take in accordance with California law).

11 38. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved
12 Employees suffered injury and damage to their statutorily protected rights. Accordingly,
13 Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater
14 of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an
15 aggregate penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

16 **FIRST CAUSE OF ACTION**

17 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
18 **2004, Cal. Lab. Code § 2698 et seq.)**

19 39. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
20 though fully set forth herein.

21 40. At all times herein mentioned, Defendants were subject to the Labor Code of the
22 State of California and the applicable IWC Orders.

23 41. California Labor Code § 2699(a) specifically provides for a private right of action
24 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
25 law, any provision of this code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
28 be recovered through a civil action brought by an aggrieved employee on behalf of himself or

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

3 42. Plaintiff has exhausted his administrative remedies pursuant to California Labor
4 Code § 2699.3. On September 3, 2021, he gave written notice by online filing to the Labor and
5 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
6 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
7 former Aggrieved Employees, including the facts and theories to support the violations. Plaintiff
8 also paid the filing fee on September 3, 2021. Plaintiff’s PAGA case number is LWDA-CM-
9 843519-21 (*Cuitlahuac Nino v. J.W. Peterson Painting, Inc.*).

10 43. The statute of limitations is tolled while a plaintiff exhausts his administrative
11 remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor
12 Code § 2699.3(d).)

13 44. The statute of limitations is also tolled from April 6, 2020 to October 1, 2020
14 pursuant to Rule 9(a) of the Emergency Rules Related to COVID-19.

15 45. More than sixty-five (65) days has elapsed since Plaintiff provided notice, but the
16 LWDA has not indicated that it intends to investigate Defendants’ Labor Code violations
17 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
18 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
19 this Complaint. These penalties include, but are not limited to, penalties under California Labor
20 Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

21 46. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
22 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
23 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
24 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

25 47. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs
26 pursuant to Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action
27 shall be entitled to an award of reasonable attorney’s fees and costs.”

28 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
3 against Defendants, jointly and severally, as follows:

4 1. That the Court declare, adjudge and decree that Defendants violated the California
5 Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages),
6 failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all
7 earned wages twice per month, failing to maintain accurate records of hours worked and meal
8 periods, failing to timely pay final wages, and failing to furnish accurate wage statements;

9 2. An award of civil penalties on behalf of himself and all similarly aggrieved
10 employees pursuant to PAGA;

11 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

12 4. Attorneys' fees and costs reasonably incurred;

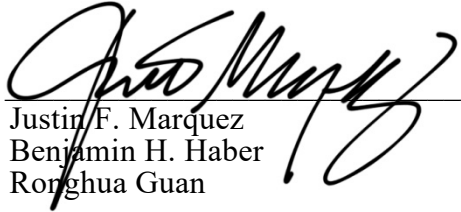
13 5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

14 6. Such other and further relief that the Court deems proper.
15

16 Respectfully submitted,

17 Dated: November 30, 2021

WILSHIRE LAW FIRM

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19 By: 

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Benjamin H. Haber
Ronghua Guan

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21 Attorneys for Plaintiff Cuitlahuac Nino
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