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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

HEMANT RASIKLAL SHAH and KERVIN NGUYEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CHEVRON STATIONS, INC., a Delaware Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 21CV390041

PAGA REPRESENTATIVE ACTION

Assigned for All Purposes To:
Dept.:

COMPLAINT FOR:

(1) Civil Penalties Under the Private Attorneys' General Act, Labor Code Section 2698 *et seq.*

Plaintiffs HEMANT RASKILAL SHAH and KERVIN NGUYEN ("Plaintiffs"), on behalf of themselves and all others similarly situated, and asserts claims against defendant CHEVRON STATIONS, INC., a Delaware corporation, and DOES 1-50, inclusive (collectively "Defendants" or "Chevron") as follows:

I.

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys' General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 *et seq.* PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer's violations of the California Labor Code.

2. Plaintiffs bring this action pursuant to the PAGA on a representative basis on behalf of any and all persons who are or were employed by the Defendants as non-exempt employees in Defendants' gas stations/retail stores in the state of California (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice (as tolled by Emergency Rule 9) to the conclusion of this action.

3. Plaintiffs bring this action on behalf of themselves and the Aggrieved Employees to recover civil penalties and address Defendants' violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Security Services,* 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiffs have standing to pursue penalties on behalf of the state of violations affecting all the aggrieved employee at Chevron, regardless of their classification, job title, or locations in California.

5. In this case, Defendants violated various provisions of the California Labor Code and IWC Wage Order. Defendants' violations include: (1) failure to accurately calculate and pay all wages owed, including overtime wages and minimum wages; (2) failure to pay minimum wage

for each hour worked; (3) failure to authorize and permit lawful rest periods; (4) failure to accurately pay lawful compensation when lawful rest period were not provides; (5) failure to provide meal periods; (6) failure to accurately pay premiums when lawful meal periods were not provided; (7) failure to timely pay all owed wages at the time of termination; (8) failure to provide accurate, itemized wage statements; (9) failure to keep accurate records; (10) failure to pay sick pay at the proper rate; and (11) failure to provide suitable seating.

6. This action is timely because Plaintiffs suffered from a violation or numerous violations of the California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA via online submission. More than 65 days have passed, and no response has been received by the LWDA. A copy of the letter sent to the LWDA is attached hereto as **Exhibit 1**, thereby satisfying the notice requirement under the statute and permitting Plaintiffs to proceed with this action in a representative capacity.

II.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to the California Constitution Article VI section 10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

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

9. Venue is proper in this Court because upon information and belief, one or more of the Defendants transact business, or have offices in this County and the acts or omissions alleged herein took place in this County and because Plaintiffs are presently a resident of this County.

III.

PARTIES

10. Defendant Chevron Stations, Inc. is a Delaware corporation in good standing and authorized to do business in California and operates in Santa Clara County and throughout

California. It is based at 6001 Bollinger Canyon Road, San Ramon, CA 94583. On information and belief, Plaintiffs allege that at all relevant times referenced herein Defendants did and continue to transact business throughout California.

11. Chevron Stations, Inc. is a multinational energy corporation with gas stations and retail locations.

12. Plaintiff Hemant Raskilal Shah is and during the liability period has been, a resident of California.

13. Plaintiff Kervin Nguyen is and during the liability period has been, a resident of California.

14. During the relevant time, Plaintiffs worked as non-exempt employees, including without limitation as assistant managers, at Defendant's gas station locations in Palo Alto, San Jose, and Fremont, California. Plaintiffs worked for Defendant during the relevant time period. Plaintiff Nguyen worked for Defendants until September 2020, and Mr. Shah worked for Defendants until January 2021.

15. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Chevron Stations, Inc.'s officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

16. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under California Code of Civil Procedure section 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

17. Plaintiffs are informed and believe, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Chevron Stations, Inc., and of each other; that Chevron Stations, Inc. and the Doe Defendants performed the acts and conduct herein alleged

directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

18. Plaintiffs are further informed and believes, and thereon alleges, that at all times material herein, each Defendant was dominated or controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

IV.

FACTUAL ALLEGATIONS

19. Plaintiffs and Aggrieved Employees were or are currently employed by Chevron Stations, Inc. as non-exempt employees in Defendants' gas stations/retail stores in the state of California (also referred to as "Aggrieved Employees") (the "Aggrieved Group").

20. Plaintiffs and the Aggrieved Employees were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

21. Plaintiffs are informed and believe, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

22. During the relevant time frame, Aggrieved Employees typically worked five (5) days per week and generally averaged over forty (40) hours per week. Plaintiffs and the Aggrieved Employees worked long hours typically substantially in excess of 40 hours per week.

23. During the relevant time frame, in violation of the mandates of Labor Code section 1174(d) and the IWC Wage Orders, Defendants failed to maintain accurate time records showing

the beginning and end of each work period, including meal periods, and all hours worked by Plaintiff and Aggrieved Employees.

24. During the relevant time frame, Plaintiffs and the Aggrieved Employees worked over eight (8) hours in a day or over forty (40) hours in a workweek without being paid overtime at a rate of 1.5 times the employee's regular rate of pay for hours worked in excess of 8 hours in a day or 40 hours in a week because Plaintiffs and the Aggrieved Employees earned certain sums including bonuses, incentives, COVID-19 pay, differential pay, appreciation pay, and gift cards which, upon information and belief, were not factored into the regular rate of pay.

25. During the relevant time frame, Plaintiffs and Aggrieved Employees on occasion worked over twelve (12) hours in a workday and for seven consecutive days in a workweek without being paid overtime at a rate of 2.0 times the employee's regular rate of pay for hours worked as required by law because Plaintiffs and the Aggrieved Employees earned certain sums including bonuses, incentives, COVID-19 pay, differential pay, appreciation pay, and gift cards which, upon information and belief, were not factored into the regular rate of pay.

26. Defendants also failed to provide lawful, timely and uninterrupted meal periods as a matter of Defendants' policies and practices, work demands, lack of coverage, scheduling practices which pressured or required Aggrieved Employees to work during their meal periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty (30) uninterrupted minutes.

27. Defendants also failed to authorize and permit lawful, timely and uninterrupted rest periods as a matter of Defendants' policies and practices, work demands, lack of coverage, scheduling practices which pressured or required Aggrieved Employees to work during their rest periods, to forego their meal periods, and/or to return to work from rest periods prior to ten (10) uninterrupted minutes.

28. Despite the above-mentioned meal and rest period violations, Defendants did not compensate Plaintiffs and, on information and belief, did not compensate Aggrieved Employees one additional hour of pay at their regular rate as required by California law when meal or rest periods were not lawfully provided.

29. Plaintiffs also alleges that to the extent they and the other Aggrieved Employees were paid overtime or meal/rest period premiums at any point, they were not paid the proper regular rate because Plaintiffs and the Aggrieved Employees earned certain sums including bonuses, incentives, COVID-19 pay, differential pay, appreciation pay, and gift cards which, upon information and belief, were not factored into the regular rate of compensation.

30. Defendants failed to properly pay Plaintiffs and other Aggrieved Employees the legal minimum wages and overtime wages they earned, failed to provide all authorized meal and rest periods owed to Aggrieved Employees, and failed to pay one (1) hour wages in lieu of each non-provided meal and rest period, all as discussed above. Defendants have made it difficult to account with precision for the unlawfully withheld wages owed to Plaintiffs and Aggrieved Employees during the liability period and failed to implement and preserve a lawful record-keeping method to record all non-provided meal and rest periods owed to employees, as required for Non-Exempt Employees by California Labor Code section 226 and applicable California Wage Orders. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed $4,000 for each employee pursuant to Labor Code section 226(e).

31. Plaintiffs are informed and believe, and thereon allege, that Defendants know, should know, knew, and/or should have known that Plaintiffs and the other Aggrieved Employees were entitled to receive accurate wages for minimum wages, overtime compensation, and premium wages under Labor Code section 226.7(b) and the IWC Wage Order, but were not receiving accurately calculated compensation.

32. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants knew that they had a duty to accurately compensate Plaintiffs and Aggrieved Employees for all hours worked including minimum wages, overtime wages and meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

33. Plaintiffs also assert that Defendants did not provide Plaintiffs and the Aggrieved Employees with accurate itemized wage statements in writing. Here, Defendants failed to include all applicable hourly rates on the wage statements and the corresponding number of hours worked

at such rate or hours paid at such rates. In addition, Defendants violated Labor Code section 226(a) as a result of the above specified violations, including failure to pay for all hours worked, and the failure to pay one hour of premium pay at the Aggrieved Employee's regular rate of compensation for meal and rest periods that were not provided, and the failure to properly calculate and pay overtime at the regular rate of pay.

34. Plaintiffs further allege that Defendants violated sections 226(a), 1174 and 1174.5 which require Defendants to keep accurate payroll and timekeeping information. By virtue of the above-specified violations, including the failure to record all hours worked, wages, and the proper regular rate, Defendants failed to keep accurate timekeeping information for Plaintiffs and, upon information and belief, the Aggrieved Employees. Defendants failed to keep accurate payroll information as a consequence of the above-specified violations, including the failure to accurately calculate overtime pay, sick pay, and pay premiums for missed meal and rest periods.

35. Plaintiffs allege that Defendants violated section 204 of the Labor Code, as Defendants willfully failed to pay on time to Plaintiffs and the Aggrieved Employees the legal wages they earned, including but not limited to unpaid minimum wage, overtime pay, premium pay for missed meal and rest periods, sick pay, twice per calendar month as required by law.

36. Defendants further failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. In addition to the derivative violations, Defendants failed to pay Plaintiffs and the Aggrieved Employees all wages owed at the time of separation as required by law including but not limited to unpaid minimum wage, overtime pay, premium pay for missed meal and rest periods, and sick pay.

37. Plaintiffs alleges that Defendants failed to pay sick leave pay to Plaintiffs and the Aggrieved Employees at the proper rate in violation of Labor Code §246 by failing to properly calculate the regular rate of sick pay for Plaintiffs and Aggrieved Employees because Plaintiffs and the Aggrieved Employees earned certain sums including bonuses, incentives, COVID-19 pay, differential pay, appreciation pay, and gift cards which, upon information and belief, were not factored into the regular rate of pay.

38. Plaintiffs alleges that Defendants failed to provide suitable seats to Aggrieved

Employees even though the nature of the work reasonable permits the use of seats. This is in violation of Wage Order 7-2001, 4-2001 and Labor Code section 1198.

39. Plaintiffs and the Aggrieved Employees were also not properly reimbursed for necessary expenses by Defendants for expenses, including but not limited to, mileage.

40. In addition, Plaintiffs allege that Defendants violated Labor Code section 221-223 by unlawfully deducting sums (including taxes) from purported reimbursements such that employees were paid less than the correct rate for reimbursement.

41. Plaintiffs further allege that, on occasion, they received gifts cards in lieu of wages owed in violation of Labor Code section 212. Further, no wage statement was issued for said sums in violation of Labor Code section 226.

FAILURE TO PAY ALL WAGES OWED, INCLUDING MINIMUM WAGES AND OVERTIME WAGES

42. Labor Code section 204 establishes the fundamental right of all employees in the State of California to be paid wages, including minimum wage and overtime, in a timely fashion for their work.

43. Labor Code section 1194 (a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

44. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

45. Labor Code section 510(a) reads in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek … shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours

on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

46. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

47. IWC Wage Orders No. 7-2001 and No. 4-2001 apply to Plaintiffs and Aggrieved Employees' employment. It provides for the payment of at least minimum wage for all hours worked and overtime wages equal to one and one-half times an employee's regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in workweek or, in certain circumstances, two times an employee's regular rate of pay.

48. Plaintiffs and the Aggrieved Employees were expected to work in excess of 8 hours in a day and/or over 40 hours in a week.

49. Plaintiffs allege that during the relevant time, Plaintiffs and the other Aggrieved Employees worked hours in which they were not compensated, including overtime in violation of the law.

50. Plaintiffs allege that employees were frequently required to work off the clock including without limitation during purported meal periods.

51. Plaintiffs alleges upon information and belief that Aggrieved Employees were not accurately paid overtime, as they received certain wages, including bonuses, incentives, COVID-19 pay, differential pay, appreciation pay, and gift cards which were not factored into the regular rate for purposes of calculating overtime. As a consequence, the Aggrieved Employees were systematically undercompensated for overtime hours worked under Labor Code section 510 and IWC Wage Orders 7-2001 and 4-2001.

52. As a result of the unlawful acts of Defendants, Plaintiffs and Aggrieved Employees have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 218, 218.5, 218.6, 510, 1194, 1197, 1198, and 1199, and Civil Code section 3287, and other applicable statutes.

FAILURE TO PROVIDE MEAL PERIODS

53. Labor Code section 226.7(a) provides that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

54. Labor Code section 512 provides that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee." The applicable wage order contains a similar mandate.

55. Labor Code section 512 further provides that "An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." The applicable wage order contains a similar mandate.

56. Labor Code section 226.7(c) provides: "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

57. During the relevant time period, Defendants failed to provide Plaintiffs and the Aggrieved Employees with lawful, timely off-duty thirty-minute uninterrupted meal periods as required by the Wage Order and Labor Code section 512.

58. By their failure to provide meal periods for days on which Plaintiffs and the Aggrieved Employees work(ed) work periods in excess of five and/or ten hours, and their failure to provide compensation for such non-provided meal periods, Defendants willfully violated the provisions of Labor Code section 226.7, 512 and applicable IWC Wage Orders.

59. Defendants failed to provide Plaintiffs and other Aggrieved Employees first and second uninterrupted meal periods of not less than thirty (30) minutes. Defendants implemented

and enforced policies and practices, work demands, lack of coverage, and scheduling practices which pressured or required employees to work during their first and second meal period, to forego their meal periods, and/or return to work from meal periods prior to thirty (30) uninterrupted minutes.

60. Defendants further violated the law by failing to compensate Plaintiffs and the Aggrieved Employees with one additional hour of pay at their *regular rate of pay* when lawful meal periods were not lawfully provided in violation of Labor Code §§226.7 and 512, and the applicable Industrial Welfare Commission Wage Orders 4-2001 and 7-2001.

61. As a result of the unlawful acts of Defendants, Plaintiffs and the Aggrieved Group they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.5. 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS

62. Plaintiffs allege that Defendants failed to authorize and permit rest periods.

63. This failure violated Labor Code §226.7 and Section 12(A) of Wage Order 4 and 7, which provide that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked.

64. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 4 and 7, which provide that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted.

65. Plaintiffs and the Aggrieved Employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section226.7, 1198, and IWC Wage Oder 4 and 7.

66. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices,

staffing policies and practices, lack of coverage, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest.

67. Pursuant to Labor Code §226.7, 1198, and the Wage Order, Plaintiffs and the Aggrieved Employees are entitled to recover one (1) hour of premium pay for each day in which a rest period violation occurred.

68. Defendants' failure to pay rest period premiums despite the above-mentioned rest period violations, constitutes a separate and independent violation of the Labor Code.

69. As a result of the unlawful acts of Defendants, Plaintiffs and the Aggrieved Group they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

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

71. Further, the IWC Wage Orders require: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded…(5) Total hours worked in the payroll period and applicable rates of pay…."

72. Labor Code section 1174 of the California also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees.

73. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

74. Under Labor Code section 226 and applicable IWC Wage Orders, the wage statements Defendants provide to employees must show all payments owed. Employers such as Defendants must also accurately report total hours worked by employees such as Plaintiffs and Aggrieved Employees, and all applicable hourly rates in effect during the hours worked, along with the total hours worked each day at each applicable hourly rate. The wage statements Defendants provided to Plaintiffs and Aggrieved Employees failed to comply with these requirements.

75. Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiffs and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all overtime hours worked, was an inaccurate wage statement.

76. On information and belief, Defendants failed to implement and preserve a lawful record-keeping method to record hours worked and all non-provided meal and rest periods owed to employees or all hours worked, as required under California Labor Code section 226 and applicable California Wage Orders. In order to determine if they had been paid the correct amount and rate for all hours worked, Plaintiffs and Aggrieved Employees have been, would have been, and are compelled to try to discover the required information missing from their wage statements and to perform complex calculations in light of the inaccuracies and incompleteness of the wage

statements Defendants provided to them.

77. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and still do not furnish Aggrieved Employees with accurate itemized statements in writing accurately reflecting all of the required information.

78. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC Wage Orders, Defendants, did not and do not maintain accurate records pertaining to the total hours worked for Defendants by the members of the Aggrieved Group, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

79. On occasion, Plaintiffs and, upon information and belief, the Aggrieved Employees received gift cards in lieu of wages owed in violation of Labor Code section 212. In addition, no wage statements were issued for said sums in violation of Labor Code section 226.

FAILURE TO TIMELY PAY ALL WAGES OWED AT SEPARATION

80. Labor Code sections 201-202 requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages on their last day of work.

81. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by Labor Code sections 201-202, the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

82. During the liability period, Defendants willfully failed and refused to pay Plaintiffs and members of the Aggrieved Group their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving of Defendants' employment. These wages include unpaid straight time and overtime wages, and unpaid meal and rest period premiums as described above.

83. As described, employees were not paid all hourly and overtime wages earned, and were not provided all rest periods and meal periods, and accordingly any members of the Plaintiffs' Aggrieved Group who were discharged or resigned from Defendant's employment during the liability periods have not received such compensation for all rest periods and meal periods and unpaid overtime wages that Defendants failed to provide.

84. Upon information and belief, more than thirty (30) days have passed since the affected Aggrieved Employees, including Plaintiffs, have left Defendants' employment, and on information and belief, they have not received payment of all compensation owed to them by Defendants.

85. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendants' employment, violates Labor Code sections 201-202.

FAILURE TO TIMELY PAY ALL WAGES OWED DURING EMPLOYMENT

86. Defendants also violated California Labor Code § 204 by failing to pay wages in a timely manner. Pursuant to Labor Code § 204, "[a]ll wages, …, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Lab. Code § 204(a).

87. Per Labor Code Section 210, if an employer fails to pay the wages of each employee as provided in Labor Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, the employer is subject to the following penalties: "(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

88. Here, Defendants failed to pay all wages owed in a timely manner as a result of

Defendants' failure to pay Plaintiffs and Aggrieved Employees all overtime wages at the proper rate, all sick pay wages at the proper rate, all premium pay for missed meal and rest periods at the proper rate.

FAILURE TO REIMBURSE NECESSARY EXPENDITURES

89. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

90. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Aggrieved Employees for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

91. Plaintiffs, and on information and belief members of the Aggrieved Group, were required to incur expenses in the performance of their assigned job duties. For example, Plaintiff and the Aggrieved Employees were required to incur numerous out of pocket expenses, including but not limited to, mileage.

92. Upon information and belief, the Defendants did not reimburse Plaintiffs or the Aggrieved Employees for such expenses.

93. In addition, Plaintiffs allege that Defendants violated Labor Code sections 221-223 by unlawfully deducting sums (including taxes) for purported reimbursements such that employees were paid less the correct rate for reimbursement.

FAILURE TO KEEP ACCURATE PAYROLL AND TIMEKEEPING RECORDS

94. The IWC wage orders, Labor Code sections 226(a), 1174, and 1174.5 require that the Defendant keep accurate payroll and timekeeping information.

95. By virtue of the above-specified violations, including the failure to record hours worked off the clock, wages earned, proper rates of pay and hours worked during purportedly provided meal breaks, and the failure to timely pay wages according to requirements of Labor Code 204, Defendant failed to keep accurate timekeeping and wage information and violated Labor Code sections 226(a), 1174, and 1174.5.

96. Defendant also failed to keep accurate payroll information as a consequence of the above specified violations, including the failure to pay for all hours worked, premiums for missed

meal and rest breaks as required by law.

FAILURE TO PAY SICK LEAVE PAY

97. Plaintiffs alleges that Defendants failed to pay sick leave pay to Plaintiffs and the Aggrieved Employees at the proper rate.

98. Labor Code §246(a)(1) provides: An employee who, on or after July 1, 2015, works in California for the same employee for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified.

99. Labor Code section 246(l) provides: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee used paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay period of the prior 90 days of employment."

100. In this case, Plaintiffs allege that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, commissions, differentials, COVID-19 pay, appreciation pay, and other wages into account in calculating the regular rate.

FAILURE TO PROVIDE SUITABLE SEATING

101. Plaintiffs alleges that Defendants failed to provide suitable seats to aggrieved employees in violation of Wage Order 7-2001, 4-2001, and Labor Code section1 1198.

102. Wage Order 7-2001 provides: "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

103. In connection with this claim, Plaintiffs seek to represent a subgroup of employees Defendants failed to provide aggrieved employees throughout the state of California, including Plaintiffs, with suitable seats—despite the fact that the nature of the work reasonably permits the use of sets.

104. Labor Code section 1198 makes it unlawful to employ an employee under conditions of Labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiffs and the other Aggrieved Employees with suitable seats in violation of Wage Order 7-2001, Defendants also violated Labor Code section 1198.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTION 2698 *ET SEQ.*

105. Plaintiffs incorporate by reference each and every paragraph above, and reallege each and every allegation contained above as though fully set forth herein.

106. On September 1, 2021, Plaintiffs gave written notice by online submission to the LWDA and by certified mail to Defendants of Defendants' violations of numerous provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as **Exhibit 1**.

107. Plaintiffs are an "aggrieved employee" as defined in Labor Code Section 2699(A), as they were employed by Defendants during the statutory period and suffered one or more of the Labor Code violations set forth herein. They seek to recover of herself and all other current and former aggrieved employees of Defendants the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

108. 65 days have passed, and no response has been received from the LWDA. Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative capacity.

109. Plaintiffs have exhausted all administrative procedures required of them under the Labor Code §§2698, 2699, 2699.3, and as a result, are justified as a matter of right in bringing forward this cause of action.

110. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

111. Plaintiffs seek to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court (2009) 46 Cal. 4th 969. Class certification of the PAGA claims is not required.

112. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiffs seek to recover civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order violations as set forth in this Complaint.

113. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees, seek penalties under <u>Labor Code</u> §2699, for, *without limitation*, the claims set forth herein, including:

a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every hour worked;

b. Defendants' failure to comply with the requirement of Labor Code §510, 1194, 1197, 1198, and Wage Orders to accurately pay all wages earned including overtime wages;

c. Defendants' failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;

d. Defendants' failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;

e. Defendants' failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees;

f. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;

g. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;

h. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes off-duty meal periods;

i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;

j. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;

k. Defendants' failure to reimburse necessary expenses in violation of Labor Code §2802.

l. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders for the above-specified violations, and failure to maintain accurate clock in and out times;

m. Defendants' failure to pay sick leave at the proper rate in violation of Labor Code §246;

n. Defendants' failure to provide suitable seating in violation of IWC Wage Orders and Labor Code §1198 and IWC Wage Orders 7-2001 and 4-2001.

114. Plaintiffs seek civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars ($100) for the initial violation for each failure to pay each employee and two hundred ($200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.

b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars ($250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars ($1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf of an employer who violated, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in nay order of the Industrial Welfare Commission," including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars ($50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars ($100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

d. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

e. Pursuant to Labor Code § 1174.5, for violations of Labor Code §1174(d), Defendants are subject to a civil penalty of five hundred dollars ($500).

115. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders.

116. Under Labor Code §2699, Plaintiffs and Aggrieved Employees are entitled to $100 for any initial violation and $200 for all subsequent violations of the above-mentioned provisions of the California Labor Code.

117. Under Labor Code §2699, Plaintiffs and Aggrieved Employees should be awarded twenty-five (25%) of all penalties due under California Law, interest, attorneys' fees and costs.

118. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: November 5, 2021

JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiffs HEMANT RASIKLAL SHAH and KERVIN NGUYEN, on behalf of themselves and all others similarly situated

Exhibit 1

JAMES JH HAWKINS
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 1, 2021

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

Chevron Stations, Inc.
6001 Bollinger Canyon Road
San Ramon, CA 94583
Certified Mail Receipt:

Chevron Stations Inc.
Agent for Service of Process
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive., Suite 150N
Sacramento, CA 95833
Certified Mail Receipt:

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Hemant Rasiklal Shah and Kervin Nguyen, on behalf of themselves and all others similarly situated, hereby gives NOTICE of their Complaint pursuant to Labor Code Sections 2698, *et seq*. against Defendants Chevron Stations, Inc., a Delaware Corporation, and DOES 1 through 50, inclusive. Plaintiffs intend to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq*. Plaintiffs hereby give written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant Chevron Stations, Inc. via its agent for service of process. This notice is timely as it is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act, is tolled by operation of law under Emergency Rule 9 due to the COVID-19 pandemic.

Plaintiffs set out the specific provisions of the Labor Code that Plaintiffs allege have been violated, including the facts and relevant theories alleged against Defendants. <u>All Labor Code violations and related allegations pertain to all entities or individuals named herein, even if not so specified.</u>

Plaintiffs allege that Defendants committed the violations specified in the Complaint against them and the group of aggrieved employees that they seek to represent: Any and all persons who are or were employed by the Defendants as non-exempt employees in Defendants' gas stations/retail stores in the state of California through resolution or trial of the matter (the "Aggrieved Employees") during the liability period as tolled by Emergency Rule 9.

During the relevant time, Plaintiffs worked as non-exempt employees, including without limitation as assistant managers, at Defendant's gas station locations in Palo Alto, San Jose and Fremont, California. Plaintiffs worked for Defendant during the relevant time period. Mr. Nguyen worked for Defendants until September 2020, and Mr. Shah worked for Defendants until January 2021.

Plaintiffs claim that Defendants implemented legally non-compliant policies and practices which led to the following violations against the aggrieved group: (1) failure to accurately calculate and pay all wages owed, including overtime wages and minimum wages; (2) failure to pay minimum wage for each hour worked; (3) failure to authorize and permit lawful rest periods; (4) failure to accurately pay lawful compensation when lawful rest periods were not provided; (5) failure to provide meal periods; (6) failure to accurately pay premiums when lawful meal periods were not provided; (7) failure to timely pay all owed wages at the time of termination; (8) failure to provide accurate, itemized wage statements; (9) failure to keep accurate records; (10) failure to pay sick pay at the proper rate; and (11) failure to provide suitable seating.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5^{th} 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Shah and Mr. Nguyen have standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at Chevron Stations, Inc. regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiffs allege that Defendant violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 7-2001 and 4-2001 and Labor Code section 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provides that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (4) hours in a work week. An employee who works mor than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay. Plaintiffs allege that during the relevant time, Plaintiffs and the other aggrieved employees worked hours in which they were not compensated, including overtime, in violation of the law. Plaintiffs allege that employees were frequently required to work off the clock including without limitation during purported meal periods. Finally, Plaintiff alleges upon information and belief that aggrieved employees were not accurately paid overtime, as they received certain wages, including bonuses, incentives, differentials, appreciation pay, Covid-19 pay, and gift cards which were not factored into the regular rate for purposes of calculating overtime. As a consequence, the aggrieved employees were systematically undercompensated for overtime hours worked under Labor Code section 510 and Wage Order 7-2001 and 4-2001.

Plaintiffs allege he and the aggrieved employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiffs claim that Defendants violated Labor Code sections 512, and 226.7, and IWC Wage Order 4-2001 and 7-2001 for failing to provide timely, uninterrupted meal periods of at least thirty (30) minutes. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ and employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Here, Defendants failed to provide Plaintiffs and other aggrieved employees first and second uninterrupted meal periods of not less than thirty (30) minutes. Defendants implemented and enforced policies and practices, work demands, lack of coverage, and scheduling practices which pressures or required employees to work during their first and second meal periods, to forego their meal periods, and/or return to work from meal periods prior to thirty (30) uninterrupted minutes. Defendants further violated the law by failing to compensate Plaintiffs and the aggrieved employees with one additional hour of pay at their regular rate of pay when lawful meal periods were not lawfully provided in violation of Labor Code §§226.7 and 512, and the applicable Industrial Welfare Commission Wage Orders 4-2001 and 7-2001.

Plaintiffs allege that Defendants failed to authorize and permit rest periods. This failure violated Labor Code §226.7 and Section 12(A) of Wage Order 4 and 7, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 4 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiffs and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minutes rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 4 and 7. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing policies and practices, lack of coverage, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. Pursuant to Labor Code §226.7, 1198, and the Wage Order, Plaintiffs and the aggrieved employees are entitled to recover one (1) hour of premium pay for each day in which a rest period violation occurred. Defendants' failure to pay rest period premiums despite the above-mentioned rest period violations, constitutes a separate and independent violation of the Labor Code.

In relevant part, Labor Code section 226(a) requires: an employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Plaintiff asserts that Defendant failed to include all applicable hourly rates on the wage statements and the corresponding number of hours worked at such rate or hours paid at such rates. Plaintiff also asserts that Defendant violated Labor Code section 226 in part because of the above specified violations, including failure to pay for all hours worked, and the failure to pay one hour of premium pay at the employee's regular rate of pay for meal and rest break that were not legally provided. In addition, Plaintiff alleged that Defendant failed to accurately calculate and pay overtime. Thus, the rates that were included on the wage statement are incorrect.

Wage Order No. 4 and 7, Labor Code sections 226(a), 1174, and 1174.5 require that the Defendant keep accurate payroll and timekeeping information. By virtue of the above-specified violations, including the failure to record hours worked, wages, and the proper regular rate, Defendants failed to keep accurate timekeeping information for Plaintiffs and the aggrieved employees. Defendants failed to keep accurate payroll information as a consequence of the above-specified violations, including the failure to accurately calculate overtime and pay premiums for missed meal and rest break as required by law.

In addition, Plaintiffs allege that Defendants violated section 204 of the Labor Code, as Defendant willfully failed to pay on time to Plaintiffs and the aggrieved employees the legal wages (including minimum wage and overtime) they earned, and failed to pay one hour wages in lieu of required, but not lawfully provided, meal and rest periods, twice per calendar month as required by law.

In part as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid minimum wage, accurate overtime compensation and compensation for non-provided meal and rest periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. In addition to the derivative violations, Defendants failed to pay Plaintiffs and the aggrieved employees all wages owed at the time of separation of separation as required by law.

Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246 (a) (1) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(l) provides: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." In this case, Plaintiffs allege that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, commissions, differentials, Covid-19 pay, appreciation pay, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

In addition, Plaintiffs allege that Defendants failed to provide suitable seats to aggrieved employees in violation of Wage Order 7-2001, 4-2001, and Labor Code section 1198. Wage Order 7-2001 provides: "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." In connection with this claim, Plaintiffs seek to represent a subgroup of employees Defendants failed to provide aggrieved employees throughout the state of California, including Plaintiffs, with seats—despite the fact that the nature of the work reasonably permits the use of seats. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the other aggrieved employees with suitable seats in violation of Wage Order 7-2001, Defendants also violated Labor Code section 1198.

Plaintiffs also allege that Defendants failed to properly reimburse mileage incurred in order to perform job duties in violation of Labor Code section 2802. In addition, Plaintiffs allege that Defendants violated Labor Code section 221-223 by unlawfully deducting sums (including taxes) from purported reimbursements such that employees were paid less than the correct rate for reimbursement.

Plaintiffs further allege that, on occasion, they received gift cards in lieu of wages owed in violation of Labor Code section 212. In addition, no wage statement was issued for said sums in violation of Labor Code section 226.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.