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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 RUDOLPH MARQUEZ III, on behalf of the
11 State of California and other aggrieved persons,

12 *Plaintiff,*

13 v.

14 EMSER TILE, LLC, a California limited liability
15 company; and DOES 1 through 10, inclusive,

16 *Defendants.*
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 30 2021

COPY
BY Daisy Babilon
DAISY BAILON, DEPUTY

Case No: **CIV SB 2135303**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

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

**FILE BY FAX
PER CRC
2.303**

1 Plaintiff Rudolph Marquez III (“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 Emser Tile, LLC and DOES 1
6 through 10 (Emser Tile, LLC and DOES 1 through 10 are collectively referred to as
7 “Defendants”) for civil penalties under the Private Attorneys General Act of 2004, California
8 Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for all hours
9 worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to
10 authorize and permit rest periods, failure to pay all earned wages twice per month, failure to
11 maintain accurate records of hours worked and meal periods, failure to timely pay final wages,
12 failure to furnish accurate wage statements, and failure to indemnify for necessary expenditures.

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 or
16 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 San Bernardino County. As such and
10 based upon all the facts and circumstances incident to Defendants' business in California,
11 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
12 Welfare 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".

22 **THE PARTIES**

23 **A. Plaintiff**

24 8. Plaintiff Rudolph Marquez III is a California resident who worked for Defendants
25 in Oxnard, California as an hourly-paid, non-exempt employee from approximately September
26 2018 to approximately September 2021.

27 **B. Defendants**

28 9. Plaintiff is informed and believes, and based upon that information and belief

1 alleges, that Emser Tile, LLC is, and at all times herein mentioned, was:

- 2 (a) A corporation qualified to do business and actually conducting business in
3 numerous counties throughout the State of California, including San
4 Bernardino County; and,
- 5 (b) The former employer of Plaintiff, and the current and/or former employer
6 of the Aggrieved Employees because Defendant Emser Tile, LLC suffered
7 and permitted Plaintiff and the Aggrieved Employees to work, and/or
8 controlled their wages, hours, or working conditions.

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

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

19 12. Plaintiff is informed and believes and thereon alleges that at all relevant times
20 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
21 the other employees and exercised control over their wages, hours, and working conditions.
22 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant
23 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
24 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
25 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
26 a joint enterprise for profit, and bore such other relationships to some or all of the other
27 Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff
28 is informed and believes and thereon alleges that each Defendant acted pursuant to and within the

1 scope of the relationships alleged above, that each Defendant knew or should have known about,
2 and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
3 Defendants.

4 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 13. Plaintiff Rudolph Marquez III worked for Defendants in San Bernardino County,
6 California from approximately September 2018 to approximately September 2021. At all times,
7 Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

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

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

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

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

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

24 18. Throughout the statutory period, Defendants maintained a policy and practice of
25 not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum,
26 straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees
27 to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff and the Aggrieved
28 Employees to continue working during unpaid meal periods. Some of this unpaid work should

1 have been paid at the overtime rate. In failing to pay for all hours worked. In failing to pay for
2 all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and
3 the Aggrieved Employees worked. As discussed below, Plaintiff's experience working for
4 Defendants was typical and illustrative.

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

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

12 20. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff
13 and the Aggrieved Employees with legally compliant meal periods. Defendants regularly, but
14 not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive
15 hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every
16 five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal
17 periods that were not provided by the end of the fifth hour of work or tenth hour of work.
18 Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by
19 requiring, pressuring, or encouraging them to perform work tasks which could not be completed
20 without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the
21 Aggrieved Employees permission to take a meal period. Defendants also failed to permit
22 Plaintiff to take a second meal period when Plaintiff worked at least ten hours of work in a
23 workday. Accordingly, Defendants' policy and practice was not to provide meal periods to
24 Plaintiff and the Aggrieved Employees in compliance with California law.

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

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

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

7 23. Throughout the statutory period, Defendants have wrongfully failed to authorize
8 and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods.
9 Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four
10 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
11 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four
12 hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that
13 were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff
14 and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work
15 tasks which could not be completed without working in lieu of taking mandatory rest periods, or
16 by denying Plaintiff and the Aggrieved Employees permission to take a rest period.
17 Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the
18 Aggrieved Employees to take rest periods in compliance with California law.

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

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

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

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

1 27. Labor Code § 204 requires employers to pay employees all earned wages two
2 times per month. Throughout the statute of limitations period applicable to this cause of action,
3 employees were entitled to be paid twice a month at their regular rates, including all meal period
4 premium wages owed, rest period premium wages owed, and wages owed for overtime hours
5 worked. However, during all such times, Defendants systematically failed and refused to pay the
6 employees all wages due, and failed to pay those wages twice a month, in that employees were
7 not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods
8 not authorized and permitted by Defendants, and all wages for all hours worked. As a result,
9 Defendants owe employees the legally required wages not paid, and Plaintiff and the Aggrieved
10 Employees suffered damages in those amounts.

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

12 28. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to
13 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
14 fails to maintain accurate and complete records required by California Labor Code § 1174 is
15 subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
16 employer shall keep time records showing when the employee begins and ends each work period.
17 Meal periods and total hours worked daily shall also be recorded

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

20 30. Defendants' failure to provide and maintain records required by the California
21 Labor Code and IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
22 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
23 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
24 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
25 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
26 Employees have suffered and continue to suffer, substantial losses related to the use and
27 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
28 to compel Defendants to fully perform its obligation under state law, all to their respective

1 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to
2 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the
3 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
4 understanding, and disputing the wage payments paid to them.

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

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

12 32. Within the applicable statute of limitations, the employment of Plaintiff and many
13 other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the
14 employment of others will be terminated. However, during the relevant time period, Defendants
15 failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without
16 abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time
17 of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These
18 unpaid wages include wages for unpaid work time (including minimum, straight time, and
19 overtime wages), missed meal period premium wages, and missed rest period premium wages.

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

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

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

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

14 36. The statute further provides: “An employee suffering injury as a result of a
15 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
16 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
17 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
18 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
19 to an award of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

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

25 38. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved
26 Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff
27 and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their
28 actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an

1 aggregate penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

2 **H. Failure to Indemnify for Necessary Expenditures**

3 39. Labor Code § 2802(a) provides that employers shall indemnify his or her
4 employees for all necessary business expenditures or losses that have been incurred by the
5 employees in direct discharge of his or her duties. Throughout the statute of limitations period
6 applicable to this cause of action, Defendants wrongfully required Plaintiff and the Aggrieved
7 Employees to pay expenses that they incurred in direct discharge of their duties for Defendants.

8 40. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary
9 employment-related expenses, including, without limitation, for mandatory work boots and
10 work-related use of their personal cell phones. Plaintiff and the Aggrieved Employees incurred
11 substantial expenses as a direct result of performing their job duties for Defendants, but
12 Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these employment-
13 related expenses. As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for
14 the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify
15 Plaintiff and the Aggrieved Employees for necessary business expenditures.

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

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

23 43. 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 herself or

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

3 44. Plaintiff has exhausted his administrative remedies pursuant to California Labor
4 Code § 2699.3. On October 26, 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 October 26, 2021. Plaintiff’s PAGA case number is LWDA-CM-
9 850029-21 (*Rudolph Marquez III v. Emser Tile, LLC, et al.*).

10 45. 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 Code
12 § 2699.3(d).)

13 46. 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 47. 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 48. 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 49. 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.”

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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, failing to furnish accurate wage statements, and failing
9 to indemnify for necessary expenditures;

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

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

13 4. Attorneys' fees and costs reasonably incurred;

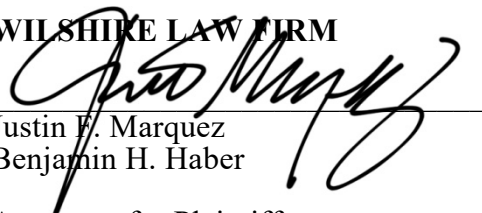
14 5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

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

16 Respectfully submitted,

17 Dated: December 30, 2021

18 **WILSHIRE LAW FIRM**

19 By: 

Justin F. Marquez
Benjamin H. Haber

20 Attorneys for Plaintiff
21 Rudolph Marquez III
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