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Assigned For All Purposes

Judge Peter Wilson

CX-102

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Attorneys for Plaintiff, NOEMI SERVIN, as a representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other similarly-situated current and former employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF ORANGE

NOEMI SERVIN, as an individual and
on behalf of all similarly situated
employees,

Plaintiffs,

v.

ABRAZAR, INC., and DOES 1 through
50, inclusive,

Defendant.

Case No.: **30-2022-01252304-CU-OE-CXC**

COMPLAINT FOR CIVIL PENALTIES

1. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Recovery of Unpaid Minimum Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Issue Accurate Itemized Wage Statements; and
5. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Pay Wages Due at Separation of Employment.

1 Plaintiff NOEMI SERVIN (“Plaintiff”), as a representative of the State of California and
2 the Labor and Workforce Development Agency, and on behalf of herself and other similarly-
3 situated current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought pursuant to the Private Attorneys General
6 Act, Labor Code section 2698, *et seq.* (“PAGA”) on behalf of Plaintiff and all similarly-aggrieved
7 employees who were subjected to one or more of the violations alleged herein (“Aggrieved
8 Employees”) by Defendant ABRAZAR, INC. (“Defendant”).

9 2. The term “PAGA Period” is defined as one (1) year and sixty-five (65) days prior
10 to the filing of this complaint. Plaintiff reserves the right to amend this complaint to reflect a
11 different PAGA Period as further discovery is conducted.

12 3. “Aggrieved Employees” is defined as all non-exempt, hourly-paid employees,
13 currently and/or formerly employed by Defendant during the PAGA period.

14 4. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
15 against Defendant for violations of numerous Labor Code provisions, including, but not limited
16 to, sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, and 1197 for: (1) failure to pay all
17 minimum and overtime wages due; (2) failure to provide meal periods or premium compensation
18 in lieu thereof, (3) failure to provide rest periods or premium compensation in lieu thereof; (4)
19 failure to issue accurate itemized wage statements; and (6) failure to pay all wages due at
20 separation of employment.

21 5. At all relevant times herein, Defendant has consistently maintained and enforced
22 the following unlawful policies and practices against Plaintiff:

- 23 a. Willfully refusing to pay for all hours worked, including both minimum and
24 overtime wages;
- 25 b. Willfully refusing to permit off-duty meal periods or provide premium
26 compensation in lieu thereof;
- 27 c. Willfully refusing to permit rest periods or provide premium compensation in
28 lieu thereof;

- d. Willfully refusing to furnish accurate itemized wage statements; and
e. Willfully refusing to pay all wages due upon separation of employment.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the causes of action alleged in this complaint as a Court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action. The penalties recoverable for Plaintiff individually do not exceed seventy-five thousand dollars (\$75,000.00), and collectively amongst all Aggrieved Employees do not exceed five million dollars (\$5,000,000.00). Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, Code of Civil Procedure, and Rules of Court.

7. Defendant is a California Corporation with its principal office in Westminster, California. As such, this Court has personal jurisdiction over Defendant because Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California, and more specifically, in the County of Orange. (Code Civ. Proc., § 410.10.)

8. Venue is proper in this judicial district and the County of Orange pursuant to the California Code of Civil Procedure, sections 295 and 395.5, because the acts that give rise to the causes of action alleged herein occurred in this county.

THE PARTIES

Plaintiff

9. Plaintiff was employed by Defendant from on or about February 9, 2019 until on or about April 12, 2021 at Defendant’s Westminster, California location. At all relevant times herein, Plaintiff was employed by Defendant in a non-exempt, hourly position as a driver, and was entitled to compensation for all hours worked, including overtime compensation and penalties from Defendant. Plaintiff was employed by Defendant within the PAGA Period.

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1 10. Plaintiff and Aggrieved Employees consist of identifiable, current, and/or formerly
2 similarly situated persons who worked for Defendant in California during the PAGA Period.

3 **Defendant(s)**

4 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant is a
5 California corporation whose facilities are located in Orange County, California, and was the
6 employer of Plaintiff. On information and belief, and based thereon, Plaintiff alleges that
7 Defendant is conducting business in good standing in California, and at all times herein mentioned
8 has regularly conducted business in the State of California.

9 12. Plaintiff is further informed and believes that Defendant was the employer of
10 Plaintiff and Aggrieved Employees during the PAGA Period.

11 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
12 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
13 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
14 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
15 capacities of the DOE Defendants when that information is ascertained.

16 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
19 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
20 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
21 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
22 the conduct described in this complaint.

23 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
25 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
26 below was acting, at least in part, within the course and scope of that authority as such agent,
27 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
28 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant

are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

16. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided for under PAGA, Labor Code section 2698 *et seq.*, to the extent permitted by law, as an aggrieved employee who was employed by Defendant and did not receive all regular and overtime wages due, was not provided compliant meal or rest periods or premium compensation in lieu thereof, was not provided accurate itemized wage statements, and did not receive all wages owed upon termination of employment.

17. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under the PAGA only after giving the Labor Workforce Development Agency (LWDA) and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

18. On October 25, 2021, prior to the filing of this complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant, and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-849813-21. Attached herein as **Exhibit A** is a true and correct copy of Plaintiff's original letter sent to the LWDA on October 25, 2021.

19. More than 65 days have elapsed since Plaintiff submitted her October 25, 2021 notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Also, Plaintiff has not received notice of Defendant's intent to cure any of the alleged violations. Accordingly, Plaintiff has satisfied the administrative prerequisites for filing this action.

FACTUAL ALLEGATIONS

20. Plaintiff and Aggrieved Employees are, and at all times during the PAGA Period were, non-exempt employees within the meaning of the California Labor Code, and California

1 Wage Order 4–2001 of the Industrial Welfare Commission (“IWC”). Defendant is, and at all
2 times during the PAGA Period was, an “employer” within the meaning of state law and IWC
3 Wage Order 4–2001.

4 21. Defendant owns and operates a Community Center Facility in Westminster,
5 California, providing monthly food distribution, free computer classes, daily activities, and
6 transportation specifically for the community’s senior citizens. (*See* Abrazar, Inc. “Homepage,”
7 *available at* www.abrazarinc.com.) Plaintiff and Aggrieved Employees were employees of
8 Defendant, and Plaintiff worked primarily as a driver from on or about February 9, 2019 until on
9 or about April 12, 2021.

10 22. During the PAGA Period, Defendant was required to pay Plaintiff and Aggrieved
11 Employees overtime compensation for any and all hours in excess of eight (8) hours in a workday
12 and/or forty (40) hours in a workweek.

13 23. Defendant required Plaintiff and Aggrieved Employees to arrive approximately
14 twenty-five (25) minutes prior to the start of their shift and perform preparatory work for the day.
15 Specifically, Plaintiff and Aggrieved Employees were required to clean the vehicle they would
16 be using that day prior to departing for their first scheduled trip. Plaintiff and Aggrieved
17 Employees were not paid for the twenty-five (25) minutes of preparatory cleaning work every
18 day.

19 24. Defendant also required Plaintiff and Aggrieved Employees to work during their
20 meal periods, yet still deducted thirty (30) minutes of pay each day for a meal period.

21 25. Finally, even without the aforementioned unpaid hours, when Plaintiff and
22 Aggrieved Employees’ timesheets reflected that they worked over eight (8) hours in a workday
23 and/or forty (40) hours in a workweek, Defendant failed to compensate them for the overtime
24 hours at the applicable overtime wage rate.

25 26. As a result of Defendant’s policies and practices of failing to pay Plaintiff and
26 Aggrieved Employees all wages due, including minimum and overtime wages, Defendant
27 violated Labor Code sections 204, 510, 1194, and 1197, and the applicable IWC Wage Order, and
28 is subject to penalties under PAGA.

1 27. During the PAGA Period, Defendant was required to permit Plaintiff and
2 Aggrieved Employees to take one (1) uninterrupted thirty (30) minute meal period prior to the
3 sixth (6th) hour of work. Defendant was also required to permit Plaintiff and Aggrieved
4 Employees to take one (1) ten (10) minute rest period for every four (4) hours or major fraction
5 thereof worked.

6 28. Due to the work requirements and demands of Defendant, Plaintiff and Aggrieved
7 Employees were unable to take the meal and rest periods to which they were entitled. Defendant
8 failed to implement meal and rest break policies and prioritized work responsibilities over
9 providing requisite meal and rest breaks to Plaintiff and Aggrieved Employees.

10 29. Plaintiff and Aggrieved Employees' job duties included transporting community
11 members throughout the day. Defendant failed to schedule Plaintiff and Aggrieved Employees in
12 such a manner as to ensure that Plaintiff and Aggrieved Employees were able to take an off-duty
13 uninterrupted thirty (30) minute meal period prior to their sixth hour of work each day, yet thirty
14 (30) minutes were deducted from each day's pay for meal breaks.

15 30. Further, when Plaintiff and Aggrieved Employees did attempt to take a meal
16 period, Defendant would often contact them during their meal periods and instruct them to stop
17 their lunch break to perform work duties. Defendant would further instruct Plaintiff and
18 Aggrieved Employees to take their meal period at a later time which resulted in their meal periods
19 occurring, if at all, after their sixth hour of work had commenced.

20 31. Due to the workload and demands of Defendant, Plaintiff and Aggrieved
21 Employees were often precluded from taking compliant rest periods.

22 32. At times, Defendant instructed Plaintiff and Aggrieved Employees to take their
23 rest breaks while they were driving, thereby depriving them of uninterrupted duty-free rest periods
24 as required by law. Other times, Defendant instructed Plaintiff and Aggrieved Employees to take
25 their rest breaks concurrently or consecutively with their meal periods or for the last ten (10)
26 minutes of their shifts. Moreover, approximately three (3) to four (4) times each week, Plaintiff
27 and Aggrieved Employees did not receive one of their rest breaks at all.

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1 33. When Plaintiff and Aggrieved Employees were prevented from taking compliant
2 meal and rest periods, Defendant failed to compensate them with premium pay for every missed
3 meal period and failed to compensate them with premium pay on all workdays on which one or
4 more rest periods were missed.

5 34. As a result of Defendant's policies and practices of failing to provide Plaintiff and
6 Aggrieved Employees with meal or rest breaks, or premium pay in lieu thereof, Defendant
7 violated Labor Code sections 226.7, 512, 1194, 1197, and the applicable IWC Wage Order, and
8 is subject to penalties under PAGA.

9 35. During the PAGA Period, Defendant was required to provide Plaintiff and
10 Aggrieved Employees with complete and accurate wage statements.

11 36. As discussed above, Plaintiff and Aggrieved Employees were not paid for all hours
12 worked. Specifically, they were not compensated for the twenty-five (25) minutes they spent each
13 day cleaning their vehicle in preparation for their shift. Overtime hours reflected on their
14 timesheets were also missing from their wage statements. Further, thirty (30) minutes of pay was
15 deducted on days when Plaintiff and Aggrieved Employees did not receive a meal period. Finally,
16 Plaintiff and Aggrieved Employees were not paid premium pay for non-compliant meal and rest
17 periods.

18 37. Accordingly, Plaintiff and Aggrieved Employees were provided inaccurate wage
19 statements as they omitted the aforementioned hours of work and rates of pay. Therefore,
20 Defendant furnished Plaintiff and Aggrieved Employees wage statements with an inaccurate
21 number of hours worked, inaccurate gross and net wages, and inaccurate corresponding number
22 of hours worked at each hourly rate.

23 38. Defendant's failure to pay Plaintiff and Aggrieved Employees timely upon
24 termination of their employment is in violation of Labor Code sections 226 and 1174, and is
25 subject to penalties under PAGA.

26 39. At the time of Plaintiff's and any of the Aggrieved Employees' separation from
27 employment, Defendant was required to compensate them for all wages earned and owed.

28 40. Defendant failed to compensate Plaintiff and Aggrieved Employees for all wages

1 owed at the time their employment ended as Plaintiff and Aggrieved Employees were not
2 compensated for all hours worked, nor at the proper overtime rate for applicable overtime hours
3 and they were owed as much at the time their employment ended. Plaintiff and Aggrieved
4 Employees were also owed compensation in the form of premium pay for the times they did not
5 receive compliant meal and rest periods.

6 41. Defendant's failure to pay Plaintiff and Aggrieved Employees timely upon
7 termination of their employment is in violation of Labor Code sections 201–203, and is subject
8 to penalties under PAGA.

9 42. Plaintiff, by virtue of her employment with Defendant, is an aggrieved employee
10 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
11 as a representative of the general public to enforce California's labor laws, and the penalty
12 provisions identified in Labor Code section 2699.5.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF PAGA FOR FAILURE TO PAY ALL WAGES**

15 **(Lab. Code, §§ 204, 510, 1194, and 1197)**

16 **(Plaintiff Against All Defendants)**

17 43. Plaintiff and Aggrieved Employees reallege and incorporate by reference all
18 preceding paragraphs as if fully set forth herein.

19 44. Pursuant to Labor Code section 204, subdivision (a), "[a]ll wages ... earned by
20 any person in any employment are due and payable twice during each calendar month."

21 45. Labor Code section 1194 mandates that employers pay employees no less than the
22 minimum wage for each hour worked, and Labor Code section 1197 holds that "the payment of
23 a lower wage than the minimum so fixed is unlawful."

24 46. Pursuant to Labor Code section 510, subdivision (a), "[a]ny work in excess of eight
25 hours in one workday and any work in excess of 40 hours in any one workweek ... shall be
26 compensated at the rate of no less than one and one-half times the regular rate of pay for an
27 employee."

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1 47. Defendant regularly scheduled Plaintiff and Aggrieved Employees to work eight
2 (8) hours each workday. Defendant required Plaintiff and Aggrieved Employees to clean the
3 vehicle to which they were assigned each day before their departure. However, Defendant failed
4 to account for the time it took to clean the vehicles, which was approximately twenty-five (25)
5 minutes, when scheduling Plaintiff's and Class Members' workdays. As a result, in order to
6 comply with Defendant's scheduling and requirements, Plaintiff and Aggrieved Employees were
7 forced to arrive early and clean their assigned vehicle prior to clocking in for their shift. To the
8 extent that the uncompensated twenty-five (25) minutes caused Plaintiff and Aggrieved
9 Employees to work in excess of eight (8) hours in a workday, they are owed said compensation
10 at the applicable overtime rate.

11 48. Defendant also required Plaintiff and Aggrieved Employees to work during their
12 meal periods even though they were off-the-clock. Defendant often called Plaintiff and Aggrieved
13 Employees during their meal periods and required they attend to clients and postpone their meal
14 periods until a later time. However, Plaintiff and Aggrieved Employees were not compensated
15 for the thirty (30) minutes during which they were clocked out for their meal period yet still
16 performing work duties.

17 49. By virtue of Defendant's failure to pay Plaintiff and Aggrieved Employees all
18 wages due, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing
19 violations incurring civil penalties, the amount of which are presently unknown, but will be
20 ascertained according to proof at trial.

21 50. Labor Code section 558, subdivision (a), imposes civil penalties on employers for
22 violating "any provision regulating hours and days of work" of fifty dollars (\$50) for the initial
23 violation and one hundred dollars (\$100) for each subsequent violation "for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages."

26 51. Labor Code section 1197.1 provides that "[a]ny employer ... who pays or causes
27 to be paid to any employee a wage less than the minimum fixed by an applicable state or local
28 law, or by an order of the commission shall be subject to a civil penalty ... as follows: (1) For any

1 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid
2 employee for each pay period for which the employee is underpaid ... (2) For each subsequent
3 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid
4 employee for each pay period for which the employee is underpaid regardless of whether the
5 initial violation is intentionally committed.”

6 52. Since the LWDA has not indicated that it will be investigating more than sixty-
7 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to
8 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
9 California, will seek any and all penalties otherwise capable of being collected by the Labor
10 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
11 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
12 alleged violation of the following provisions: Labor Code sections 204, 510, 1194, and 1197.

13 53. Plaintiff is informed and believes that Defendant has violated, and continues to
14 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
15 minimum wages.

16 54. Plaintiff, as a personal representative of the general public, will and does seek to
17 recover any and all penalties for each and every violation shown to exist or to have occurred
18 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
19 only available to public agency enforcement actions. Funds recovered will be distributed in
20 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
21 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
22 Aggrieved Employees.

23 55. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees
24 and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
3 **PREMIUM COMPENSATION IN LIEU THEREOF**

4 **(Lab. Code, §§ 226.7 and 512)**

5 **(Plaintiff Against All Defendants)**

6 56. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
7 fully set forth herein.

8 57. Labor Code sections 226.7 and 512 and Industrial Welfare Commission (IWC)
9 Wage Order No. 4-2001, section 11, provide that no employer shall employ any person for a
10 work period of more than five (5) hours without providing an uninterrupted meal period of at least
11 thirty (30) minutes.

12 58. Labor Code section 226.7 provides that if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
15 period is not provided in accordance with this section.

16 59. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
17 than five (5) hours in a workday.

18 60. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal
19 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for
20 timely and uninterrupted meal periods. Defendant's intentional conduct denied Plaintiff and
21 Aggrieved Employees their lawfully required meal periods.

22 61. IWC Wage Order No. 4-2001 section 11(A), provides that if an employee is not
23 relieved of all duties during a thirty (30) minute meal period, the meal period is considered "on
24 duty" and counts as time worked. "On duty" meal periods are only permitted when the nature of
25 the work prevents an employee from being relieved of all duties, in which case a written
26 agreement between the employer and employee for an on duty paid meal period is required.

27 62. Here, neither of those requirements are met. Defendant failed or refused to provide
28 legally compliant meal periods by failing to schedule Plaintiff and Aggrieved Employees in such

1 a manner as to ensure that they could take proper meal periods as required by law. When Plaintiff
2 and Aggrieved Employees did attempt to stop and take a meal period, Defendant would often
3 interrupt their meal period by contacting them and instructing them to go and help a client and
4 take their meal period at a later time. This resulted in Plaintiff and Aggrieved Employees being
5 required to take their meal periods after their sixth hour of work or forego them altogether.

6 63. Further, Plaintiff and Aggrieved Employees never agreed to waive their meal
7 periods, nor were asked by Defendant to sign a waiver.

8 64. Defendant had a practice of deducting thirty (30) minutes pay from Plaintiff and
9 Aggrieved Employees hours, presumably for a meal period, even when no compliant meal periods
10 were provided.

11 65. Defendant failed to provide premium compensation (one hour of regular pay) to
12 Plaintiff and Aggrieved Employees in lieu of their missed or noncompliant meal periods as
13 required by law.

14 66. As such, Defendant intentionally and improperly denied meal periods to Plaintiff
15 and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and IWC Wage
16 Order No. 4-2001, and is subject to penalties under PAGA.

17 67. By virtue of Defendant's violation of the provisions of Labor Code sections 226.7
18 and 512, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing
19 violations incurring civil penalties, the amount of which are presently unknown, but will be
20 ascertained according to proof at trial.

21 68. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
22 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
23 first initial violations and two hundred dollars (\$200.00) per pay period for each subsequent
24 violation.

25 69. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
26 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has provided
27 no cure notice, and has not taken any steps of corrective action to remedy the allegations set forth
28 above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff, individually and

on behalf of the Aggrieved Employees and the State of California, seeks penalties for violations of Labor Code sections 226.7 and 512 during the PAGA Period, in an amount according to proof, that would otherwise only be collected through public agency enforcement actions by the Labor Commission, the LWDA and/or the DLSE.

70. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

71. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

THIRD CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Lab. Code, § 226.7)

(Plaintiff Against All Defendants)

72. Plaintiff and Aggrieved Employees reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

73. Labor Code section 226.7 and IWC Wage Order No. 4–2001, section 12, require that employers permit all employees to take a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that at a required rest period is not provided.

74. During the PAGA Period, Plaintiff and Aggrieved Employees worked more than four (4) hours in a workday.

75. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest

1 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for
2 timely and uninterrupted rest periods. At times, Defendant instructed Plaintiff and Class Members
3 to take their rest breaks while they were driving thereby depriving them of a duty-free rest period.
4 Other times, Defendant instructed Plaintiff and Class Members to take their rest breaks
5 concurrently with their meal period thereby depriving them of their rest periods altogether.
6 Additionally, there were occasions when Defendant instructed Plaintiff and Class Members to
7 take a rest period during the last ten (10) minutes of their shift, which is improper. Moreover,
8 approximately three (3) to four (4) times each workweek, Plaintiff and Class Members were
9 unable to take a rest break at all.

10 76. Defendant's intentional conduct denied Plaintiff and Aggrieved Employees their
11 lawfully required rest periods. Moreover, Defendant did not compensate Plaintiff and Aggrieved
12 Employees for their missed rest periods with one hour of regular pay as required by law.

13 77. Further, Defendant failed to provide premium compensation (one hour of regular
14 pay) to Plaintiff and Aggrieved Employees in lieu of their missed or noncompliant rest periods as
15 required by law.

16 78. As such, Defendant intentionally and improperly denied rest periods to Plaintiff
17 and Aggrieved Employees in violation of Labor Code section 226.7 and IWC Wage Order No.
18 4-2001, and is subject to penalties under PAGA.

19 79. By virtue of Defendant's violation of the provisions of Labor Code section 226.7,
20 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations
21 incurring civil penalties, the amount of which are presently unknown, but will be ascertained
22 according to proof at trial.

23 80. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
24 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
25 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

26 81. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
27 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has provided
28 no cure notice, and has not taken any steps of corrective action to remedy the allegations set forth

1 above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff, individually and
2 on behalf of the Aggrieved Employees and the State of California, seeks penalties for violations
3 of Labor Code sections 2699 and 2699.3. Plaintiff, individually and on behalf of the Aggrieved
4 Employees and the State of California, seeks penalties for violations of Labor Code section 226.7
5 during the PAGA Period, in an amount according to proof, that would otherwise only be collected
6 through public agency enforcement actions by the Labor Commission, the LWDA and/or the
7 DLSE.

8 82. Plaintiff, as a personal representative of the general public, will and does seek to
9 recover any and all penalties for each and every violation shown to exist or to have occurred
10 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
11 only available to public agency enforcement actions. Funds recovered will be distributed in
12 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
13 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
14 Aggrieved Employees.

15 83. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
16 and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
19 **WAGE STATEMENTS**

20 **(Lab. Code, §§ 226 and 1174)**

21 **(Plaintiff Against All Defendants)**

22 84. Plaintiff and Aggrieved Employees reallege and incorporate by reference all
23 preceding paragraphs as if fully set forth herein.

24 85. Labor Code section 1174 requires employers to keep accurate payroll records.
25 Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages,"
26 employers furnish employees with "an accurate itemized statement" that includes, inter alia, gross
27 wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate.

1 86. An employee is deemed to suffer injury if the employer fails to provide a wage
2 statement containing all of the required information set forth in Labor Code section 226,
3 subdivision (a). (Lab. Code § 226, subd. (e)(2)). Plaintiff alleges that Defendant knowingly and
4 intentionally failed to provide Plaintiff and Aggrieved Employees wage statements in compliance
5 with Labor Code section 226, because said statements contained inaccurate gross wages earned,
6 an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable
7 hourly rates in effect during the pay period, and an inaccurate number of hours worked at each
8 hourly rate.

9 87. In particular, Defendant failed to include the appropriate hours, wages, and
10 remuneration for its failure to provide Plaintiff and Aggrieved Employees meal and rest periods
11 or premium compensation in lieu thereof, overtime compensation pursuant to the provisions of
12 Labor Code section 510, and for any hours and wages for work Plaintiff and Aggrieved
13 Employees were required to perform prior to, or after the conclusion of, their shifts.

14 88. To the extent that Plaintiff and Aggrieved Employees worked more than eight (8)
15 hours in a workday, they were entitled to overtime wages that were not included on their wage
16 statements.

17 89. Plaintiff and Aggrieved Employees also had thirty (30) minutes deducted from
18 their total hours worked each workday even though they worked continuously throughout the
19 workday with no meal period.

20 90. Consequently, Plaintiff and Aggrieved Employees' wage statements reflected an
21 inaccurate total number of hours worked at each hourly rate, and inaccurate gross and net wages
22 earned in violation of Labor Code sections 226 and 1174, and subject to penalties under PAGA.

23 91. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
24 of Section 226 shall be subject to a civil penalty in the amount of two hundred and fifty dollars
25 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000.00) per
26 employee for each violation in a subsequent citation, for which the employer fails to provide the
27 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
28 Section 226. The civil penalties provided for in this section are in addition to any other penalty

provided by law.

92. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections 226 and 1174.

93. Plaintiff is informed and believes that Defendant has violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the provision of accurate itemized wage statements.

94. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

95. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

FIFTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY ALL WAGES DUE UPON TERMINATION OF EMPLOYMENT

(Lab. Code, §§ 201, 203)

(Plaintiff Against All Defendants)

96. Plaintiff and Aggrieved Employees reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

97. Labor Code section 201, subdivision (a), states that "[i]f an employer discharges

1 an employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

3 98. Pursuant to Labor Code section 202, subdivision (a), “[i]f an employee not having
4 a written contract for a definite period quits his or her employment, his or her wages shall become
5 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
6 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
7 wages at the time of quitting.”

8 99. At the time that Plaintiff and any of the Aggrieved Employees’ employment ended,
9 they were entitled to timely compensation of regular and overtime wages for all hours worked,
10 overtime compensation, and premium compensation for all missed meal and rest periods, but
11 Defendant failed or refused to do so. As a result, Plaintiff and Aggrieved Employees have suffered,
12 and continue to suffer, injury which will be ascertained according to proof at trial.

13 100. Plaintiff is informed and believes that Defendant has violated, and continues to
14 violate, provisions of the Labor Code related to the requirement to pay all wages due upon
15 termination of employment.

16 101. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
17 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
18 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

19 102. Pursuant to Labor Code section 203, subdivision (a), “[i]f an employer willfully
20 fails to pay ... any wages of any employee who is discharged or who quits, the wages of the
21 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
22 an action therefor is commenced; but the wages shall not continue for more than 30 days.” Labor
23 Code section 256 provides for civil penalties not exceeding 30 days’ pay at the employees’ same
24 rate of pay.

25 103. Since the LWDA has not indicated that it will be investigating more than sixty-
26 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to
27 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
28 California, will seek any and all penalties otherwise capable of being collected by the Labor

Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections 201 and 203.

104. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

105. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

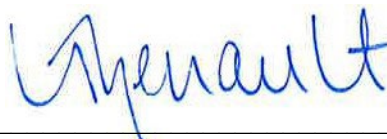
PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute and provided by PAGA, and for unpaid wages;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: March 29, 2022

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.
Laura Theriault, Esq.
Attorneys for Plaintiff NOEMI SERVIN

EXHIBIT A



Kevin Mahoney, Esq.
(562) 590-5550 Phone
(562) 590-8400 Facsimile
kmahoney@mahoney-law.net

October 25, 2021

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
DIR PAGA Unit
<https://dir.tfaforms.net/>

VIA FIRST CLASS MAIL & CERTIFIED MAIL

Certified No. 7019 2970 0000 2983 4861

Abrazar, Inc.
7101 Wyoming St.
Westminster, CA 92683

VIA FIRST CLASS MAIL & CERTIFIED MAIL

Certified No. 7019 2970 0000 2983 4878

Abrazar, Inc.
c/o Mario Ortega
Agent for Service of Process
7101 Wyoming St.
Westminster, CA 92683

Re: *Noemi Servin v. Abrazar, Inc.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION
2698, ET SEQ.**

To: California Labor and Workforce Development Agency, Abrazar, Inc., and
Abrazar, Inc. c/o Agent for Service of Process, Mario Ortega

From: Noemi Servin, on behalf of herself and other aggrieved employees who were
subject to the Employer's wage and hour policies as set forth below

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code section 2698 *et seq.*, including, without limitation, California Labor Code sections 2699.3 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online

filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office, along with our co-counsel, Amir Seyedfarshi from Employment Rights Law Group, APC, represents Plaintiff Noemi Servin ("Plaintiff"), and a proposed group (and subgroups) of current and former Aggrieved Employees of Abrazar, Inc., a California corporation and its co-employers, successors in interest, and/or merged entities ("Defendants"), in connection with her individual, class action and PAGA representative claims for civil penalties, based on, without limitation, Defendant's:

1. failure to provide timely and duty-free meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
2. failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof in violation of Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;
3. failure to provide accurate itemized wage statements in violation of Labor Code section 226 based upon Defendant's failure to include meal and rest break premiums in stating the total gross and net wages earned;
4. failure to pay for overtime wages in violation of Labor Code section 510;
5. unfair competition in violation of Bus. & Prof. Code section 17200 based upon the foregoing meal and rest break premium claims; and
6. statutory penalties under California's Private Attorneys General Act ("PAGA") based upon the foregoing under Labor Code sections 2698 et seq.

In connection with her PAGA claims, Plaintiff seeks PAGA penalties from one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were employed by Abrazar, Inc. in the State of California and who worked one or more shifts of (5) hours or longer during the PAGA Period.

i. The "Wage Statement Aggrieved Employees":

All Aggrieved Employees who were issued one or more wage statement from Defendants during the PAGA Period;

ii. The "Rest Break Aggrieved Employees":

All Aggrieved Employees who did not receive their timely ten-minute, duty-free rest breaks while working for Defendants during the PAGA Period;

iii. The “Meal Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their timely thirty-minute meal break on or before the fifth hour of work while working for Defendants on the shifts greater than 5 hours during the PAGA Period;

iv. The “Overtime Aggrieved Employees”:

All Aggrieved Employees who worked in excess of eight (8) hours a day; and,

v. The “Waiting Time Penalty Aggrieved Employees”:

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period.

DEFENDANTS’ MEAL PERIOD VIOLATIONS

Labor Code section 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Plaintiff and the aggrieved employees were in charge of transportation of patients on a daily basis. During each of their shifts, Plaintiff and the aggrieved employees were precluded from stopping and often each of the transportation assignment last over 5 hours. During this time, Plaintiff and the aggrieved employees were required to remain in their vehicle and were not allowed to leave their vehicle.

Moreover, Defendant has put in place a rounding policy for all meal periods’ entries, rounding the time. The rounding policy affects the correct time keeping of the employees, and therefore their meal breaks are not correctly registered. See *Donohue v. AMN Services, LLC* (SC S253677 February 25, 2021) holding that “Under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. (Lab. Code, § 512, subd. (a); Industrial Welfare Commission (IWC) wage order No. 4-2001, § 11(A) (Wage Order No. 4).) If an employer does not provide an employee with a compliant meal period, then ‘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 . . . period is not provided.’ (Lab. Code, § 226.7, subd. (c); Wage Order No. 4, § 11(B).)”

Defendants violated, and continue to violate, Labor Code section 512 and IWC Wage Order 5-2002 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Aggrieved Employees and failed to advise all other Meal Break Aggrieved Employees of their meal break rights with respect to the timing of meal

breaks, failed to provide Meal Break Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. As a result of Defendants' failure to authorize or permit lawful and timely meal periods, Plaintiff and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANTS' REST PERIOD VIOLATIONS

Under Labor Code section 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Because of the workload, Plaintiff and other aggrieved employees were precluded from receiving their rest breaks.

Plaintiff and the Aggrieved Employees were driving patients throughout southern California and were often precluded from taking their ten-minute rest breaks since they did not have the possibility to stop. During each of their shifts, Plaintiff and the Aggrieved employees were constantly driving and they were required to finish their assignment prior to making any stops. Often each assignment was in excess of 4 hours.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code section 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage 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;
4. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
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...

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all meal and rest break premiums), the wage statements issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code section 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiff and the other Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, *inter alia*, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code section 226(e) provides that an employee is entitled to recover \$50.00 for initial pay period in which a violation of section 226 occurs and \$100.00 for each subsequent pay period, not to exceed \$4,000.00, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Further and in addition to the penalties outlined above, Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250.00) per employee per violation in an initial violation and one thousand dollars (\$1,000.00) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code section 204 expressly requires that “[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.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendants’ failure to pay Plaintiff and the other Aggrieved Employees all meal and rest break period premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100.00) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200.00) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

DEFENDANT'S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 4.

Here, Defendant hired Plaintiff and the Overtime Aggrieved Employees to work as drivers and/or transportation aid for Defendant’s operations in California. Plaintiff and Aggrieved Employees often worked more than 8 hours and over 40 hours per week and at least six days a week. However, Plaintiff and the aggrieved employees were not paid the correct overtime rate for all overtime hours. (See **Exhibit A**, Plaintiff’s paystubs where the total amount of overtime pay does not correspond to all the overtime hours worked).

Moreover, here Employer required Servin to work through meal periods, thus causing to work 8 1/2 hours as a result, but was not paid overtime wages for the hours over 8 as Employer required Plaintiff and Aggrieved Employees to record a meal period even though they were working through their meal period.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4, Defendant did not pay Plaintiff and the Overtime Aggrieved Employees any overtime wages corresponding to the accurate calculation of one and a half times the regular rate of pay of Plaintiff and the Overtime Aggrieved Employees for all hours over 8 in a day. Defendant violated Labor Code § 510 by failing to pay Plaintiff and Aggrieved Employees the accurate overtime wages, including daily overtime

and night shifts' overtime.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, including its failure to pay for meal and rest break premiums, Defendant violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendants are interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by November 24, 2021, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,



Kevin Mahoney
MAHONEY LAW GROUP, APC

cc: Amir Seyedfarshi (via Email)

EXHIBIT A

000669
CO FILE DEPT CLOCK VOHL NO. 070
CB6 001284 000022 0000050039 1

ABRAZAR, INC.
GENERAL ACCOUNT
7101 WYOMING STREET
WESTMINSTER, CA 92683

Taxable Marital Status: Married
Exemptions/Allowances:
Federal 0
CA: 0

Social Security Number: XXX-XX-9806

Earnings	rate	hours	this period	year to date
Regular	15.0000	72.00	1,080.00	2,280.00
Vacation	15.0000	8.00	120.00	120.00
Holiday				120.00
Gross Pay			\$1,200.00	2,520.00

Deductions	Statutory
Federal Income Tax	-69.17
Social Security Tax	-74.40
Medicare Tax	-17.40
CA State Income Tax	-14.00
CA SUI/SDI Tax	-14.40
Net Pay	\$1,010.63
Checking	-1,010.63
Net Check	\$0.00

Your federal taxable wages this period are
\$1,200.00

Earnings Statement

Period Beginning: 01/16/2021
Period Ending: 01/31/2021
Pay Date: 02/05/2021



Other Benefits and Information	this period	total to date
Sick Available	7.00	
Vacation Avail	16.00	
Total Hrs Worked	72.00	

Important Notes

BASIS OF PAY: HOURLY

DATE	IN	OUT	IN	OUT	TOTAL
MON 01/18	7:00AM	9:30AM	9:45AM	10:30AM	8.00
MON 01/18	11:00AM	2:15PM	3:15PM	4:45PM	8.00
TUE 01/19	7:15AM	10:45AM	11:25AM	2:00PM	8.01
TUE 01/19	2:05PM	4:00PM			8.01
WED 01/20	7:00AM	9:50AM	11:10AM	1:50PM	8.01
WED 01/20	2:45PM	5:15PM			8.00
THU 01/21	VACATION				
FRI 01/22	7:00AM	9:30AM	10:05AM	11:50AM	8.00
FRI 01/22	11:45AM	2:00PM	2:30PM	4:20PM	8.00
MON 01/25	7:00AM	10:00AM	11:00AM	2:15PM	8.01
MON 01/25	4:15PM	6:00PM			8.00
TUE 01/26	7:15AM	9:30AM	11:15AM	1:45PM	8.00
TUE 01/26	3:00PM	6:15PM			8.01
WED 01/27	7:00AM	9:40AM	10:10AM	10:50AM	8.01
WED 01/27	11:30AM	4:10PM			8.00
THU 01/28	7:15AM	9:30AM	9:45AM	10:30AM	8.00
THU 01/28	11:30AM	2:00PM	2:40PM	3:10PM	8.00
FRI 01/29	7:00AM	10:15AM	11:00AM	12:00PM	8.00
FRI 01/29	1:00PM	4:45PM			8.00

000659
 CO: FILE DEPT CLOCK VCHR. NO. 070
 CB6 001284 000022 0000110089 1

ABRAZAR, INC.
 GENERAL ACCOUNT
 7101 WYOMING STREET
 WESTMINSTER, CA 92683

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 0
 CA: 0

Social Security Number: XXX-XX-9806

Earnings	rate	hours	this period	year to date
Regular	15.0000	88.00	1,320.00	5,400.00
Overtime				1.80
Holiday				240.00
Sick				360.00
Vacation				240.00
Gross Pay			\$1,320.00	6,241.80

Deductions	Statutory	
Federal Income Tax	-81.17	370.03
Social Security Tax	-81.84	386.99
Medicare Tax	-19.14	90.51
CA State Income Tax	-16.64	75.32
CA SDI Tax	-15.84	74.90
Net Pay	\$1,105.37	
Checking	-1,105.37	
Net Check	\$0.00	

Your federal taxable wages this period are
 \$1,320.00

Earnings Statement



Period Beginning: 03/01/2021
 Period Ending: 03/15/2021
 Pay Date: 03/19/2021

Other Benefits and Information

	this period	total to date
Sick Available	-15.00	
Vacation Avail	24.00	
Total Hrs Worked	88.00	

Important Notes

BASIS OF PAY: HOURLY

Time Card Detail

DATE	IN	OUT	IN	OUT	TOT
MON 03/01	7:00AM	8:45AM	9:45AM	10:40AM	
MON 03/01	11:00AM	2:10PM	3:35PM	5:45PM	
TUE 03/02	7:15AM	10:10AM	11:00AM	2:20PM	
TUE 03/02	2:45PM	4:30PM			
WED 03/03	7:15AM	9:30AM	10:05AM	11:30AM	
WED 03/03	12:15PM	2:30PM	3:00PM	5:05PM	
THU 03/04	7:15AM	10:10AM	10:40AM	11:45AM	
THU 03/04	12:05PM	2:15PM	2:30PM	4:20PM	
FRI 03/05	8:00AM	9:45AM	11:00AM	5:15PM	
MON 03/08	7:00AM	9:40AM	10:30AM	11:25AM	
MON 03/08	12:00PM	4:25PM			
TUE 03/09	7:15AM	9:40AM	10:30AM	12:40PM	
TUE 03/09	1:00PM	4:25PM			
WED 03/10	6:30AM	9:15AM	9:30AM	10:15AM	
WED 03/10	11:50AM	1:55PM	2:30PM	4:55PM	
THU 03/11	7:15AM	10:30AM	11:15AM	12:00PM	
THU 03/11	1:00PM	5:00PM			
FRI 03/12	6:30AM	9:20AM	11:30AM	2:25PM	
FRI 03/12	2:40PM	4:55PM			
MON 03/15	7:00AM	8:50AM	9:20AM	11:30AM	
MON 03/15	12:15PM	4:15PM			

001085
 CO FILE DEPT CLOCK VGR NO 070
 CB6 001284 000022 000090088 1



Earnings Statement

ABRAZAR, INC.
 GENERAL ACCOUNT
 7101 WYOMING STREET
 WESTMINSTER, CA 92683

Period Beginning: 02/16/2021
 Period Ending: 02/28/2021
 Pay Date: 03/05/2021

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 0
 CA: 0

Social Security Number: XXX-XX-9806

Earnings	rate		hours		this period		year to date		Other Benefits and Information		this period		total to date	
Regular	15.0000		48.00		720.00		4,080.00		Sick Available		-15.00			
Overtime	22.5000		.08		1.80		1.80		Vacation Avail		16.00			
Sick	15.0000		16.00		240.00		360.00		Tot Hrs Worked		48.08			
Vacation	15.0000		8.00		120.00		240.00		Important Notes					
Holiday							240.00		BASIS OF PAY: HOURLY					
Gross Pay					\$1,081.80		4,921.80							

Deductions

Statutory		
Federal Income Tax		-57.35
Social Security Tax		-67.07
Medicare Tax		-15.69
CA State Income Tax		-11.40
CA SDI Tax		-12.98
Net Pay		\$917.31
Checking		-917.31
Net Check		\$0.00

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
TUE 02/16	7:15AM	9:45AM	10:30AM	2:45PM	8.00
TUE 02/16	3:30PM	4:45PM			
WED 02/17	7:00AM	10:00AM	11:10AM	12:20PM	8.01
WED 02/17	1:00PM	4:50PM			8.00
THU 02/18	VACATION				8.00
FRI 02/19	SICK				8.00
MON 02/22	SICK				8.01
TUE 02/23	9:00AM	11:20AM	12:35PM	2:20PM	8.01
TUE 02/23	2:35PM	6:30PM			
WED 02/24	6:30AM	9:40AM	10:45AM	11:50AM	8.01
WED 02/24	12:15PM	4:00PM			
THU 02/25	7:15AM	9:25AM	10:00AM	10:50AM	8.01
THU 02/25	12:00PM	1:30PM	2:30PM	6:00PM	8.01
FRI 02/25	6:45AM	10:10AM	10:40AM	3:20PM	8.09

Your federal taxable wages this period are
 \$1,081.80