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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

WYATT RAY, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

24 HOUR FITNESS USA, LLC, a
California Limited Liability Company,
f.k.a. 24 HOUR FITNESS USA, INC., a
California Corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. 37-2022-00004782-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") AND RESTITUTION**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. CIVIL PENALTIES FOR FAILURE TO
RECORD HOURS WORKED**
- 6. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE UPON
TERMINATION OF EMPLOYMENT**

1 Plaintiff WYATT RAY (“Plaintiff”), on behalf of others aggrieved and as a
2 Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against his
7 employers 24 HOUR FITNESS USA, LLC, a California Limited Liability Company, formerly
8 known as 24 HOUR FITNESS USA, INC., a California Corporation; and DOES 1 through 100,
9 inclusive (collectively referred to as “Defendants”) under the California Labor Code to recover
10 civil penalties arising out of Defendants’ multiple labor code violations as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay him or other hourly
14 employees all wages for all hours worked. Defendants also failed to provide compliant meal
15 and rest periods and failed to pay the applicable premium wages owed when meal and rest
16 periods are not paid.

17 3. Plaintiff brings this lawsuit as a PAGA Representative Action behalf of the state
18 of California, and aggrieved current and former employees, including but not limited to other
19 current and former employees employed as personal trainers. Pursuant to Labor Code sections
20 2698, *et seq.*, Plaintiff seeks to recover civil penalties and reasonable attorney’s fees and costs.
21 Plaintiff, by operation of law, has standing and capacity to sue as a representative of the State of
22 California. Plaintiff mailed written notice of the specific provisions of the Labor Code that
23 Defendants violated, including the facts and theories to support the alleged violations, to the
24 LWDA and to Defendants 24 Hour Fitness USA, LLC and 24 Hour Fitness USA, Inc. pursuant
25 to Labor Code section 2699.3 on November 30, 2021. Defendants did not provide notice of cure
26 and the LWDA did not provide notice of investigation in the 65 days after the November 30,
27 2021 mailing of the PAGA notice.

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II.

JURISDICTION AND VENUE

4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants conduct business in the city and county of San Diego in the state of California and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other employees within the State of California and San Diego County. Defendants employ numerous employees in San Diego County and in California generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure.

5. Plaintiff alleges, on information and belief, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action the federal court. Plaintiff is also informed and believes that based on his rate of pay, his individual PAGA claims do not arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

6. Plaintiff WYATT RAY is a non-exempt employee of Defendants, currently employed as a personal trainer. At all relevant times, he has been employed by Defendants as a non-exempt hourly employee in San Diego County since December 22, 2016.

7. Plaintiff alleges that all other employees in the State of California worked under Defendants' policies and as a result, suffered the same violations alleged herein.

8. Plaintiff is an "aggrieved employee" because he was employed by the alleged

1 violators and had one or more of the alleged violations committed against him and, therefore, is
2 properly suited to represent the interests of all other current and former employees of
3 Defendants.

4 9. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
5 current and former aggrieved employees, including but not limited to other current and former
6 employees employed as personal trainers, who suffered one or more of the alleged violations
7 (“aggrieved employees”) as described herein during the applicable limitations period for the
8 time period covered by the PAGA (which is defined as any time from one year and 65 days
9 prior to the commencement of this action until the commencement of trial in the matter). The
10 applicable limitations period is referred herein as “the PAGA Period.”

11 10. Plaintiff is informed and believes, and alleges Defendant 24 Hour Fitness USA,
12 LLC, a California Limited Liability Company, formerly known as 24 Hour Fitness USA, Inc., a
13 California Corporation, is a health fitness chain with fitness and health clubs located throughout
14 California.

15 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
16 employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or
17 caused to be violated, any provision regulating minimum wages or hours and days of work in
18 the applicable order of the Industrial Welfare Commission, as well as California Labor Code
19 sections 203, 226, 226.7, 1193.6, and 1194, , and as such, are liable as an employer of Plaintiff
20 for such violations pursuant to California Labor Code sections 558 and 558.1.

21 12. At all times relevant, Defendants did, and do, transact and conduct business in
22 the state of California, including, but not limited to, within the jurisdiction of the Court. At all
23 times relevant, Defendants, and each of them, were Plaintiff’s and aggrieved employees’
24 employer for purposes of the California wage and hour laws at issue in this action.

25 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
26 participation in the conduct alleged of Defendants sued as DOES 1 through 100, but is informed
27 and believes, and based on that alleges, DOE Defendants are legally responsible for the
28 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will

1 amend this complaint when their true names and capabilities are ascertained.

2 14. Plaintiff is informed and believes and, based thereon alleges, that each
3 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
4 other aggrieved employees, and exercised control over their wages, hours, and working
5 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
8 Defendant is legally attributable to the other Defendants.

9 IV.

10 **GENERAL ALLEGATIONS**

11 15. At all times during the liability period, Plaintiff and aggrieved current and
12 former employees were employed by Defendants and each of them, including Doe Defendants,
13 within the state of California.

14 16. At all relevant times, Plaintiff and other aggrieved employees of Defendants
15 worked under the same policies, practices, and procedures relating to their employment,
16 including those governing wage statements, recordkeeping, payment of wages, and provision of
17 rest and meal periods applicable to Defendants' facilities.

18 17. The California Labor Code and applicable IWC Wage Order and portions of the
19 California Code of Regulations provide that all persons employed in the State of California
20 shall be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked"
21 and subject to the control of the employer, whether exercised or not, are to be paid at least the
22 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
23 the regular rate of pay or 2.0x the regular rate of pay when "hours worked" exceeds 8 hours in a
24 single day or shift, or over 40 hours in a 168-total hour workweek.

25 18. Plaintiff and each aggrieved employee were non-exempt employees covered
26 under one or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or
27 other applicable wage orders, regulations and statutes, and each aggrieved employee was not
28 subject to an exemption for executive, administrative, professional employees, or any other

1 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and each
2 aggrieved employee lawful minimum and overtime compensation, as well as to provide
3 statutory meal and rest periods.

4 19. Plaintiff and each aggrieved employee worked in excess of the maximum regular
5 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore
6 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
7 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
8 and/or statutes.

9 20. During the PAGA Period, Defendants maintained common policies and practices
10 of failing to pay all required wages for all hours worked.

11 21. During the PAGA Period, Defendants maintained a common policy and practice
12 of paying Plaintiff and other aggrieved employees only for time spent performing personal
13 training sessions, or "Session Hours." Defendants failed to pay for all hours worked outside of
14 these Session Hours, including but not limited to the time spent taking rest periods, maintaining
15 contact with current clients, updating client folders, creating and planning for workouts,
16 performing scheduling, attending meetings, and procuring new clients and business.

17 22. As a result of failing to pay for all time spent outside of Session Hours failed to
18 pay any wages, including all applicable minimum, regular and overtime wages, for this time
19 spent working and under the direction and control of Defendants.

20 23. Defendants' failure to pay for all hours worked, including hours worked outside
21 of Session hours, also resulted in the failure to pay all required overtime wages when the time
22 spent outside of Session Hours caused an employee to work in excess of 8 hours in one day, or
23 40 hours in one work week.

24 24. Upon information and belief, Plaintiff and other aggrieved employees worked in
25 non-exempt and during the relevant time period, each was subject to the Defendants' policy of
26 failing to pay all applicable minimum, regular, and overtime wages for all hours worked.

27 25. Defendants subjected all aggrieved employees to policies and practices which
28 failed to provide compliant meal and rest periods. Defendants failed to provide compliant meal

1 periods to Plaintiff and other aggrieved employees, and failed to authorize and permit Plaintiff
2 and aggrieved employees to take lawful rest periods.

3 26. Due to the additional time worked outside of non-Session Hours, Plaintiff and
4 other aggrieved employees were not provided all required meal periods. By not accurately
5 capturing all time worked, Defendants did not therefore provide all required meal periods in
6 circumstances where actual time worked would have triggered the Defendants' duty to provide
7 a meal period. For example, if the Defendants recorded an aggrieved employee working 4.8
8 hours based only on Session Hours, and the non-Session Hours worked meant the aggrieved
9 employee actually worked more than five hours, they should have been provided meal period,
10 but were not.

11 27. As a result, Plaintiff and other aggrieved employees were not provided an
12 opportunity to take an uninterrupted, off-duty, thirty-minute meal period on shifts lasting longer
13 than five hours, and were not provide second uninterrupted, off-duty, thirty-minute meal period
14 on shifts lasting more than 10 hours. The Defendants never paid one hour of wages at a regular
15 rate of pay for each shift in which non-compliant meal periods were not provided, as required
16 by Labor Code section 226.7 and section 12 of the applicable wage order.

17 28. For the same reasons, Plaintiff and other aggrieved employees were not
18 provided complaint off-duty, timely and uninterrupted rest periods. That is, by not actually
19 capturing all time worked, the Defendants did not provide all requisite rest periods. For
20 example, if the Defendants recorded an aggrieved employee working 3.9 hours based only on
21 Session Hours, and the non-Session Hours worked meant the aggrieved employee actually
22 worked more than 4 hours, they should have been provided rest period, but were not.

23 29. The Defendants never paid one hour of wages at a regular rate of pay for each
24 shift in which non-compliant rest periods were not provided, as required by Labor Code section
25 226.7 and section 11 of the applicable wage order.

26 30. During the PAGA Period, the Defendants, and each of them, required the
27 Plaintiff and aggrieved employees to work without taking statutory meal and rest periods and
28 failed to pay putative aggrieved employees an hour's pay at the regular rate of pay in lieu

1 thereof.

2 31. Furthermore, the Defendants failed to record and maintain records reflecting the
3 total daily hours worked, and the beginning and ending of each shift and work period, including
4 the beginning and ending of each meal period. The Defendants further failed to record the total
5 hours worked, including all hours worked during “non-Session Hours.”

6 32. As a result of the failures to pay all minimum, regular, and overtime wages, and
7 meal and rest period premium wages, as described herein, Defendants further failed to pay
8 Plaintiff and all other aggrieved employees timely during employment as required by Cal.
9 Labor Code section 204.

10 33. During the relevant time period, the Defendants, by virtue of centralized and
11 uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and
12 aggrieved employees, as required by Labor Code section 226. Due to the failure pay for all
13 hours worked and the failure to adequately provide all meal and rest periods and related
14 premium wages, the wage statements did not accurately state the gross and net wages earned,
15 the total hours worked, and all applicable hourly rates in effect and the corresponding number
16 of hours worked at each hourly rate.

17 34. During the PAGA period Defendants maintained a policy and practice of failing
18 to pay all wages owed to terminated employees within the requirements of Labor Code sections
19 201-202. Defendants further maintained a policy and practice of failing to pay waiting time
20 penalties pursuant to California Labor Code section 203 when they failed to comply with the
21 requirements set forth in Sections 201-202.

22 35. At the time of separation from employment and as alleged herein, Plaintiff and
23 others aggrieved were owed and continue to be owed minimum wages, regular wages, overtime
24 wages, and meal and rest period premium wages from Defendants for all hours worked.

25 36. As a result, Plaintiff and other aggrieved employees are owed waiting time
26 penalties.

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PAGA Penalties for Failure to Pay Minimum, Regular, and Overtime Wages in Violation of Labor Code §§ 510, 1194, 1197, 1198, and the Applicable IWC Wage Order (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

37. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

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

39. Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

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

41. Labor Code section 510, states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

1 42. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
2 law, any provision of this code that provides for a civil penalty to be assessed and collected by
3 the Labor and Workforce Development Agency or any of its departments, divisions,
4 commissions, boards, agencies, or employees, for a violation of this code, may, as an
5 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
6 himself or herself and other current or former employees pursuant to the procedures specified in
7 Section 2699.3.”

8 43. Labor Code section 2699(f)(2) states: “For all provisions of this code except
9 those for which a civil penalty is specifically provided, there is established a civil penalty for a
10 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
11 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
12 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
13 each aggrieved employee per pay period for each subsequent violation.”

14 44. At all relevant times and as set forth herein, Defendants subjected all hourly
15 employees, including Plaintiff, to a policy that resulted in the failure to pay all applicable
16 minimum and regular wages for all hours worked. Defendants further failed to pay aggrieved
17 employees all overtime wages for all overtime hours worked.

18 45. Defendants’ conduct violates Labor Code sections 510, 1194, 1197, and 1198 as
19 well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable wage
20 order.

21 46. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
22 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
23 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs
24 all recoverable in an amount according to proof.

25 47. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

of California.

SECOND CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Meal Periods in Violation of Labor Code §§
226.7, 512, 558, and 1198, and the Applicable IWC Wage Order
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

48. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

49. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

50. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

51. Labor Code section 512(a) provides in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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53. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

54. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 558, and the Applicable IWC Wage Order
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

55. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

56. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

57. Defendants failed to authorize and permit all rest periods as required by law. Plaintiff and other aggrieved employees were never paid a rest period premium for non-compliance with Labor Code section 226.7 and aggrieved employees were not provided rest period premium for non-compliance with Labor Code section 226.7.

58. Defendants' violated Labor Code sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable Wage Order and are liable to Plaintiff and other aggrieved employees for penalties as required by Cal. Labor Code section 2699(a) or, in the alternative,

1 section 2699(f)(2), attorney's fees and costs and recoverable in an amount according to proof.

2 59. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
5 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
6 of California.

7 **FOURTH CAUSE OF ACTION**

8 **PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements in Violation**
9 **of Labor Code § 226 and the Applicable IWC Wage Order**
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

10 60. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
11 full herein.

12 61. Section 226(a) of the California Labor Code requires Defendants to itemize in
13 wage statements wages earned, all deductions from payment of wages and to accurately report
14 total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to
15 comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff
16 and other aggrieved employees.

17 62. Labor Code section 226.3 provides for civil penalties for violations of the Labor
18 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each
19 subsequent violation.

20 63. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
21 of civil penalties for violations of the labor code, to be recovered through a civil action brought
22 by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Section 2699.3.

24 64. As alleged herein, Defendants failed to provide adequate wage statements in
25 compliance with Labor Code section 226(a).

26 65. Wage statements did not comply with Labor Code section 226(2) because
27 Defendants failed to list the correct total amount of hours worked, net and gross wages earned,
28 all applicable hourly rates and the total hours worked at each rate, they thereby issued

1 inaccurate itemized wage statements to Plaintiff and other aggrieved employees.

2 66. Defendants' conduct violates Labor Code section 226.

3 67. As a result, Defendants willfully violated the Labor Code and are liable to
4 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections
5 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs,
6 all recoverable in an amount according to proof.

7 68. Plaintiff, as a representative of the general public, will and does seek to recover
8 any and all penalties for each and every violation, in an amount according to proof, as to those
9 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
10 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
11 of California.

12 **FIFTH CAUSE OF ACTION**

13 **PAGA Penalties for Failure to Maintain Accurate Records in Violation of Labor Code**
14 **§§ 1174 and 1198**
15 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

16 69. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
17 full herein.

18 70. Labor Code section 1174(d) requires each employee to "[k]eep, at a central
19 location in the state or at the plants or establishments at which employees are employed, payroll
20 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
21 units earned by and any applicable piece rate paid to, employees employed at the respective
22 plants or establishments."

23 71. The "Records" section of the applicable IWC wage order requires each employer
24 to maintain "[t]ime records showing when the employee begins and ends each work period.
25 Meal periods, split shift intervals and total daily hours worked shall also be recorded."

26 72. California Labor Code section 1174.5 imposes a \$500 civil penalty for any
27 failure to maintain records required by Section 1174(d).

28 73. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
of civil penalties for violations of the labor code, to be recovered through a civil action brought

1 by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3.

3 74. Defendants failed to maintain all records as required by law, including but not
4 limited to the beginning and ending time of each work period and meal period.

5 75. As a result, Defendants willfully violated the Labor Code and are liable to
6 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections
7 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
8 according to proof.

9 76. Plaintiff, as a representative of the general public, will and does seek to recover
10 any and all penalties for each and every violation, in an amount according to proof, as to those
11 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
12 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
13 of California.

14 **SIXTH CAUSE OF ACTION**

15 **PAGE Penalties for Failure to Pay All Wages Owed During and Upon Termination of**
16 **Employment in Violation of Labor Code §§ 201-203 and 204**
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

17 77. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
18 full herein.

19 78. An employer who discharges an employee must pay all compensation due and to
20 that employee immediately upon discharge. Labor Code § 201. An employer must pay all
21 compensation due to an employee who quits within 72 hours. Labor Code § 202. If an employer
22 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the
23 subject employee's wages until paid or until an action is commenced, but the penalty cannot
24 exceed 30 days' wages. Labor Code § 203.

25 79. Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any
26 person in any employment are due and payable twice during each calendar month, on days
27 designated in advance by the employer as the regular paydays." Section 204(d) states: "The
28 requirements of this section shall be deemed satisfied by the payment of wages for weekly,

1 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
2 following the close of the payroll period.” The “Minimum Wages” Section of the applicable
3 Wage Order further states “every employer shall pay to each employee, on the established
4 payday for the period involved, not less than the applicable minimum wage for all hours worked
5 in the payroll period.”

6 80. Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent*
7 *and apart from*, any other penalty provided in this article, every person who fails to pay the
8 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
10 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any
11 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
12 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

13 81. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
14 of civil penalties for violations of the labor code, to be recovered through a civil action brought
15 by an aggrieved employee on behalf of himself or herself and other current or former
16 employees pursuant to the procedures specified in Section 2699.3.

17 82. As set forth herein, Defendants failed to pay all wages and penalties owed to
18 Plaintiff and other aggrieved employees within the timeline required by Cal. Labor Code
19 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
20 by Labor Code section 203.

21 83. As a result, Defendants willfully violated the Labor Code and are liable to
22 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,
23 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
24 according to proof.

25 84. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

1 of California.

2 **VII.**

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff WYATT RAY, on behalf of himself and all other aggrieved
5 employees and as a Representative of the Labor and Workforce Development Agency, prays for
6 judgment as follows:

7 a. For maintenance of this claim as a Representative Action under the PAGA, and
8 providing Plaintiff and his counsel with all enforcement capability as if this action has been
9 instituted by the Department of Labor Standards enforcement (“DLSE”);

10 b. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
11 1197.1, and 558(a)(1)-(2), in an amount according to proof;

12 c. For recovery of civil penalties as permitted by Labor Code section 226.3, for
13 failing to provide accurate itemized wage statements, in an amount to be assessed and according
14 to proof;

15 d. For recovery of civil penalties as permitted by Labor Code sections 210, for
16 failing to pay wages timely during employment;

17 e. For recovery of civil penalties as permitted by Labor Code section 1174 and
18 1174.5 for failing to maintain records;

19 f. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
20 extent that 2699(a) does not apply and/or where a statutory civil penalty is not provided for
21 failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 1198, and 1174.

22 g. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
23 to any restitution recovery;

24 h. For Attorneys’ fees and costs of suit, including expert fees and fees pursuant to
25 California Labor Code sections 218.5, 226(e), 1194, 1197, the PAGA, and/or Code of Civil
26 Procedure section 1021.5 on a public benefit theory; and all other applicable state laws;

27 i. For injunctive relief; and

28 j. Such other legal equitable relief as this Court deems necessary, just, equitable

1 and proper.

2 COHELAN KHOURY & SINGER

3
4 Dated: February 7, 2022

By: 

Michael D. Singer, Esq.

Kristina De La Rosa, Esq.

Counsel for Plaintiff WYATT RAY