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Attorneys for Plaintiff FERNANDO CARRILLO
on behalf of himself and current and former aggrieved employees

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

FERNANDO CARRILLO, on behalf of himself
and other aggrieved employees,

Plaintiff,

vs.

SYNERGY AC, INC.; SYNERGY
EFFICIENCY AC, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **22CV020740**

PAGA ACTION

**PLAINTIFF FERNANDO
CARRILLO'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff FERNANDO CARRILLO ("Plaintiff"), who alleges and
complains against Defendants SYNERGY AC, INC.; SYNERGY EFFICIENCY AC, INC.; and
DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

- This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/28/2022 at 05:37:19 PM
By: Chan Huang,
Deputy Clerk

1 (“PAGA”). representative action brought by Plaintiff on behalf of the State of California, himself
2 and other current and former aggrieved employees of Defendants who worked as hourly, non-
3 exempt employees, in California during the relevant time period seeking civil penalties associated
4 with Defendants’ violation of the Labor Code based on Defendant’s for failure to pay wages for all
5 hours worked at minimum wage; failure to pay wages for all overtime hours worked; failure to
6 authorize or permit all legally required and/or compliant meal periods and/or pay meal period
7 premium wages; failure to authorize or permit all legally required and/or compliant rest periods
8 and/or pay rest period premium wages; indemnification for all necessary expenditures or losses
9 incurred by employees in direct consequence of discharging their duties; statutory penalties for
10 failure to timely pay earned wages during employment; statutory penalties for failure to provide
11 accurate wage statements; statutory waiting time penalties in the form of continuation wages for
12 failure to timely pay employees all wages due upon separation of employment. Plaintiff seeks on a
13 representative basis, following notice to the Labor and Workforce Development Agency, civil
14 penalties, reasonable attorney’s fees pursuant to Labor Code section 2699(g)(1) and costs brought
15 on behalf of Plaintiff, the State of California, and others aggrieved.

16 **II. JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
18 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks
19 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
20 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
21 (\$25,000; Defendants employed Plaintiff and all other current and former aggrieved California-
22 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
23 aggrieved California-based hourly non-exempt employees occurred in locations throughout
24 California including but not limited to Alameda County, at 28436 Satellite Street, Hayward,
25 California 94545.

26 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
27 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
28

1 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
2 tolled from April 6, 2020, until October 1, 2020.

3 **III. PARTIES**

4 4. Plaintiff brings this action as a representative of the Labor and Workforce
5 Development Agency on behalf of himself and other current and former employees subject to
6 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
7 filed include current, former and/or future employees of Defendants who worked, work, or will
8 work for Defendants as non-exempt hourly employee in California. At all times mentioned herein,
9 the currently named Plaintiff is and was domiciled and a resident and citizen of California and was
10 employed by Defendants in an hourly non-exempt air-conditioning installer at Defendants'
11 location in Hayward from approximately March 3, 2021 until his termination on or about October
12 4, 2021.

13 5. Plaintiff is informed and believes and thereon alleges that Defendant SYNERGY
14 AC, INC. is authorized to do business within the State of California and is doing business in the
15 State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto were
16 persons acting on behalf of Defendant SYNERGY AC, INC. in the establishment of, or
17 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
18 SYNERGY AC, INC. operates in Alameda County and employed Plaintiff and aggrieved
19 employees in Alameda County, including but not limited to, at 28436 Satellite Street, Hayward,
20 California 94545.

21 6. Plaintiff is informed and believes and thereon alleges that Defendant SYNERGY
22 EFFICIENCY AC, INC. is authorized to do business within the State of California and is doing
23 business in the State of California and/or that Defendants DOES 26-50 are, and at all times
24 relevant hereto were persons acting on behalf of Defendant SYNERGY EFFICIENCY AC, INC.
25 in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
26 policies. Defendant SYNERGY EFFICIENCY AC, INC. operates in Alameda County and
27 employed Plaintiff and aggrieved employees in Alameda County, including but not limited to, at
28 28436 Satellite Street, Hayward, California 94545.

7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 through 75 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

10. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(Against all Defendants)

11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and the applicable Wage Orders.

1 13. Specifically, Defendants have committed the following violations of California
2 Labor Code:

3 14. **Failure to pay wages for all hours worked at the legal minimum wage:**
4 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
5 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
6 which includes all time that an employee is under control of the employer and all time the
7 employee is suffered and permitted to work. This includes the time an employee spends, either
8 directly or indirectly, performing services which inure to the benefit of the employer.

9 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
10 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
11 Wage Orders.

12 16. In this case, Plaintiff and other current and former aggrieved California-based
13 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
14 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
16 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
17 not limited to:

18 (a) Requiring Plaintiff and other current and former aggrieved California-based
19 hourly non-exempt employees to review their calendar of tasks assigned to them and also
20 determine which AC parts they would need to accomplish the tasks assigned to them on the
21 “Calendar” cellphone application – these tasks were to be completed prior to being permitted to
22 clock in for their shifts.

23 (b) Requiring Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees to maintain and protect Defendants’ property while off the clock.
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
26 are issued a Defendant-owned van in order to drive to the various worksites assigned to them by
27 Defendants. Plaintiff and other current and former aggrieved California-based hourly non-exempt
28 employees are required to keep these Defendant-issued vans in their possession every night after

1 clocking out for their shifts, are required to clean and wash the vans while off-the-clock, and are
2 required to perform tire checks prior to clocking in for their shifts – without just compensation;

3 (c) Requiring Plaintiff and other current and former aggrieved California-based
4 hourly non-exempt employees to clock in for their shifts on the “Deputy” cellphone application on
5 their drive to the assigned worksite, and only after Plaintiff and other current and former aggrieved
6 California-based hourly non-exempt employees reached the forty-five (45) mile mark on their
7 journey to the assigned worksite. Because operating a cellphone while driving is a dangerous task,
8 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
9 often pulled their vehicles over to the side of the road or exited a highway in order to clock-in to
10 Defendants’ satisfaction. Finding a safe location to clock in can take up to several minutes,
11 depending on the geographic and traffic circumstances of Plaintiff and other current and former
12 aggrieved California-based hourly non-exempt employees at the forty-five (45) mile mark. This
13 policy, practice, and/or procedure results in Plaintiff and other current and former aggrieved
14 California-based hourly non-exempt employees being subject to the Defendants’ exercise of
15 control and direction while off-the-clock; and

16 (d) Requiring Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees to fuel their Defendant-issued vans off-the-clock if the Defendant-
18 issued van is in need of fuel prior to Plaintiff and other current and former aggrieved California-
19 based hourly non-exempt employees reaching the aforementioned forty-five (45) mile mark and
20 being permitted to clock in for their shifts.

21 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
22 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
23 control without paying wages for that time. This resulted in Plaintiff and other current and former
24 aggrieved California-based hourly non-exempt employees working time for which they were not
25 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
26 Wage Order.

27 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
28 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt

1 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
2 which includes all time that an employee is under control of the employer and all time the
3 employee is suffered and permitted to work. This includes the time an employee spends, either
4 directly or indirectly, performing services that inure to the benefit of the employer.’

5 19. Labor Code sections 510 and 1194 require an employer to compensate employees a
6 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
7 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

8 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
9 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
10 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
11 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
12 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
13 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
14 seventh day of a workweek shall be compensated at the rate of no less than twice the
15 regular rate of pay of an employee.

16 Labor Code section 510.

17 20. In this case, Defendants failed to pay Plaintiff and other current and former
18 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
19 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

20 (a) Requiring Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees to review their calendar of tasks assigned to them and also
22 determine which AC parts they would need to accomplish the tasks assigned to them on the
23 “Calendar” cellphone application – these tasks were to be completed prior to being permitted to
24 clock in for their shifts.

25 (b) Requiring Plaintiff and other current and former aggrieved California-based
26 hourly non-exempt employees to maintain and protect Defendants’ property while off the clock.
27 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
28 are issued a Defendant-owned van in order to drive to the various worksites assigned to them by
Defendants. Plaintiff and other current and former aggrieved California-based hourly non-exempt
employees are required to keep these Defendant-issued vans in their possession every night after
clocking out for their shifts, are required to clean and wash the vans while off-the-clock, and are

1 required to perform tire checks prior to clocking in for their shifts – without just compensation;

2 (c) Requiring Plaintiff and other current and former aggrieved California-based
3 hourly non-exempt employees to clock in for their shifts on the “Deputy” cellphone application on
4 their drive to the assigned worksite, and only after Plaintiff and other current and former aggrieved
5 California-based hourly non-exempt employees reached the forty-five (45) mile mark on their
6 journey to the assigned worksite. Because operating a cellphone while driving is a dangerous task,
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
8 often pulled their vehicles over to the side of the road or exited a highway in order to clock-in to
9 Defendants’ satisfaction. Finding a safe location to clock in can take up to several minutes,
10 depending on the geographic and traffic circumstances of Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees at the forty-five (45) mile mark. This
12 policy, practice, and/or procedure results in Plaintiff and other current and former aggrieved
13 California-based hourly non-exempt employees being subject to the Defendants’ exercise of
14 control and direction while off-the-clock; and

15 (d) Requiring Plaintiff and other current and former aggrieved California-based
16 hourly non-exempt employees to fuel their Defendant-issued vans off-the-clock if the Defendant-
17 issued van is in need of fuel prior to Plaintiff and other current and former aggrieved California-
18 based hourly non-exempt employees reaching the aforementioned forty-five (45) mile mark and
19 being permitted to clock in for their shifts.

20 21. The foregoing policies, practices, and/or procedures resulted in time during each
21 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
22 employees were under the control of Defendants but were not compensated. To the extent that the
23 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
24 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
25 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
26 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
27 sections 510 and 1194 and the applicable Wage Order.

28 22. **Failure to pay wages to hourly non-exempt employees for workdays that**

1 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
2 current and former aggrieved California-based hourly non-exempt employees regularly worked
3 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

4 23. California law requires an employer to authorize or permit an employee an
5 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
6 all duties and the employer relinquishes control over the employee's activities prior to the
7 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 16 at §11; *Brinker*
8 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
9 employee for a work period of more than ten (10) hours per day without providing the employee
10 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
11 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
12 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
13 period is only permitted when: (1) the nature of the work prevents an employee from being
14 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

15 24. If an employer fails to provide an employee a meal period in accordance with the
16 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
17 for each workday that a legally required and compliant meal period was not provided. Labor Code
18 section 226.7; Wage Order 16 at §11.

19 25. In this case, Defendants failed to authorize or permit legally required and compliant
20 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
21 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
22 limited to:

23 (a) requiring Plaintiff and other current and former aggrieved California-based hourly
24 non-exempt employees to remain on-duty and continue working after clocking out for their second
25 meal break, resulting in meal periods which were not uninterrupted, duty-free, and/or at least thirty
26 (30) minutes as required by law.

27 26. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
28 procedure of failing to compensate Plaintiff and other current and former aggrieved California-

1 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
2 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees did not receive legally required and compliant meal periods, in violation of Labor Code
4 section 226.7.

5 27. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
6 and other current and former aggrieved California-based hourly non-exempt employees not
7 receiving wages to compensate them for workdays during which Defendants did not provide them
8 with meal periods in compliance with California law.

9 28. **Failure to pay wages to hourly non-exempt employees for workdays that**
10 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
11 current and former aggrieved California-based hourly non-exempt employees regularly worked
12 shifts of more than three-and-a-half (3.5) hours.

13 29. California law requires every employer to authorize and permit an employee a rest
14 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
15 Code section 226.7; Wage Order 16 at §12. Under California law, "[e]mployees are entitled to 10
16 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
17 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
18 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
19 section 226.7; Wage Order 16 at §12. Rest periods, insofar as practicable, shall be in the middle of
20 each work period. Wage Order 16 at §12. Additionally, the rest period requirement "obligates
21 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
22 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
23 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

24 30. If the employer fails to authorize or permit a required rest period, the employer
25 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
26 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
27 Wage Order 16 at § 12.

28 31. In this case, Defendants failed to authorize or permit all legally required and

1 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
3 limited to:

4 (a) failing to provide Plaintiff and other current and former aggrieved California-based
5 hourly non-exempt employees with duty-free rest periods of at least a net ten (10) minutes in
6 length for every four (4) hours worked or major fraction thereof.

7 32. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
8 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
9 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
10 workday they did not receive legally required and compliant rest periods, , in violation of Labor
11 Code section 226.7.

12 33. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
13 and other current and former aggrieved California-based hourly non-exempt employees not
14 receiving wages to compensate them for workdays in which Defendants did not provide them with
15 rest periods in compliance with California law.

16 34. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
17 **Employment:** California law requires that every employer must indemnify its employees for all
18 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
19 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
20 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
21 2802.)

22 1. Defendants have violated Labor Code Section 2802 by failing to indemnify
23 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
24 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
25 employed a policies, practices, and/or procedures included, but were not limited to, the following:

26 (a) Requiring Plaintiff and other current and former aggrieved California-based
27 non-exempt hourly employees' to purchase, use, and/or maintain personal cell phones and cellular
28 data plans, or lease cell phones and cellular data plans, in order to satisfy Defendants' employment

1 requirements including, but not limited to, checking assignments, clocking in and out of shifts,
2 requesting time off, and attending mandatory meetings. Plaintiff and other current and former
3 aggrieved California-based non-exempt hourly employees' were not fully compensated for the
4 costs associated with maintaining personal or leased cell phones; and

5 2. Since the outbreak of COVID-19, requiring Plaintiff and other current and former
6 aggrieved California-based non-exempt hourly employees' to wear face coverings such as masks
7 while performing their job responsibilities, but only providing Plaintiff and similarly situated
8 employees with a total of three (3) masks apiece. Plaintiff and other current and former aggrieved
9 California-based non-exempt hourly employees' were required to purchase any additional masks
10 in the event that the Defendant-provided masks were rendered unusable and/or unsafe for
11 compliance with Defendants' aforementioned policies, practices, and/or procedures.

12 3. Moreover, Defendants employed policies and procedures which ensured Plaintiff
13 and aggrieved employees would not receive indemnification for their employment related
14 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
15 indemnification in compliance with California law.

16 4. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
17 employment related expenses, including but not limited to costs related to use of their personal
18 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

19 5. **Failure to timely pay earned wages during employment:** In California, wages
20 must be paid at least twice during each calendar month on days designated in advance by the
21 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
22 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
23 16th and the 26th day of that month and wages earned between the 16th and the last day,
24 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
25 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
26 paid within seven (7) calendar days following the close of the payroll period in which wages were
27 earned. Labor Code section 204(d).

28 6. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed

1 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
2 exempt employees' earned wages (including minimum wages, overtime wages, meal period
3 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
4 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
5 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
6 their earned wages within the applicable time frames outlined in Labor Code section 204.

7 **7. Failure to provide complete and accurate wage statements:** Labor Code section
8 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
9 employee his or her wages, the employer must "furnish each of his or her employees ... an
10 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
11 employee, except for any employee whose compensation is solely based on a salary and who is
12 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
13 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
14 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
15 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
16 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
17 name of the employee and his or her social security number, (8) the name and address of the legal
18 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
19 the corresponding number of hours worked at each hourly rate by the employee."

20 **8.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
21 and other current and former aggrieved California-based hourly non-exempt employees all wages
22 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
23 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
24 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
25 section 226.

26 **9. Failure to pay employees all wages due at time of termination/resignation:** An
27 employer is required to pay all unpaid wages timely after an employee's employment ends. The
28 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)

1 hours of resignation (Labor Code section 202).

2 10. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
3 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
4 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
5 and/or rest period premium wages), Defendants failed to pay those employees timely after each
6 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

7 11. Defendants' violations of Wage Order 16 constituted violations of Labor Code
8 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

9 12. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
10 employee, on behalf of himself or herself and other current or former employees, to bring a civil
11 action to recover civil penalties against all Defendants pursuant to the procedures specified in
12 Labor Code section 2699.3.

13 13. Plaintiff has complied with the procedures for bringing suit specified in Labor
14 Code section 2699.3. On November 15, 2021, Plaintiff filed notice with LWDA and provided
15 notice to Defendants by certified mail which provided notice of the specific provisions of the
16 Labor Code alleged to have been violated, including the facts and theories to support the
17 violations alleged.

18 14. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
19 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
20 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
21 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
22 Plaintiff's claims.

23 15. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
24 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
25 512, 1194, 1197, 1198, and 2802, during the Civil Penalty Period in the following amounts:

26 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,
27 and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
28 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each

subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

16. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

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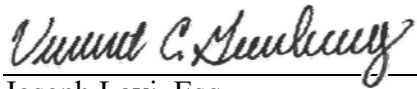
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3 Dated: October 28, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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By: 

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Attorneys for Plaintiff

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FERNANDO CARRILLO

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on behalf of himself and current and former
aggrieved employees

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