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Attorneys for Plaintiff Mark Cervantez,  
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

MARK CERVANTEZ, individually and  
on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

GENUINE PARTS COMPANY, a  
Georgia Corporation, doing business as  
NAPA AUTO PARTS; and DOES 1-50,  
inclusive,

Defendants.

Case No. **22STCV00981**

*Assigned for All Purposes To:*

Hon.

Dept.:

**COMPLAINT FOR DAMAGES FOR:**

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

COMES NOW, Plaintiff MARK CERVANTEZ (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants GENUINE PARTS COMPANY a Georgia Corporation, doing business as NAPA AUTO PARTS; and DOES 1-50, inclusive (collectively “Defendants” or “Genuine Parts”) as follows:

### **INTRODUCTION**

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

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees working in Defendants’ locations in the State of California (the “Aggrieved Employees”) from one year prior to the filing of the PAGA notice (as tolled by Emergency Rule 9) to the conclusion of this action.

3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to recover civil penalties and address Defendants’ violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Security Services*, 21 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Cervantez has standing to pursue penalties on behalf of the state for violations affecting the aggrieved employees at Genuine Parts, regardless of their classification, job title, or locations in California.

5. In this case, Defendants violated various provisions of the California Labor Code and IWC Wage Order. Defendants’ violations include: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages owed during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary

1 expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions;  
2 (9) failure to keep accurate records; and (10) failure to pay sick pay at the proper rate.

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

### 9 **JURISDICTION AND VENUE**

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

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

17 9. Venue is proper in this Court because one or more of the Defendants reside, transact  
18 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or  
19 omissions alleged herein took place in this County.

### 20 **PARTIES**

21 10. Defendant Genuine Parts Company is a Georgia Corporation doing business as  
22 NAPA Auto Parts in the state of California. It is based at 2999 Wildwood Parkway, Atlanta, GA  
23 30339.

24 11. Upon information and belief, Genuine Parts employs Non-Exempt Employees, like  
25 Plaintiff, throughout the State of California.

26 12. Plaintiff Mark Cervantez is and during the liability period has been, a resident of  
27 California.

28 13. Plaintiff was employed in an hourly, non-exempt position by Defendants during the

1 relevant time period.

2 14. Plaintiff and the members of the Aggrieved Group were employed as hourly paid  
3 employees by Defendants, either directly or indirectly, at locations in the State of California at any  
4 time during the relevant time (as tolled by Emergency Rule 9).

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

10 16. The true names and capacities of Defendants, whether individual, corporate,  
11 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
12 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §  
13 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
14 capacities of the Defendants designated hereinafter as DOES when such identities become known.

15 17. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are  
16 the partners, agents, or principals and co-conspirators of Defendants and of each other; that  
17 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided  
18 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits  
19 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the  
20 liability of the Defendants as alleged herein.

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

1 employments.

2 **FACTUAL ALLEGATIONS**

3 19. During the relevant time frame, Defendants compensated Plaintiff and the Non-  
4 Exempt Employees based upon an hourly wage.

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

9 21. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-  
10 exempt position. He worked as a delivery driver for Defendants approximately 4 days per week,  
11 32+ hours per week.

12 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were  
13 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the  
14 requirements of California's wage and employment laws.

15 23. All Aggrieved Employees are similarly situated in that they are all subject to  
16 Defendants' uniform policies and systemic practices as specified herein.

17 24. Plaintiff and the Aggrieved Employees were required to clock in at the beginning  
18 of their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their  
19 shifts. Plaintiff and the Aggrieved Employees were not paid for all hours worked because  
20 employees were required to work off the clock and because Defendants unlawfully rounded the  
21 hours worked by Plaintiff and the Aggrieved Employees such that they were not paid for all hours  
22 worked.

23 25. In addition, Plaintiff and the Aggrieved Employees worked in excess of eight (8)  
24 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time  
25 at a rate of time and one-half the employee's regular rate of pay per hour.

26 26. Upon information and belief, Defendants failed to incorporate all forms of non-  
27 discretionary compensation into the regular rate, including differentials, bonuses, incentives, and  
28 other forms of non-discretionary remuneration. This resulted systemic underpayment of

overtime, meal and rest period premiums, and sick pay.

27. Plaintiff and the Aggrieved Employees were regularly required to work shifts in excess of five hours without being provided a lawful meal period and, on occasion, over ten hours in a day without being provided a second lawful meal period as required by law.

28. Indeed, during the relevant time, as a consequence of Defendants' scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute meal periods as required by law. Not only were Plaintiff's and the Aggrieved Employees' first meal breaks frequently not provided, untimely or short, but also Plaintiff and the Aggrieved Employees were not provided a second meal period when working shifts in excess of 10 hours and in excess of 12 hours.

29. On information and belief, Plaintiff and Aggrieved Employees did not waive their rights to a second meal period.

30. Despite the above-mentioned meal period violations, Defendants failed to compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving accurately calculated compensation.

32. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

33. Defendants maintained and enforced scheduling practices, policies, and imposed work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof.

1 Such requisite rest periods were not timely authorized and permitted.

2 34. Despite the above-mentioned rest period violations, Defendants did not  
3 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one  
4 additional hour of pay at their regular rate as required by California law, including Labor Code  
5 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were  
6 not authorized and permitted.

7 35. In addition, Plaintiff and the Aggrieved Employees were required to carry work-  
8 related cellular phones or other communications devices during meal and rest periods, and were  
9 required to remain available. Meal and rest periods were frequently interrupted as a consequence.

10 36. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary  
11 expenses in the discharge of their duties, including for cellular phone usage, but were not  
12 reimbursed for such costs.

13 37. Defendants also failed to provide accurate, lawful itemized wage statements to  
14 Plaintiff and the Aggrieved Employees in part because of the above specified violations.

15 38. Defendants have also made it difficult to determine applicable rates of pay and  
16 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-  
17 exempt Employees, including Plaintiff, during the liability period because they did not implement  
18 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest  
19 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section  
20 211(c), California Labor Code section 226, and applicable California Wage Orders.

21 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
22 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
23 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
24 compensate Plaintiffs and Aggrieved Employees for all wages owed including straight time,  
25 overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such  
26 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
27 because of the above-specified violations.

28 40. Plaintiff and the Aggrieved Employees are covered by applicable California IWC

1 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title  
2 8, section 11000 *et seq.*

3 ***FAILURE TO PAY MINIMUM WAGES***

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

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

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

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

18 45. The applicable wage orders and California Labor Code sections 1197 and 1182.12  
19 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by  
20 state law.

21 46. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not  
22 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid  
23 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount  
24 equal to the unpaid wages and interest accrued thereon.

25 47. During all relevant periods, the California Labor Code and wage orders required that  
26 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all  
27 hours worked.

28 48. The IWC Wage Orders define "hours worked" as "the time during which an

1 employee is subject to the control of an employer, and includes all the time the employee is suffered  
2 or permitted to work, whether or not required to do so.”

3 49. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours  
4 for which they were not paid because Defendants frequently required Plaintiff and the Aggrieved  
5 Employees to work off the clock.

6 50. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the  
7 Aggrieved Employees were working off the clock and that they should have been paid for this time.

8 51. In addition, Defendants failed to pay at least minimum wage for all hours worked  
9 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the  
10 Aggrieved Employees’ interests.

11 52. Defendant’s policy and practice of not paying all minimum wages violates  
12 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the  
13 applicable wage order 4-2001, 7-2001 and 9-2001.

14 ***FAILURE TO PAY OVERTIME OWED***

15 53. During all relevant periods, Defendant required Plaintiff and the Aggrieved  
16 Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty  
17 (40) hours per workweek.

18 54. During all relevant periods, both the California Labor Code sections 1194, 1197,  
19 510, 1198, and the pertinent wage order 4-2001, 7-2001 and 9-2001 required that all work  
20 performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work  
21 in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-  
22 half (1.5) times the employee’s regular rate of pay. Any work in excess of twelve (12) hours in one  
23 (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an  
24 employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a  
25 workweek is required to be compensated at the rate of no less than twice the regular rate of pay of  
26 an employee.

27 55. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff  
28 and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess

1 of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5)  
2 times their regular rate of pay. Upon information and belief, Defendants also failed to properly  
3 compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours  
4 in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

5 56. The IWC Wage Orders define “hours worked” as “the time during which an  
6 employee is subject to the control of an employer, and includes all the time the employee is suffered  
7 or permitted to work, whether or not required to do so.”

8 57. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours  
9 for which they were not paid because Plaintiff and the Aggrieved Employees were required to work  
10 off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of  
11 forty (40) hours in a workweek and should have been paid at the overtime rate.

12 58. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the  
13 Aggrieved Employees were working off the clock and that they should have been paid for this time.

14 59. In addition, upon information and belief, Defendants failed to incorporate all forms  
15 of compensation, including without limitation bonuses, differentials, and incentives, into the  
16 regular rate for overtime purposes.

17 60. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees earned  
18 overtime wages and such employees suffered damages as a result.

19 61. Defendants knew or should have known Plaintiffs and the Aggrieved Employees  
20 were undercompensated as a result of these practices.

21 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

22 62. Pursuant to Labor Code § 512, no employer shall employ an employee for a work  
23 period of more than five (5) hours without providing a meal break of not less than thirty (30)  
24 minutes in which the employee is relieved of all of his or her duties, except that when a work period  
25 of not more than six (6) hours will complete the day’s work the meal period may be waived by  
26 mutual consent of the employer and employee.

27 63. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved  
28 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within

1 the first five hours of a shift.

2 64. As a consequence of Defendants' policies and practices, requirements, demands,  
3 coverage and staffing, Plaintiff and the Aggrieved Employees were often required to forego such  
4 meal periods, take shortened meal periods, and/or commence their meal periods into and beyond  
5 the sixth hour of their shifts.

6 65. In addition, Plaintiff and, upon information and belief, the Aggrieved Employees  
7 were required to carry work-related cellular phones or other communications devices during meal  
8 and rest periods, and were required to remain available. Meal and rest periods were frequently  
9 interrupted as a consequence.

10 66. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid  
11 one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

12 67. Moreover, as a matter of policy and practice, upon information and belief, the  
13 Aggrieved Employees were also not provided second meal periods on days when shifts exceeded  
14 ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal  
15 period. On information and belief, Plaintiff and the Aggrieved Employees did not waive their rights  
16 to a second meal period on shifts in excess of ten hours.

17 68. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved  
18 Employees have been damaged in an amount according to proof at time of trial.

19 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

20 69. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved  
21 Employees' employment by Defendants, "Every employer shall authorize and permit all employees  
22 to take rest periods, which insofar as practicable shall be in the middle of each work period...  
23 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten  
24 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest  
25 period time shall be counted as hours worked, for which there shall be no deduction from wages."

26 70. Labor Code §226.7(a) prohibits an employer from requiring any employee to work  
27 during any rest period mandated by an applicable order of the IWC.

28

1        71.        Defendants were required to authorize and permit employees such as Plaintiff and  
2 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total  
3 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction  
4 thereof, with no deduction from wages.

5        72.        Despite said requirements of the IWC wage orders applicable to Plaintiff's and  
6 Aggrieved Employee's employment with Defendants, Defendants failed and refused to authorize  
7 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for  
8 every four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were  
9 frequently untimely or less than net ten minutes because of the work requirements imposed by  
10 Defendants, and frequent calls during rest periods.

11       73.        In addition, as detailed above, Plaintiff and the Aggrieved Employees were required  
12 to carry work-related cellular phones or other communications devices during meal and rest  
13 periods, and were required to remain available. Meal and rest periods were frequently interrupted  
14 as a consequence.

15       74.        Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay  
16 for each day that a rest period violation occurred. On information and belief, the other members of  
17 the Aggrieved Group endured similar violations as a result of Defendants' rest period policies and  
18 practices and Defendant did not pay said Aggrieved Employees premium pay as required by law.

19       75.        By their failure to authorize and permit Plaintiff and the Aggrieved Employees to  
20 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major  
21 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour  
22 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other  
23 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and  
24 by their failure to provide compensation for such unprovided rest periods as alleged herein,  
25 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC  
26 Wage Order(s).

27                    ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***  
28                    ***EMPLOYMENT***

1           76.     Labor Code section 204 requires that all wages are due and payable twice in each  
2 calendar month.

3           77.     The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became  
4 due and payable to each employee in each month that he or she was not provided with a meal period  
5 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

6           78.     Defendants violated Labor Code § 204 by systematically refusing to pay wages due  
7 under the Labor Code.

8           79.     Labor Code section 210 (a) provides that “In addition to, and entirely independent  
9 and apart from, any other penalty provided in this article, every person who fails to pay the wages  
10 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and  
11 1197.5, shall be subject to a penalty as follow:

12           (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each  
13 employee.

14           (2) For each subsequent violation, or any willful or intentional violation, two hundred  
15 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount  
16 unlawfully withheld.

17                   ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

18           80.     Labor Code §§ 201 and 202 require Defendants to pay their employees all wages  
19 due within seventy-two (72) hours of separation of employment.

20           81.     Section 203 of the Labor Code provides that if an employer willfully fails to timely  
21 pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages  
22 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30  
23 days of wages.

24           82.     Plaintiff and Aggrieved Employees are entitled to compensation for all forms of  
25 wages earned, including but not limited to minimum wages, overtime, and premium meal and rest  
26 period compensation, but to date have not received such compensation, therefore entitling them to  
27 Labor Code § 203 penalties.

28           83.     In addition, irrespective of any derivative violation, Defendants failed to timely pay

1 Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the  
2 time of termination despite their obligations under Labor Code 201 and 202.

3 84. More than thirty (30) days have passed since affected Aggrieved Employees have  
4 left Defendants' employ, and on information and belief, they have not received payment pursuant  
5 to Labor Code § 203.

6 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

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

9 86. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved  
10 Employees for necessary expenditures incurred in direct consequence of the discharge of his or  
11 her duties.

12 87. Plaintiff and the members of the Aggrieved Group were required to incur expenses  
13 in the performance of their assigned job duties.

14 88. Upon information and belief, the Defendants did not reimburse Plaintiff or the  
15 Plaintiff's Aggrieved Group for such expenses.

16 89. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'  
17 Aggrieved Employees have been deprived of un-reimbursed sums in amounts to be determined at  
18 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,  
19 attorneys' fees, and costs, pursuant to Labor Code §2802.

20 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***

21 ***EMPLOYEE WAGE STATEMENT PROVISIONS***

22 90. Labor Code section 226(a) reads in pertinent part: "Every employer shall,  
23 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either  
24 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately  
25 when wages are paid by personal check or cash, an accurate itemized statement in writing  
26 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...  
27 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
28 name of the employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and address of  
2 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the  
3 pay period and the corresponding number of hours worked at each hourly rate by the  
4 employee....”.

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

10 92. Labor Code section 1174 of the California also requires Defendants to maintain  
11 and preserve, in a centralized location, among other items, records showing the names and  
12 addresses of all employees employed and payroll records showing the hours worked daily by, and  
13 the wages paid to, its employees. On information and belief and based thereon, Defendants have  
14 knowingly and intentionally failed to comply with Labor Code section 1174, including by  
15 implementing the policies and procedures and committing the violations alleged in the preceding  
16 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is  
17 unlawful pursuant to Labor Code section 1175.

18 93. Defendants have failed to record many of the items delineated in applicable  
19 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section  
20 1174, including by virtue of the fact that each wage statement which failed to accurately  
21 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-  
22 provided meal and rest periods, or which failed to include compensation for all minimum wages  
23 earned or overtime hours worked, was an inaccurate wage statement. In addition, the wage  
24 statements inaccurately stated totals hours worked and hours worked at each hourly wage rate.

25 94. On information and belief, Defendants failed to implement and preserve a lawful  
26 record-keeping method to record all non-provided meal and rest periods owed to employees or all  
27 hours worked, as required for Non-Exempt Employees under California Labor Code section 226  
28 and applicable California Wage Orders. In order to determine if they had been paid the correct

1 amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been, would have  
2 been, and are compelled to try to discover the required information missing from their wage  
3 statements and to perform complex calculations in light of the inaccuracies and incompleteness of  
4 the wage statements Defendants provided to them.

5 95. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC  
6 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved  
7 Group with an accurate itemized statement in writing accurately reflecting all of the required  
8 information. Here, Plaintiff asserts the Defendant omitted required information, failed to  
9 accurately include all applicable hourly rates on the wage statements and the corresponding  
10 number of hours worked at such rates or hours paid at such rates. In addition, Defendants have  
11 failed to provide accurate itemized wage statements as a consequence of the above-specified  
12 violations for failure to accurately pay all wages owed, accurately record all hours worked, and  
13 failure to pay meal and rest period premiums as required by law.

14 96. Moreover, upon information and belief, as a pattern and practice, in violation of  
15 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain  
16 accurate records pertaining to the total hours worked for Defendants by the members of the  
17 Aggrieved Group, including but not limited to, beginning and ending of each work period, meal  
18 period and split shift interval, the total daily hours worked, and the total hours worked per pay  
19 period and applicable rates of pay.

20 97. Plaintiffs and the members of the Aggrieved Group have suffered injury as a result  
21 of Defendants' failure to maintain accurate records for the members of the Aggrieved Group in  
22 that the members of the Aggrieved Group were not timely provided written accurate itemized  
23 statements showing all requisite information, such that the members of the Aggrieved Group were  
24 misled by Defendants as to the correct information regarding various items, including but not  
25 limited to total hours worked by the employee, net wages earned and all applicable hourly rates in  
26 effect during the pay period and the corresponding number of hours worked at each hourly rate.

27 98. Pursuant to Labor Code section 226, and in light of Defendants' violations  
28 addressed above, Plaintiff and the Wage Statement Aggrieved Employees are each entitled to

1 recover up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys'  
2 fees.

3 ***FAILURE TO KEEP ACCURATE RECORDS***

4 99. IWC Wage Orders 4-2001, 7-2001, and 9-2001 requires in pertinent part: Every  
5 employer shall keep accurate information with respect to each employee including the following:  
6 (3) Time records showing when the employee begins and ends each work period. Meal periods,  
7 split shift intervals, and total daily hours worked shall be records...(5) Total hours worked in the  
8 payroll period and applicable rate of pay..."

9 100. Labor Code section 1174 also requires Defendants to maintain and preserve in a  
10 centralize location, among other items, records showing the names and addresses of all employees  
11 employed and payroll records showing the hours worked daily by, and the wages paid to, its  
12 employee.

13 101. On information and belief and based thereon, Defendants have knowingly and  
14 intentionally failed to comply with Labor Code section 1174, including by implementing the  
15 policies and procedures and committing the violations alleged in the complaint, including without  
16 limitation failing to keep records of meal periods and all wages earned at the proper rates.

17 102. Defendants' failure to comply with Labor Codde section 1174 is unlawful pursuant  
18 to Labor Code section 1175.

19 ***FAIURE TO PAY SICK PAY AT THE PROPER RATE***

20 103. Plaintiff further contends that Defendants failed to pay sick leave pay to Plaintiff  
21 and the Aggrieved Employees at the proper rate.

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

25 105. Labor Code section 246(l) provides: "For the purposes of this section, an employer  
26 shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for  
27 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the  
28 workweek in which the employee uses paid sick time, whether or not the employee actually

1 works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated  
2 by dividing the employee's total wages, not including overtime premium pay, by the employee's  
3 total hours worked in the full pay periods of the prior 90 days of employment."

4 106. In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper  
5 rate because it failed to take all forms of compensation, including incentives, bonuses, shifts  
6 differentials, and other wages into account in calculating the regular rate. This constitutes a  
7 violation of the Labor Code.

### 8 **CAUSES OF ACTION**

#### 9 **FIRST CAUSE OF ACTION**

#### 10 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004,**

#### 11 **LABOR CODE SECTION 2698 ET SEQ.**

12 107. Plaintiff incorporates by reference each and every paragraph above, and realleges  
13 each and every allegation contained above as though fully set forth herein.

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

19 109. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as  
20 he was employed by Defendants during the statutory period and suffered one or more of the  
21 Labor Code violations set forth herein. He seeks to recover of himself and all other current and  
22 former aggrieved employees of Defendants the civil penalties provided by PAGA, plus  
23 reasonable attorneys' fees and costs.

24 110. 65 days have passed, and no response has been received from the LWDA.  
25 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

26 111. Plaintiff has exhausted all administrative procedures required of them under the  
27 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing  
28 forward this cause of action.

1           112. Pursuant to Labor Code section 2699(a), Plaintiff seeks to recover civil penalties  
2 for which Defendants are liable due to numerous Labor Code violations as set forth in this  
3 Complaint.

4           113. Plaintiff seeks to recover the PAGA civil penalties through a representative action  
5 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.  
6 4<sup>th</sup> 969. Class certification of the PAGA claims is not required.

7           114. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover  
8 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order  
9 violations as set forth in this Complaint.

10          115. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek  
11 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 12           a. Defendants' failure to comply with the requirement of Labor Code §1182.12,  
13           1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every  
14           hour worked;
- 15           b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,  
16           1197, 1198, and Wage Orders to accurately pay all wages earned including  
17           overtime wages;
- 18           c. Defendants' failure to comply with the requirement of Labor code §216 to pay  
19           wages after demand was made;
- 20           d. Defendants' failure to comply with the requirement of Labor Code §§204 and  
21           210 to pay, without condition and within the time set by the applicable article,  
22           all wages, or parts thereof;
- 23           e. Defendants' failure to comply with the requirement of Labor Code §225.5 to  
24           pay wages due;
- 25           f. Defendants' failure to comply with the requirement of Labor Code §§201 and  
26           202 to pay wages due to former employees;
- 27           g. Defendants' failure to comply with the requirement of Labor Code §203 to pay  
28           waiting time penalties to former employees;

- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes off duty meal periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendants' failure to reimburse necessary expenses under Labor Code §2802;
- n. Defendants' failure to pay sick leave at the proper rate in under Labor Code §246(l);
- o. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders for the above-specified violations, and failure to maintain accurate clock in and out times;

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

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

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- unlawfully withheld.
- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226(a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on behalf of an employer who violated, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.
- d. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

1 e. Pursuant to Labor Code § 1174.5, for violations of Labor Code  
2 §1174(d), Defendants are subject to a civil penalty of five hundred  
3 dollars (\$500).

4 117. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under  
5 Labor Code §2698 et seq. and 2699 because of Defendants' violation of numerous provisions of  
6 the California Labor Code and IWC Wage Orders.

7 118. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100  
8 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions  
9 of the California Labor Code.

10 119. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded  
11 twenty-five (25%) of all penalties due under California law, interest, attorneys' fees and costs.

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

14  
15 **PRAYER FOR RELIEF**

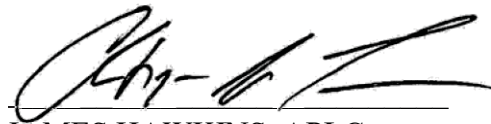
16 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as  
17 follows:

- 18 1. For penalties according to proof, pursuant to Labor Code §§2698, et seq. for the  
19 violations specified above;
- 20 2. For penalties under Labor Code section 210, 266.3, 1174.5, 1197.1, 2802 and 2699(a)  
21 and (f);
- 22 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, California Civil  
23 Code §§ 3287, 3288, and/or any other applicable provisions providing for pre-  
24 judgment interest;
- 25 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,  
26 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions  
27 providing for attorneys' fees and costs; and  
28

1           5. For such other and further relief as the Court deems proper.  
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4                               Respectfully submitted,  
5

6  
7       Dated: January 6, 2022



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

10                              Attorneys for MARK CERVANTEZ, on behalf of himself  
11                              and all others similarly situated  
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## **EXHIBIT A**

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

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

September 24, 2021

**Via Online Filing (LWDA) and Certified Mail (Employers)**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Genuine Parts Company  
2999 Wildwood Parkway  
Atlanta, GA 30339  
Certified Mail Receipt: 7018 1130 0001  
8270 3039

Agent for Service of Process for  
Genuine Parts Company:  
CT Corporation System  
330 N. Brand Blvd., Suite 700  
Glendale, CA 91203  
Certified Mail Receipt: 7018 1130 0001  
8270 3046

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Mark Cervantez, individually and on behalf of all others similarly situated, gives NOTICE of his intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants Genuine Parts Company, a Georgia Corporation doing business as NAPA Auto Parts, (“Defendant”) via their agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff began his employment with Defendants on or about June 25, 2019, and continued such employment through December 18, 2020. He worked at Defendants’ retail location in the City of Glendora, California. Plaintiff was employed by Defendants in the position of Delivery Driver.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working in Defendants’ locations in the State of California during the relevant time period (“Aggrieved Employees”) as tolled by Emergency Rule 9. 1 This notice is timely as it

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1 This group is referred to as the “Class Member” group in the Complaint (with the relevant time period modified to account for the PAGA statute of limitations).

September 24, 2021

is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act of 2004 (and the relevant time period), is tolled by operation of law under Emergency Rule 9 due to COVID-19 pandemic.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

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

Plaintiff claims that Defendants implemented legally non-compliant policies and practices which led to Defendants' (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions; (8) failure to reimburse necessary expenses; and (9) violation of the Unfair Competition Law.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and Aggrieved Employees to work off the clock. Plaintiff and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

During the relevant periods, Defendant required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent

September 24, 2021

wage order 4-2001, and 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to 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 (8) hours on any seventh (7<sup>th</sup>) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee. Defendants failed to incorporate all forms of compensation, including without limitation non-discretionary bonuses, differentials, and incentives, into the regular rate for overtime purposes. Thus, employees were undercompensated in violation of the law.

In addition, as set forth above, Plaintiff and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

Plaintiff alleges he and the aggrieved employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiff claims that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 7-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiff and all other aggrieved employees meal periods of not less than thirty (30) minutes. Due to work demands, staffing shortages, Defendant's policies and practices, and scheduling requirements, Plaintiff and the aggrieved employees were often interrupted or not provided legally compliant meal periods in violation of the law. Plaintiff is also informed and believes that Defendant unlawfully changed time records in some instances to reflect breaks that were not taken. Moreover, as a matter of Defendant's policy and practice, second meal periods were not provided to Plaintiff and the Aggrieved Employees on shifts over 10 hours without a lawful waiver.

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 7, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 7. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and policies and practices, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

In addition, aggrieved employees were required to carry communications devices. Defendant's exercise of control over the aggrieved employees during periods of rest is inconsistent with the mandates of the Labor Code and Wage Order, as set forth in *Augustus v. ABM*, 2 Cal. 5th 257, 261 (2016). The law is clear that rest periods must be "duty free" and to provide a compliant rest period, employers must "relieve their employees of all duties" during their breaks and must "relinquish any control over how employees spend their break time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

Defendants further violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of pay when lawful meal periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the violations set forth in Plaintiff's attached complaint, including the failure to pay one hour of premium pay at the employee's regular rate of pay for non-provided meal and rest breaks. In addition, the wage statements failed to indicate the relevant pay periods for certain additional compensation earned. Further, wage statements also omitted Total Hours worked from wage statements, and some pay rates, differentials, and hours are missing from wages statements.

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 7-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay...." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

September 24, 2021

Under California Labor Code §2802, an employee is entitled to be reimbursed by his or her employer “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Here, Defendants failed to reimburse Mr. Cervantez for all expenses incurred in the discharge of his duties, including but not limited to cell phone usage and GPS related expenses. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage, overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiff further alleges that, regardless of any underlying failure to pay wages or premiums, he and the Aggrieved Employees were not paid all earned wages on the date of termination as a matter of Defendants’ pattern and practice.

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

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

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

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.