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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NATALIE N. MARTINEZ, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

DICK'S SPORTING GOODS, INC., a
Delaware corporation; LARRY MARSH, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **22STCV17283**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW Plaintiff NATALIE M. MARTINEZ ("Plaintiff"), as aggrieved employees,
and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General
Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General
Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against DICK'S SPORTING

1 GOODS, INC., a Delaware corporation, and any of its respective subsidiaries or affiliated
2 companies within the State of California (“DICK’S”); LARRY MARSH and any of his respective
3 subsidiaries or affiliated companies within the State of California (“MARSH”), and with and DOES
4 1 through 100, as further defined below, “Defendants”) as a proxy of the Labor and Workforce
5 Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other
6 current and former non-exempt employees of Defendants working within the Civil Penalty Period,
7 as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor
8 Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3,
9 Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing
10 and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty
11 Period (collectively, “Aggrieved Employees”).

12 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10.

14 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
15 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
16 causes of action complained of herein arose; the county in which the employment relationship
17 began; the county in which performance of the employment contract, or part of it, between Plaintiff,
18 or some of them, and Defendants was due to be performed; the county in which the employment
19 contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed;
20 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
21 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because
22 Defendants employ numerous Class Members in Los Angeles County.

23 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor Code
25 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
26 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
27 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
28 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former

employees of Defendants during the Civil Penalty Period.

5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

6. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

8. On or around December 21, 2021, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the December 21, 2021 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime

1 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
2 worked; engaging, suffering, or permitting employees to work off the clock, including, without
3 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
4 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
5 answering calls from dispatch and others), to clock out for meal periods and continue working, to
6 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
7 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
8 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
9 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
10 additional compensation was earned for the purpose of calculating the overtime rate of pay; and
11 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
12 less hours than actually worked, to the detriment of Plaintiff and other Aggrieved Employees.

13 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
14 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
15 worked or otherwise under Defendants' control as a result of, without limitation, failing to
16 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
17 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
18 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
19 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
20 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
21 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
22 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
23 failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved Employees.

24 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
26 timely, and complete meal period for days on which the employee worked in excess of five (5) and
27 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
28 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;

1 not providing timely meal periods; failing to provide first and second meal periods; providing short
2 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
3 periods; not permitting employees to leave the premises; and otherwise requiring on-duty/on-call
4 meal periods, as required by California wage and hour laws.

5 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
7 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
8 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
9 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
10 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
11 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
12 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

13 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
15 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
16 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
19 entity securing the employer's services if the employer is a farm labor contractor; and other such
20 information as required by Labor Code section 226, subdivision (a).

21 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
23 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
24 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
25 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
26 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
27 Aggrieved Employees.

28 16. At all relevant times mentioned herein, Defendants had and have a policy or practice

1 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
2 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
3 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
4 Code sections 201, 202, and 203.

5 17. At all relevant times mentioned herein, Defendants have had a policy or practice of
6 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
7 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
8 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
9 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
10 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
11 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
12 of Defendants, as required by Labor Code 2802.

13 18. At all relevant times herein, Defendants had and have a policy or practice of failing
14 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
15 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
16 and applicable Wage Orders.

17 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
18 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
19 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
20 Employees with the rates of pay and overtime rates of pay applicable to their employment;
21 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
22 name, address, and telephone number of the workers' compensation insurance carrier; information
23 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
24 under Labor Code section 2810.5.

25 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
26 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
27 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
28 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and

1 all other Aggrieved Employees.

2 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
3 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
4 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
5 any calendar month shall be paid for between the 16th and 26th day of the month during which the
6 labor was performed, and labor performed between the 16th and the last day, inclusive of any
7 calendar month, shall be paid for between the 1st and 10th day of the following month.”

8 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
10 and experience they obtained at Defendants for purposes of competing with Defendants, including,
11 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
12 a prospective employer, and from disclosing who else works at Defendants and under what
13 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
14 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
15 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
16 Code sections 232, 232.5, and 1197.5, subdivision (k).

17 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
18 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
19 to their managers or outside to private attorneys or government officials, among others, in violation
20 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
21 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
22 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
23 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
24 of Labor Code section 232 and 232.5.

25 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
27 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
28 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,

1 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
2 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
3 economic liberty.

4 25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
5 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
6 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
7 Employees pursuant to PAGA.

8 **PARTIES**

9 **A. Plaintiff**

10 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
11 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
12 exempt employee, with duties that included, but were not limited to, customer service, payroll,
13 training, and managing the storefront. Plaintiff is informed and believes that Plaintiff worked for
14 Defendants from approximately October of 2019 through at least August of 2021

15 **B. Defendants**

16 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant DICK'S
17 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
18 the laws of the State of Delaware and doing business in the County of Los Angeles, State of
19 California.

20 28. Plaintiff is informed and believes, and based thereon alleges, that Defendant
21 MARSH is, and at all times relevant hereto was, an individual organized and existing under and by
22 virtue of the laws of the State of Delaware and doing business in the County of Los Angeles, State
23 of California.

24 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
25 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
26 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
27 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
28 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.

1 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
2 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
3 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
4 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
5 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
6 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
7 include DICK’S SPORTING GOODS, INC., a Delaware corporation; LARRY MARSH, an
8 individual and any of their parent, subsidiary, or affiliated companies within the State of California,
9 as well as DOES 1 through 100 identified herein.

10 **JOINT LIABILITY ALLEGATIONS**

11 30. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 mentioned herein, each of the defendants was the agent, principal, employee, employer,
13 representative, joint venture or co-conspirator of each of the other defendants, either actually or
14 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
15 employment, joint venture, and conspiracy.

16 31. All of the acts and conduct described herein of each and every corporate defendant
17 was duly authorized, ordered, and directed by the respective and collective defendant corporate
18 employers, and the officers and management-level employees of said corporate employers. In
19 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
20 their said employees, agents, and representatives, and each of them; and upon completion of the
21 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
22 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
23 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
24 aforementioned corporate employees, agents and representatives.

25 32. Plaintiff is informed and believes, and based thereon alleges, that despite the
26 formation of the purported corporate existence of DICK’S, and DOES 1 through 50, inclusive (the
27 “Alter Ego Defendants”), they, and each of them, are one and the same with MARSH and DOES
28 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following

1 reasons:

- 2 a. The Alter Ego Defendants are completely dominated and controlled by the
3 Individual Defendants who personally committed the wrongful and illegal acts
4 and violated the laws as set forth in this Complaint, and who have hidden and
5 currently hide behind the Alter Ego Defendants to perpetrate frauds,
6 circumvent statutes, or accomplish some other wrongful or inequitable
7 purpose;
- 8 b. The Individual Defendants derive actual and significant monetary benefits by
9 and through the Alter Ego Defendants' unlawful conduct, and by using the
10 Alter Ego Defendants as the funding source for the Individual Defendants'
11 own personal expenditures;
- 12 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
13 Defendants and the Alter Ego Defendants, while really one and the same, were
14 segregated to appear as though separate and distinct for purposes of
15 perpetrating a fraud, circumventing a statute, or accomplishing some other
16 wrongful or inequitable purpose;
- 17 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
18 of the Individual Defendants and the Alter Ego Defendants are, and at all
19 relevant times mentioned herein were, so mixed and intermingled that the
20 same cannot reasonably be segregated, and the same are inextricable
21 confusion. The Alter Ego Defendants are, and at all relevant times mentioned
22 herein were, used by the Individual Defendants as mere shells and conduits
23 for the conduct of certain of their, and each of their affairs. The Alter Ego
24 Defendants are, and at all relevant times mentioned herein were, the alter egos
25 of the Individual Defendants;
- 26 e. The recognition of the separate existence of the Individual Defendants from
27 the Alter Ego Defendants would promote injustice insofar that it would permit
28 these defendants to insulate themselves from liability to Plaintiffs for

1 violations to the Civil Code, Government Code, and other statutory violations.
2 The corporate existence of these defendants should thus be disregarded in
3 equity and for the ends of justice because such disregard is necessary to avoid
4 fraud and injustice to Plaintiff herein;

5 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
6 Individual Defendant (and vice versa), and the fiction of their separate
7 corporate existence must be disregarded.

8 33. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
9 thereon alleges that Defendants, and each of them, are joint employers.

10 **FIRST CAUSE OF ACTION**

11 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

12 34. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
13 and incorporates each by reference as though fully set forth hereat.

14 **Civil Penalties Under Labor Code § 210**

15 35. At all relevant times herein, Labor Code section 204, requires and required that:
16 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
17 between the 16th and 26th day of the month during which the labor was performed, and labor
18 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
19 between the 1st and 10th day of the following month.”

20 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
21 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
22 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
23 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
24 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
25 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
26 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

27 37. At all relevant times herein, Defendants have had a consistent policy or practice of
28 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as

1 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
2 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
3 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
4 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
5 for each subsequent violation in connection with each payment that was made in violation of Labor
6 Code section 204.

7 Civil Penalties Under Labor Code § 226.3

8 38. Defendants had and have a policy or practice of failing to comply with Labor Code
9 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
10 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
11 wages earned; the name and address of each employer with whom they have been placed to work;
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
14 entity securing the employer's services if the employer is a farm labor contractor; and other such
15 information as required by Labor Code section 226, subdivision (a).

16 39. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
17 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
18 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
19 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
20 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

21 40. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
22 this section are in addition to any other penalty provided by law."

23 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
26 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
27 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
28 name of the employer and/or the name and address of the legal entity securing the employer's services

1 if the employer is a farm labor contractor; and other such information as required by Labor Code
2 section 226, subdivision (a).

3 42. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
4 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
5 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
6 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
7 period for each subsequent violation.

8 Violation of Labor Code § 558

9 43. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
10 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
11 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
12 penalty as follows:

13 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
14 pay period for which the employee was underpaid in addition to an amount sufficient
15 to recover underpaid wages;

16 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
17 employee for each pay period for which the employee was underpaid in addition to
18 an amount sufficient to recover underpaid wages;

19 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

20 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
21 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
22 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
23 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
24 regular payday designated by employer, the name of the employer, including any "doing business
25 as" names used, the name, address, and telephone number of the workers' compensation insurance
26 carrier, information regarding paid sick leave, and other pertinent information.

27 45. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover

1 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
2 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
3 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

4 Violation of Labor Code § 1174.5

5 46. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
6 every person employing labor in California to "[a]llow any member of the commission or the
7 employees of the Division of Labor Standards Enforcement free access to the place of business or
8 employment of the person to secure any information or make any investigation that they are
9 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
10 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
11 or papers of the person."

12 47. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
13 every person employing labor in California to "[k]eep a record showing the names and addresses of
14 all employees employed and the ages of all minors."

15 48. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
16 every person employing labor in California to "[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
19 piece rate paid to, employees employed at the respective plants or establishments. These records
20 shall be kept in accordance with rules established for this purpose by the commission, but in any
21 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
22 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
23 earned."

24 49. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully
25 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
26 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
27 member of the commission or employees of the division to inspect records pursuant to subdivision
28 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

51. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

Violation of Labor Code § 1197.1

52. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

- (1) 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific 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 is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to

1 Section 203, recovered pursuant to this section shall be paid to the affected
2 employee.”

3 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
4 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
5 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
6 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
7 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
8 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
9 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
10 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

11 54. As a direct and proximate result of the herein-described Labor Code violations,
12 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
13 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
14 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
15 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
16 subsequent violation.

17 Civil Penalties Under Labor Code § 2699

18 55. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
19 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
20 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
21 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Labor Code section 2699.3.

24 56. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
25 Code except those for which a civil penalty is specifically provided, the established civil penalty for
26 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.

2 57. Plaintiff is informed and believes and based thereon alleges that Defendants, and
3 each of them, violated the Labor Code sections described herein, including, without limitation, for
4 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
5 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
6 name of the employer, including “doing business as” names used, the name, address, and telephone
7 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
8 other pertinent information required to be disclosed by Defendants under Labor Code section
9 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
10 leave required to be provided pursuant to California and local laws.

11 58. Moreover, Plaintiff and other Aggrieved Employees within the State of California
12 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
13 connection with their herein-described claims for civil penalties.

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