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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ILSE ROBLES, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

FUNDACION MONTE DE PIEDAD;
ANZAR ENTERPRISES, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2021-00052808-CU-OE-CTL

Assigned to the Hon. Richard S. Whitney,
Dept. C-68

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Sick Leave Violations
9. Violations of the Unfair Competition Law
10. – 19. Claims for Civil Penalties under the
Labor Code Private Attorneys General Act of
2004 (PAGA)

Action Filed: December 17, 2021
Trial Date: Not Set

1 Plaintiff ILSE ROBLES (“Plaintiff”), on behalf of a class of all other similarly situated
2 current and former employees of the State of California, brings this class and representative action
3 against Defendants FUNDACION MONTE DE PIEDAD; ANZAR ENTERPRISES; and DOES 1
4 through 50 (collectively, “Defendants”), alleging as follows¹:

5 **INTRODUCTION**

6 1. This is a class and representative action filed for wage and hour violations of the
7 California Labor Code. Defendants own and operate more than one dozen pawn shops.
8 Defendants miscalculated and underpaid overtime wages because of an inaccurate regular rate of
9 pay calculation method that occurred as a matter of company-wide payroll practice. Defendants
10 did not pay Labor Code § 226.7 premiums at the regular rate of compensation for non-compliant
11 meal periods and rest periods, including late, short, and missed meal periods which are evident on
12 the face of Defendants’ employment and payroll records. Defendants maintained an unlawful On-
13 Duty Meal Period Agreement and did not reimburse mileage for travel by employees between
14 store locations. Defendants failed to pay paid sick leave and supplemental sick leave at the
15 required regular rate calculation, and instead paid those wages based on straight time hourly rates
16 (and multiples). As a result of these violations, Defendants failed to timely pay Plaintiff and Class
17 Members each pay period on paydays and upon separation of employment, and thus are liable for
18 waiting time and other statutory penalties, in addition to the underlying wages, premiums,
19 attorneys’ fees, interest and reasonable litigation costs. Plaintiff also seeks to recover civil
20 penalties under the PAGA for Defendants’ violation of the California Labor Code.

21 2. Defendants’ employment policies and practices and payroll administration systems
22 enabled and facilitated these violations on a company-wide basis with respect to the Class
23 Members.

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27 ¹ Plaintiff amends the original complaint without leave of court pursuant to Labor Code § 2699.3(a)(2)(C),
28 which states “[n]otwithstanding any other provision of law [including C.C.P. § 472], a plaintiff may as a matter of right
amend an existing complaint to add a cause of action arising under this part [Labor Code § 2698 et seq.] at any time
within 60 days of the time periods specified in this part [i.e., after the 65-day notice period has expired].”

JURISDICTION & VENUE

3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution.

4. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

PARTIES

A. The Plaintiff Ilse Robles

5. Plaintiff ILSE ROBLES is an individual over 18 years of age who worked for Defendants in San Diego County as an hourly, non-exempt employee.

6. Plaintiff was employed in San Diego County until her employment ended in November 2021.

B. The Defendants

7. Throughout the relevant statutory limitations periods, each of the defendants was a legal employer of Plaintiff and Class Members.

8. Plaintiff is informed, believes, and alleges that Defendant FUNDACION MONTE DE PIEDAD is a corporation incorporated in the State of California, doing business and employing labor throughout San Diego, California.

9. Plaintiff is informed, believes, and alleges that Defendant ANZAR ENTERPRISES, INC. is a corporation incorporated in the State of California, doing business and employing labor throughout San Diego, California.

10. Plaintiff is informed, believes, and alleges that no class action asserting similar factual allegations has been filed against any of the named defendants within the preceding three years, that the defendants and more than two-thirds of Class Members are citizens of California.

11. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the fictitious defendants is responsible in some manner for the acts and

omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

12. Plaintiff is informed, believes, and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship.

13. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein. Defendants operate as employers of the Class in their operation of the Monte de Piedad pawn shops.

14. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

15. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the Class of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

GENERAL ALLEGATIONS

16. When Defendants paid overtime to Plaintiff and other Class Members, Defendants failed to pay the overtime at the lawful regular rate of pay. Plaintiff and other Class Members regularly worked overtime and earned commissions, bonuses, and/or other forms of remuneration in the same pay period. In those pay periods, Defendants paid employees at the straight time hourly rate for the overtime hours, failing to pay overtime hours “at the rate of no less than one

1 and one-half times the regular rate of pay for an employee[.]” or “at the rate of no less than twice
2 the regular rate of pay for an employee” for any applicable double time hours, as required by
3 Labor Code section 510 and the IWC Wage Orders. Plaintiff’s two paystubs for the pay period of
4 06/28/2021 through 07/04/2021 show that she was paid \$452.90 in “Sales Commissions” and also
5 worked overtime. Yet, she was paid an overtime rate of \$26.25, which is 1.5x multiple of her
6 \$17.50 base hourly rate. This just one illustrative example of Defendants’ class-wide unlawful
7 regular rate calculation, and results in liability for the overtime, civil and statutory penalties,
8 interest, and waiting time penalties for each affected Class Member.

9 17. Defendants failed to consistently provide timely, off-duty 30-minute meal periods
10 to Class Members within the first five hours of work, and timely second off-duty 30-minute meal
11 periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections
12 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v. Loews*
13 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are synonymous:
14 “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section
15 510(a), encompasses all nondiscretionary payments, not just hourly wages.”]) “[T]ime records
16 showing noncompliant meal periods raise a rebuttable presumption of meal period violations,
17 including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58,

18 18. Instead, Defendants maintained an unlawful On-Duty Meal Period Agreement that
19 erroneously stated that because shops only had two employees, employees were required to take
20 on-duty meals. This does not comply with California law because the nature of the work at the
21 pawn shops did not prevent employees from taking duty-free meal periods. (*See, e.g., Augustus v.*
22 *AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-76.) Plaintiff also revoked the On-Duty
23 Meal Period Agreement the same day she signed the Agreement, yet was held to its terms in
24 violation of California law.

25 19. When Defendants did not provide fully compliant meal periods, Defendants failed
26 to pay Class Members a meal period premium at the regular rate of compensation in violation of
27 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) Defendants’ policy and practice of not
28 paying all meal period premiums at the lawful rate (*i.e.*, including all forms of remuneration in the

1 “regular rate of compensation”) is a matter of common corporate policy and payroll administration
2 such that it applies and affected all other Class Members and are evident from the time records
3 maintained by Defendants, which show late, short and missed meal periods without an associated
4 meal period premium at the lawful rate on the corresponding employee wage statement.

5 20. Moreover, Defendants failed to authorize or permit ten-minute rest periods for
6 every four hours of work or major fraction thereof as required by Labor Code section 226.7 and
7 516 and section 12 of the applicable IWC Wage Order. When Defendants did not provide a fully
8 compliant rest period to Plaintiff or other Class Members, Defendants failed to pay Claimant and
9 other Class Members a rest period premium at the lawful “regular rate of compensation” in
10 violation of Labor Code section 226.7.

11 21. In pay periods where Defendants provided Plaintiff and other Class Members with
12 remuneration in addition to their respective base hourly rate for hours worked (such as sales
13 commissions)—excluding any forms of pay subject to any applicable statutory exclusions from
14 the “regular rate”—Defendants failed to properly calculate and pay paid sick leave at the
15 appropriate regular rate of pay, in violation of Labor Code §§ 246, 248.1, and 248.2. Defendants
16 paid sick leave at employees’ straight time hourly rate instead of one of the methods authorized by
17 statute, which required Defendants to factor in employees additional remuneration, such as
18 commissions.

19 22. Furthermore, Defendants also failed to pay Covid-19 Supplemental Sick Leave at a
20 rate authorized by statute because when paying such leave, Defendants failed to factor in
21 employees’ commissions, bonuses, incentives, and other compensation. On information and
22 belief, Defendants instead paid Supplemental Sick Leave at employees’ straight time hourly rate
23 rather than by one of the methods authorized by Labor Code sections 248.2 and 248.6.

24 23. With respect to the unpaid wages, paid sick, and premiums owed to Plaintiff and
25 Class Members, Defendants failed to pay those wages on time each pay period or upon separation
26 of employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums
27 owed each pay period their employment, Defendants failed to timely pay all wages owed each pay
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1 day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code
2 sections 201 through 203 (waiting time) and 204 and 204b (paydays).

3 24. Additionally, Defendants failed to reimburse Plaintiff and Class Members for
4 mileage and travel between Defendants' store locations that occurred during a single shift.
5 Plaintiff and other Class Members drove from one store to another using their personal vehicles,
6 but were not reimbursed at the IRS mileage or any other rate, in violation of California Labor
7 Code section 2802.

8 25. Defendants equally failed in their affirmative obligation to provide accurate
9 itemized wage statements each pay period to Plaintiff and Class Members. Defendants issued
10 wage statements to Plaintiff and, on information and belief, other Class Members, which contain
11 at least three distinct types of violations.

12 26. First, on each wage statement furnished, Defendants failed to accurately state the
13 "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1) and (5), as
14 Plaintiff and Class Members earned overtime at one and one-half times their regular rate of pay,
15 but were underpaid overtime on an hourly basis (due to the regular rate of pay underpayment), and
16 were deprived of all sick leave and meal and rest period premiums earned at the lawful rate,
17 resulting in an inaccurate itemization of gross and net wages earned on those wage statements.

18 27. Second, on each wage statement furnished to Plaintiff and, on information and
19 belief, the Class Members, Defendants failed to accurately state "all applicable hourly rates in
20 effect during the pay period and the corresponding number of hours worked at each hourly rate by
21 the employee" in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff
22 and Class Members do not accurately list the applicable hourly overtime rate in effect, but instead
23 a deflated overtime rate that does not include all forms of non-excepted remuneration in the
24 regular rate required to calculate and pay overtime.

25 28. Third, Defendants inaccurately listed total hours worked and hours worked at each
26 rate during the pay period, as the wage statements listed time worked in a different format
27 showing minutes (*e.g.*, 48:43) and rendering it difficult to multiply hours worked by pay rate to
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1 arrive at earnings, which is an inaccurate reflection of total hours worked on those corresponding
2 wage statements.

3 29. Defendants' wage statement issues described above rendered the wage statements
4 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
5 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
6 Members as the sole documentary evidence of their respective earnings.

7 30. Plaintiff and Class Members suffered injury in the form of confusion regarding
8 amounts paid for hours worked, and in the form of concealment of the common payroll practices
9 causing the violations and underpayment of wages and wage statement deficiencies as addressed
10 in this Complaint.

11 31. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
12 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
13 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
14 led to believe that the hourly rates and net and gross wages reflected were a complete and accurate
15 reflection of the wages actually earned under California law.

16 32. Defendants' wage statement violations were knowing and intentional as a matter of
17 law with respect to Plaintiff and California Class Members given that the legal obligation was not
18 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
19 Defendants nevertheless failed to comply despite the means and ability to do so.

20 33. Because of the violations set forth in this Complaint, including Defendants' failure
21 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
22 (i.e., unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
23 Wage Orders by failing to maintain records showing accurate daily hours worked at the
24 corresponding wage rate, and the wages paid to each employee.

25 34. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions
26 have knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed,
27 believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and
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IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent with their obligations under California law.

CLASS ACTION ALLEGATIONS

35. ***Class Definition.*** The named individual Plaintiff seeks class certification under California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- a. All individuals currently or formerly employed by Defendants in the State of California as hourly non-exempt employees at any time from **December 17, 2017** through the time of trial in this action (the “Class” or “Class Members” and the “Class Period”).

36. Further, Plaintiff proposes the following subclasses:

- a. All Class Members who separated from employment with Defendants at any time from **December 17, 2018** through the time of trial in this action (the “Waiting Time Subclass”).
- b. All Class Members who received a wage statement from Defendants at any time from **December 17, 2020** through the time of trial in this action (“Wage Statement Subclass”).
- c. All Class Members who received additional forms of compensation that are non-excludable from the regular rate of pay, such as bonuses and commissions, each pay period in which they also worked overtime or double-time hours (the “Regular Rate of Pay Subclass”).
- d. All Class Members who used their personal vehicles to drive for work-related purposes (“Reimbursement Subclass”).
- e. All Class Members who worked shifts of five hours or more without a duty-free meal period of at least 30 minutes or shifts of 10 hours or more without a second 30-minute meal period and, who were not paid one hour of pay at the regular rate of compensation for each of those days (“Meal Period Subclass”).

- 1 f. All Class Members who worked shifts of four hours or major fraction
2 thereof without being authorized or permitted an uninterrupted rest period
3 of at least 10 minutes, who were not paid one hour at the regular rate of
4 compensation for each of those days (“Rest Period Subclass”).
- 5 g. All Class Members who during the Class Period were paid for sick leave or
6 Covid-19 supplemental sick leave and were not paid for such sick leave at a
7 rate authorized by one of the methods provided in the California Labor Code
8 (“Sick Leave Underpayment Class”).
- 9 h. All Class Members who were not paid all regular, overtime, or minimum
10 wages for all hours worked each pay period (“Unpaid Wage Subclass”).
- 11 i. All Class Members who were subject to Defendants’ unlawful or unfair
12 business acts or practices during the Class Period (“UCL Class”).

13 37. Plaintiff reserves the right to move the Court to amend or modify the class
14 definitions and to establish additional classes and subclasses as appropriate.

15 38. **Numerosity.** The members of the Class are so numerous that joinder of all
16 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
17 of Defendants’ employment and payroll records. Plaintiff is informed, believes, and alleges there
18 are more than 40 Class Members.

19 39. **Adequacy of Representation.** Plaintiff is an adequate class representative.
20 Plaintiff will take all necessary steps to adequately and fairly represent and protect the interest of
21 the Class. Plaintiff is represented by attorneys who have substantial experience prosecuting and
22 resolving wage-and-hour class actions in California state and federal courts.

23 40. **Manageability.** This class action is manageable because the liability and damages
24 to Class Members can be ascertained by review of corporate and employer timekeeping and
25 payroll records along with other evidence that Defendants maintained and are required by law to
26 maintain under the California Labor Code, IWC Wage Orders and federal law. This class action is
27 manageable because the contact information and identity of percipient witnesses—namely,
28 Defendants’ employees (the putative class members)—is readily maintained by Defendants.

41. ***Superiority.*** A class action is superior to other means for adjudication of the claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow for the common issues to be resolved in a single forum, simultaneously and without duplication of effort and expense.

42. ***Commonality.*** Common questions of law and fact and a community of interest exists amongst Plaintiff and the Class. These common issues arise from the employment relationship with Defendants and predominate over any individual issues.

43. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members.

44. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

45. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as follows:

a. All current and former non-exempt hourly employees who worked for Defendants in the State of California during the period of **December 10, 2020** through the current date and the date of final judgment in this action at the time of trial (“PAGA Period”).

46. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the Private Attorney General. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]).

47. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the Labor Code violations committed by Defendant and alleged in this Complaint. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.*

1 (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by
2 one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
3 violations committed by that employer.”]).

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

10 49. On **December 10, 2021**, Plaintiff gave written notice by online filing with the
11 LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleges to
12 have been violated, including the facts and theories to support the alleged violations (the “PAGA
13 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
14 Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

15 50. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
16 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
17 actions taken to cure the alleged violations.

18 51. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
19 violations, without any notice to cure from them or notice from the LWDA of its intent to
20 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
21 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

22 52. Any allegations regarding violations of the IWC Wage Orders are enforceable as
23 violations of Labor Code section 1198, which states: “[t]he employment of any employee for
24 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
25 unlawful.”

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Labor Code §§ 510 and 1194**

4 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

5 53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

6 54. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
7 no less than one and one-half times their respective “regular rate of pay” for all hours worked in
8 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
9 seventh day of work in any one workweek, and no less than twice their respective “regular rate of
10 pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
11 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
12 Orders (the “Hours and Days of Work” sections of the applicable orders).

13 55. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
14 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
15 to the full amount of the unpaid overtime wages, in addition to interest, attorneys’ fees, and costs
16 to the extent permitted by law, including under Labor Code section 1194.

17 **SECOND CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **Labor Code §§ 226.7 and 512**

20 56. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

21 57. Defendants willfully failed in their affirmative obligation to consistently provide
22 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
23 beginning before the fifth hour of hour for each work period of more than five hours per day and a
24 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour
25 of work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
26 Periods” sections of the applicable orders).

1 58. Further, Defendants willfully failed in their affirmative obligation to consistently
2 pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of
3 compensation for each workday that a fully compliant meal period was not provided, in violation
4 of Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the “Meal Periods”
5 sections of the applicable orders).

6 59. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of meal
7 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
8 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’
9 fees, and costs to the extent permitted by law, including under Code of Civil Procedure section
10 1021.5.

11 **THIRD CAUSE OF ACTION**
12 **REST PERIOD VIOLATIONS**
13 **Labor Code §§ 226.7 and 516**

14 60. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

15 61. Defendants willfully failed in their affirmative obligation to consistently authorize
16 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less
17 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
18 Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
19 applicable orders).

20 62. Further, Defendants willfully failed in their affirmative obligation to consistently
21 pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of
22 compensation for each workday that a fully compliant rest period was not provided, in violation of
23 Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

24 63. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest
25 periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are
26 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’
27 fees, and costs to the extent permitted by law, including under Code of Civil Procedure section
28 1021.5.

FOURTH CAUSE OF ACTION
UNTIMELY PAYMENT OF WAGES
Labor Code §§ 204, 204b and 210

64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

65. Defendants willfully failed in their affirmative obligation to timely pay all wages, sick leave, and premiums earned by Plaintiff and Class Members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

66. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of timely wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code section 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
Labor Code § 226

67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

68. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code section 226(a).

69. As an initial matter, on information and belief, Plaintiff alleges that Defendants maintained a policy and practice of non-compliance with Labor Code section 226(a)’s statutory mandate by failing to issue or make available wage statements to Class Members each pay period that list any of the information required by Labor Code section 226.

1 70. Moreover, based on the wage statements issue by Defendants, Plaintiff alleges that
2 these wage statements fail to correctly list (1) gross wages earned each pay period, (2) total hours
3 actually worked each pay period, (5) net wages earned, (9) all hourly rates in effect and the total
4 number of hours worked each pay period.

5 71. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
6 accurate itemized wage statements, causing confusion and concealing wage and premium
7 underpayments. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of
8 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee
9 for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee,
10 in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
11 Labor Code section 226(e).

12 **SIXTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **Violation of Labor Code §§ 201 through 203**

15 72. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

16 73. Defendants willfully failed in their affirmative obligation to pay all wages earned
17 and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination
18 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
19 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
20 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

21 74. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
22 wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class
23 are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a
24 waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs
25 to the extent permitted by law.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 75. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 76. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
6 Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in
7 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

8 77. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and
10 the Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class
11 Members in addition to interest, attorneys' fees, and costs to the extent permitted by law,
12 including under Labor Code section 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE PAID SICK LEAVE &**

15 **SUPP. PAID SICK LEAVE**

16 **Labor Code §§ 246 *et seq.***

17 78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 79. Plaintiff brings this cause of action on behalf of the Sick Leave Underpayment
19 Subclass.

20 80. Defendants knowingly and intentionally failed in their affirmative obligation
21 provide and pay paid sick leave and Covid-19 Supplemental Sick Leave to Plaintiff and Class
22 Members in violation of Labor Code section 246.

23 81. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
24 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
25 entitles employees to use any accrued sick leave beginning on their 90th day of employment.
26 Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:
27
28

1 [A]n employer shall calculate paid sick leave using any of the following calculations:

2 (1) Paid sick time for nonexempt employees shall be calculated in the
3 same manner as the regular rate of pay for the workweek in which the employee
4 uses paid sick time, whether or not the employee actually works overtime in that
5 workweek.

6 (2) Paid sick time for nonexempt employees shall be calculated by
7 dividing the employee's total wages, not including overtime premium pay, by the
8 employee's total hours worked in the full pay periods of the prior 90 days of
9 employment.

10 (3) Paid sick time for exempt employees shall be calculated in the same
11 manner as the employer calculates wages for other forms of paid leave time.

12 82. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of the
13 lawful rates set forth in the statute because Defendants failed to include in their calculation the
14 commissions and additional remuneration received by Plaintiff and the Class Members.

15 83. Furthermore, Defendants knowingly and intentionally failed in their affirmative
16 obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation
17 of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6.

18 84. Labor Code section 248.1 requires employers to provide up to 80 hours of Covid-
19 19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31,
20 2020. Labor Code 248.2 requires employers to provide up to 80 hours of Covid-19 Supplemental
21 Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code
22 section 248.6 extended Covid sick leave protections and requires employers to provide up to 80
23 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to
24 September 30, 2022, and may be extended thereafter.

25 85. Under Labor Code section 248.1, employees must be paid for Covid-19
26 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
27 last pay period, (2) state minimum wage, (3) local minimum wage.

1 86. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
2 supplemental paid sick leave according to the highest of the following four methods: (1) the
3 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
4 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked,
5 (3) the state minimum wage, or (4) the local minimum wage.

6 87. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
7 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's total
8 wages in a 90-day period divided by total hours worked.

9 88. Defendants failed to provide and pay Covid-19 supplemental paid sick leave in the
10 manner described above because Defendants failed to pay Plaintiff and the Class Members such
11 sick leave at one of the rates authorized by statute.

12 89. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
13 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

14 **NINTH CAUSE OF ACTION**

15 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

16 **Business and Professions Code §§ 17200, *et seq.***

17 90. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 91. Defendants willfully failed in their affirmative obligation to timely pay each
19 payday or at other required intervals all minimum, regular, and overtime wages, meal and rest
20 period premium wages, and reimbursements and other amounts sought in this lawsuit to Plaintiff
21 and Class Members. These failures constitute unlawful, deceptive, and unfair business acts and
22 practices in violation of Business and Professions Code section 17200, *et seq.*

23 92. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
24 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution
25 of all monies and property withheld, acquired, or converted by Defendants in violation of the
26 Labor Code and IWC Wage Orders under Business and Professions Code section 17202, 17203,
27 17204 and 17208.

1 93. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
2 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
3 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
4 which Plaintiff and the Class have an ownership interest and to prevent future damage under
5 Business and Professions Code section 17200, *et seq.* in addition to interest, attorneys' fees, and
6 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

7 **TENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME (PAGA)**

9 **Labor Code §§ 2698, *et seq.***

10 94. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 95. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
12 employees no less than one and one-half times their respective "regular rate of pay" for all hours
13 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked
14 on the seventh day of work in any one workweek, and no less than twice their respective "regular
15 rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any
16 seventh day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage
17 Orders and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable
18 orders).

19 96. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
20 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
21 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees,
22 and costs to the extent permitted by law, including under Labor Code section 2699(g).

23 **ELEVENTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

25 **Labor Code § 226.7**

26 97. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 98. Defendants willfully failed in their affirmative obligation to consistently provide
28 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes

beginning before the fifth hour of hour for each work period of more than five hours per day and a second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders)..

99. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7 and the IWC Wage Orders.

100. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

TWELFTH CAUSE OF ACTION

CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)

Labor Code § 226.7

101. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

102. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

103. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7 and the IWC Wage Orders.

104. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as

1 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees,
2 and costs to the extent permitted by law, including under Labor Code section 2699(g).

3 **THIRTEENTH CAUSE OF ACTION**
4 **CIVIL PENALTIES FOR UNTIMELY**
5 **PAYMENT OF WAGES (PAGA)**
6 **Labor Code § 204, *et seq***

7 105. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 106. Defendants willfully failed in their affirmative obligation to timely pay all wages
9 and premiums earned by Plaintiff and aggrieved employees twice during each calendar month on
10 days designated in advance by the employer as regular paydays (for employees paid on a non-
11 weekly basis) and on the regularly-scheduled weekly payday for any weekly employees, as
12 applicable, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
13 "Minimum Wages" sections of the applicable orders).

14 107. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
15 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
16 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees,
17 and costs to the extent permitted by law, including under Labor Code section 2699(g).

18 **FOURTEENTH CAUSE OF ACTION**
19 **CIVIL PENALTIES FOR**
20 **WAGE STATEMENT VIOLATIONS (PAGA)**
21 **Labor Code § 226**

22 108. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 109. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

1 The civil penalties provided for in this section are in addition to any other penalty provided by
2 law.”

3 110. Defendants failed in their affirmative obligation provide accurate itemized wage
4 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because
5 Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and
6 the wage statements reflected inaccurate totals, including gross and net wages earned, total hours
7 worked, applicable rates in effect and corresponding number of hours worked. The wage
8 statements are also inaccurate as they do not reflect the proper rate for sick leave pay and amounts
9 owed for meal and rest period premiums.

10 111. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
11 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
12 required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’
13 fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

14 **FIFTEENTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF**
16 **EMPLOYMENT (PAGA)**

17 **Labor Code §§ 201 through 203**

18 112. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 113. Defendants willfully failed in their affirmative obligation to pay all wages earned
20 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
21 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
22 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
23 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
24 those due to Defendants’ failure to pay employees for all hours worked and for meal and rest
25 period premiums.

1 114. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
2 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
3 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees,
4 and costs to the extent permitted by law, including under Labor Code section 2699(g).

5 **SIXTEENTH CAUSE OF ACTION**
6 **CIVIL PENALTIES FOR**
7 **FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)**
8 **Labor Code § 2802**

9 115. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 116. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
11 aggrieved employees for all necessary expenditures, losses, expenses, and costs incurred by them
12 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

13 117. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
14 aggrieved employees and the State of California for civil penalties as required by Labor Code
15 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
16 by law, including under Labor Code section 2699(g).

17 **SEVENTEENTH CAUSE OF ACTION**
18 **RECORDKEEPING VIOLATIONS (PAGA)**
19 **Labor Code § 1174**

20 118. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

21 119. Labor Code section 1174 provides: "Every person employing labor in this state
22 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which
23 employees are employed, payroll records showing the hours worked daily by and the wages paid
24 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
25 employed at the respective plants or establishments. These records shall be kept in accordance
26 with rules established for this purpose by the commission, but in any case, shall be kept on file for
27 not less than three years."
28

1 120. Labor Code section 1174.5 provides: “Any person employing labor who willfully
2 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
3 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
4 hundred dollars (\$500).”

5 121. Defendants willfully failed in their affirmative obligation to maintain accurate
6 records showing the hours worked daily and wages paid to the aggrieved employees, in violation
7 of Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the
8 applicable orders).

9 122. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
10 aggrieved employees and the State of California for civil penalties as required by Labor Code
11 section 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
12 including under Labor Code section 2699(g).

13 **EIGHTEENTH CAUSE OF ACTION**
14 **CIVIL PENALTIES FOR**
15 **PAID SICK LEAVE VIOLATIONS (PAGA)**
16 **Labor Code § 246 *et seq.***

17 123. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 124. Defendants knowingly and intentionally failed in their affirmative obligation to
19 provide notice of and provide and pay paid sick leave to Plaintiff and the aggrieved employees in
20 violation of Labor Code sections 246 through 248.5.

21 125. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
22 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
23 entitles employees to use any accrued sick leave beginning on their 90th day of employment.

24 126. Labor Code section 246(l) governs how Defendants were required to calculate paid
25 sick leave:

26 ///

1 [A]n employer shall calculate paid sick leave using any of the following
2 calculations:

3 (1) Paid sick time for nonexempt employees shall be calculated in the same
4 manner as the regular rate of pay for the workweek in which the employee uses paid
5 sick time, whether or not the employee actually works overtime in that workweek.

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

9 (3) Paid sick time for exempt employees shall be calculated in the same
10 manner as the employer calculates wages for other forms of paid leave time.

11 127. Labor Code section 246(i) requires employers to provide employees with written
12 notice every pay period "that sets forth the amount of paid sick leave available, or paid time off in
13 lieu of sick leave." The notice can either be on the employees' wage statements or a separate
14 written notice.

15 128. Defendants failed to pay sick leave to Plaintiff and the aggrieved employees at the
16 correct rate, which should have factored in employees' commissions, bonuses, and other forms of
17 remuneration. Defendants instead paid sick leave at the straight time hourly rate.

18 129. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
19 aggrieved employees and the State of California for civil penalties as required by Labor Code
20 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
21 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
22 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
23 amounts in addition to interest, attorneys' fees, and costs to the extent permitted by law.

24 ///

1
2 **NINETEENTH CAUSE OF ACTION**

3 **CIVIL PENALTIES FOR**
4 **SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS (PAGA)**

5 **Labor Code § 246 *et seq.***

6 130. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 131. Defendants knowingly and intentionally failed in their affirmative obligation to
8 provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the
9 aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.1, 248.2, and 248.6.

10 132. Pursuant to Labor Code section 248.1, Defendants were required to provide up to
11 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020
12 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours
13 of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
14 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and
15 requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the
16 period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

17 133. Labor Code section 248.1, 248.2, and 248.6 incorporate the notice and record
18 keeping provisions of sections 246(i) and 247.5. Labor Code section 246(i) requires employers to
19 provide employees with written notice every pay period “that sets forth the amount of paid sick
20 leave available, or paid time off in lieu of sick leave.” The notice can be either on the employees’
21 wage statements or a separate written notice. Labor Code section 247.5 also requires Defendants
22 to keep records of such leave or else there is a presumption that employees are “entitled to the
23 maximum hours accruable...unless [Defendants] can show otherwise by clear and convincing
24 evidence.”

25 134. On information and belief, Defendants are alleged to have failed to maintain paid
26 sick leave records as required by Labor Code section 247.5.

1 135. Under Labor Code section 248.1, employees must be paid for Covid-19
2 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
3 last pay period, (2) state minimum wage, (3) local minimum wage.

4 136. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
5 supplemental paid sick leave according to the highest of the following four methods: (1) the
6 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
7 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked,
8 (3) the state minimum wage, or (4) the local minimum wage.

9 137. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
10 leave under either one of the following methods (1) regular rate of pay or (2) the employee's total
11 wages in a 90-day period divided by total hours worked.

12 138. As with paid sick leave, Defendants failed to pay Covid-19 Supplemental Sick
13 Leave at the correct rate because Defendants failed to factor in employees' commissions, bonuses,
14 and other forms of remuneration. Defendants instead paid such sick leave at the straight time
15 hourly rate rather than one of the methods authorized by statute.

16 139. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
17 aggrieved employees and the State of California for civil penalties as required by Labor Code
18 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
19 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
20 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
21 amounts in addition to interest, attorney's fees and costs to the extent permitted by law.

22 **PRAYER FOR RELIEF**

23 Plaintiff prays for judgment as follows:

- 24 a. For certification of this action as a class action;
- 25 b. For appointment of Plaintiff as the representative of the Class;
- 26 c. For appointment of counsel for Plaintiff as Class Counsel;
- 27 d. For injunctive relief;
- 28 e. For compensatory damages in amount according to proof;

- 1 f. For all recoverable pre- and post-judgment interest;
- 2 g. For recovery of all statutory penalties and liquidated damages;
- 3 h. For disgorgement of all amounts wrongfully obtained;
- 4 i. For this action to be maintained as a representative action under the PAGA and for
- 5 Plaintiff and counsel to be provided with all enforcement capability as if the action
- 6 were brought by the State of California or the California Division of Labor
- 7 Enforcement;
- 8 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 9 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 10 permitted by law, including (without limitation) under California Labor Code
- 11 sections 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5;
- 12 l. For such other relief the Court deems just and proper.

13

14 Respectfully submitted,

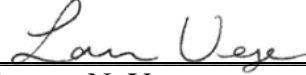
15

16 Dated: March 7, 2021

Ferraro Vega Employment Lawyers, Inc.

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20 Lauren N. Vega

21 Attorney for Plaintiff Ilse Robles

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Exhibit A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

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Facsimile: 619-350-6855
www.ferrarovega.com

December 10, 2021

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Fundacion Monte De Piedad
329 E San Ysidro Blvd
San Ysidro, CA 92173

Francisco Anzar
329 E San Ysidro Blvd
San Ysidro, CA 92173

Anzar Enterprises, Inc.
329 E San Ysidro Blvd
San Ysidro, CA 92173

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **12/10/2021**

Omar Anzar
329 E San Ysidro Blvd
San Ysidro, CA 92173

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of ILSE ROBLES (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against FUNDACION MONTE DE PIEDAD; ANZAR ENTERPRISES, INC. dba MONTE DE PIEDAD; OMAR ANZAR; and FRANCISCO ANZAR, along with any other related employer entities who may be later added (“Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants operate pawn shops known as Monte de Piedad and employ individuals like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked for Defendants until November 2021 in San Diego County. Throughout her employment, Claimant was an hourly, non-exempt employee. Defendants have more than one dozen locations. Claimant worked at multiple of Defendants’ locations during her employment.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations

Violation of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing

Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage *for all hours* worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

When Claimant and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Claimant and the aggrieved employees sales commissions, non-discretionary bonuses, and other forms of remuneration that

Defendants failed to include in the “regular rate of pay” when employees earned overtime. Defendants paid overtime and doubletime to Claimant and the aggrieved employees at 1.5x and 2x their straight hourly rate. For each overtime hour worked during the period in which Claimant and the aggrieved employees earned sales commissions and bonuses, Defendants should have (but failed to) pay overtime “at the rate of no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. The aggrieved employees' time records establish meal period liability on their face. Claimant's time records show that she often experienced missed, short, and late meal periods. When Defendants did not provide compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. To the extent Defendants paid any meal period premiums, the premiums were not paid at the "regular rate of compensation" because they did not factor in sales commissions, bonuses, and other forms of remuneration. Furthermore, Defendants required Claimant and the aggrieved employees to sign an On-Duty Meal Period Agreement that erroneously stated that because the shops only had two employees, employees were required to take on-duty meals. Defendants' On-Duty Meal Period Agreement is invalid as to Claimant and the aggrieved employees because the nature of the work did not prevent the aggrieved employees from taking a duty-free meal period. As such, Defendants are liable for both wages and meal period premiums for any on-duty meal period taken by an aggrieved employee. Claimant's On-Duty Meal Period Agreement is separately invalid because she revoked the agreement on December 30, 2019, the same day she signed the Agreement.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to staffing issues, employees' job responsibilities, and the steady flow of business, Claimant and the aggrieved employees were not always authorized and permitted to take all of their rest periods. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were

not paid at the regular rate of compensation, which would have factored in bonuses, commissions, and other compensation.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Reimburse Necessary Expenses
Violation of Labor Code §2802

Defendants failed in their affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required Claimant and the aggrieved employees to use their personal vehicles for work-related purposes without reimbursement. Specifically, Defendants required Claimant and the aggrieved employees to travel from one store location to another when other stores needed more staffing. The travel between locations occurred during a single shift. Claimant and the aggrieved employees drove from one store to the next in their personal vehicles, but were not reimbursed for their gas mileage. In direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not reimburse as a matter of policy and practice. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code section 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." In other words, if—as here—

employees incur “necessary expenses” or “losses” for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney’s fees and costs of suit.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees’ regular, overtime, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 ("Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG ("Injuries from a failure to provide an accurate pay statement include 'possibility of not being paid overtime, employee confusion over whether they

subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(2) by failing to list employees “total *hours* worked”. (Emphasis added). Defendants’ wage statements list employees’ hours in the format of hours and *minutes* worked (e.g., 48:43) and not as a decimal of the total hours worked. Employees are unable to simply multiply their hours worked by their rate of pay to verify if their wages are correct.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. For the reasons explained in the paragraph above, employees corresponding *hours* are not listed on their wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime hours that were not paid at the “regular rate of pay.”

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked”) (rejecting *Maldonado* defense for class claims).

Underpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3). Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code § 246(l)(1)-(3):

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time 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.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

The third option is not applicable because this case involves non-exempt employees. Defendants were required to pay paid sick time under the method set forth in options one or two. However, Defendants instead paid sick leave at employees' straight time rate of pay and failed to factor in bonuses, commissions and/or other forms of remuneration. Specifically, (1) Defendants did not pay paid sick leave "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek," as the regular rate should have included commission wages for the reasons aforementioned. Additionally, Defendants did not use method two by dividing the employee's total wages by total hours worked in the full pay periods of the prior 90 days, as such calculation would have resulted in a paid sick leave rate higher than the base rate at which Claimant was paid.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Claimant and

the aggrieved employees in those pay periods where they earned cash in lieu of benefits payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Underpaid Covid Supplemental Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 248.1 and 248.2 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at the lawful hourly rate. Under Labor Code section § 248.1, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2021. Under Labor Code § 248.2, employers were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

Under Labor Code section 248.1, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following methods:

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

(i) The covered worker's regular rate of pay for the covered worker's last pay period, including pursuant to any collective bargaining agreement that applies.

(ii) The state minimum wage.

(iii) The local minimum wage to which the covered worker is entitled.

Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following methods:

(i) For nonexempt covered employees, by the highest of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered 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.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

For the same reasons discussed in the Paid Sick Leave section above, Defendants failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute. Defendants failed to factor in employees' bonuses, commissions, and other compensation when paying sick leave. Defendant instead paid Supplemental Sick Leave at employees' straight time hourly rate rather than by the highest of the methods authorized by Labor Code section 248.2.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.1 and 248.2 was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned bonuses, commissions, or other forms of non-excludable remuneration and also received statutory paid sick leave.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully

release liability and resolve the claims alleged in this notice. Claimant will establish that (1) her lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Vega".

Lauren N. Vega

Cc Claimant

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