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CHRISTOPHER ENGLISH

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED, OLD MERCED COURTHOUSE

CHRISTOPHER ENGLISH, an individual,

Plaintiff,

vs.

KAGOME INC., a California corporation, LUIS
DE OLIVEIRA, an individual, and DOES 1
through 20 inclusive,

Defendants.

Case No. 22CV-01039

**COMPLAINT AND ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

1. Plaintiff CHRISTOPHER ENGLISH is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. Plaintiff CHRISTOPHER ENGLISH was at all times relevant hereto a resident of San Los Banos, California.

3. At all relevant times herein, Defendant KAGOME INC. was a California corporation with its principal place of business in Los Banos, California.

4. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5 because this suit was filed in the county where the liability arises, where the breach occurred and where

1 Defendants resided at the commencement of this action.

2 5. Defendant LUIS DE OLIVEIRA was at all times relevant herein a principal of
3 Defendant KAGOME INC.

4 6. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
5 unity of interest and ownership between KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 that
6 the individuality and separateness of defendants have ceased to exist.

7 7. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
8 of purported corporate existence, KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 are, in
9 reality, one and the same.

10 8. KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 do not comply with all
11 requisite corporate formalities to maintain a legal and separate existence.

12 9. The business affairs KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 are, and
13 at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated,
14 and the same are in inextricable confusion. KAGOME INC. is, and at all times relevant hereto was,
15 used by LUIS DE OLIVEIRA, and DOES 1-20 and, as a mere shell and conduit for the conduct of
16 certain of Defendants' affairs, and is, and was, the alter ego of DOES 1-20. The recognition of the
17 separate existence KAGOME INC. would not promote justice, in that it would permit Defendants to
18 insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of
19 KAGOME INC. and DOES 1-20 should be disregarded in equity and for the ends of justice because
20 such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

21 10. Accordingly, KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 are the alter
22 egos of one another, and the fiction of their separate corporate existence must be disregarded.

23 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
24 thereon alleges that KAGOME INC., LUIS DE OLIVEIRA, and DOES 1-20 are joint employers by
25 virtue of a joint enterprise, and that the employees and agents of KAGOME INC. were also employees
26 of LUIS DE OLIVEIRA, and DOES 1-20. KAGOME INC. employees performed services for each
27 and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared
28 control of them as employees, either directly or indirectly, and the manner in which Defendants'

1 business was and is conducted.

2 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
3 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
4 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
5 Complaint to insert the true names and capacities of these Defendants when they become known to
6 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
7 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
8 Plaintiff as alleged hereinafter.

9 13. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
10 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
11 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
12 each of them, and in doing the things alleged herein, were acting at least in part within the course and
13 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
14 joint venture and with the permission and consent of each of the other Defendants.

15 14. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
16 including those defendants named as DOES 1-20 acted in concert with one another to commit the
17 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
18 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
19 based thereupon alleges, that Defendants, including those defendants named as DOES 1-20 formed
20 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
21 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
22 intended to cause and actually causing Plaintiff's harm.

23 15. Whenever and wherever reference is made in this Complaint to any act or failure to act
24 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
25 and/or failures to act by each Defendant acting individually, jointly and severally.

26 **FACTUAL ALLEGATIONS**

27 16. Plaintiff CHRISTOPHER ENGLISH worked as a Building Maintenance Technician
28 for Defendants from August 20, 2019 to February 28, 2021.

1 17. Plaintiff CHRISTOPHER ENGLISH 'S job duties included performing maintenance
2 and repairs of food processing machines.

3 18. During his employment, Plaintiff worked at the Kagome Inc. office located at 333
4 Johnson Road, Los Banos, California 93635.

5 19. Plaintiff worked Monday through Friday, from 10:00 p.m. to 6:30 a.m. and on Sunday
6 from 10:00 p.m. to 6:30 a.m. He was to be paid \$19.66 per hour.

7 20. During his employment, there were occasions when Plaintiff did not receive compliant
8 meal periods because of manager interruptions or needed urgent repairs. These interruptions and
9 emergencies occurred about three times per month.

10 21. Plaintiff did not receive compliant rest periods, specifically, his 10-minute rest periods
11 were interrupted about 15 times per month because of emergency maintenance issues or lack of
12 staffing to deal with urgent repairs.

13 22. At no point during Plaintiff's employment was he paid double minimum wage despite
14 that Plaintiff supplied his own tools to perform his job duties, as required by the IWC Wage Orders.

15 23. During the interview process, Plaintiff was asked by Jacob Damron (Maintenance
16 Manager) and Ignacio Carillio (Maintenance Supervisor) whether he has his own tools, as it was a
17 requirement for the position.

18 24. Plaintiff spent approximately \$1,100 purchasing tool necessary to perform his job
19 duties but was not reimbursed for the tools purchased.

20 25. During Plaintiff's employment, the only tools that were available were welders and
21 power tools.

22 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
23 have known that Plaintiff and other aggrieved employees were entitled to receive full reimbursement
24 for all business-related expenses and costs they incurred in direct consequence of the discharge of
25 their duties and that they did not receive full reimbursement of applicable business-related expenses
26 and costs incurred.

27 27. Additionally, it was custom and practice for Plaintiff and all other aggrieved employees
28 to continue working without taking any 10-minute rest periods when the workload demands did not

1 allow for compliant rest periods.

2 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
3 aggrieved employees were not paid for all hours worked because all hours worked were not recorded.

4 29. Plaintiff is informed and believes, and thereon allege, that Defendants knew or should
5 have known that Plaintiff and other aggrieved employees were entitled to receive certain wages for
6 overtime compensation and that they were in fact not receiving certain wages for overtime
7 compensation.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
9 have known that Plaintiff and other aggrieved employees were entitled to 10 minute rest periods in
10 accordance with the Labor Code and applicable IWC Wage Order or payment of one additional hour
11 of pay at their regular rates of pay when they were not provided with a compliant 10 minute rest
12 period and that Plaintiff and other aggrieved employees were not provided compliant 10 minute rest
13 periods or payment of one additional hour of pay at their regular rates of pay when they were not
14 provided a compliant 10 minute rest period.

15 31. As discussed above, Defendants' employees are owed wages for unpaid overtime, rest
16 periods and unreimbursed business expenses. At no time since their separation of employment were
17 these outstanding sums ever paid to them. Further, Defendant knew or should have known that it owed
18 these outstanding sums to employees and intentionally failed and refused to pay these sums
19 immediately upon their termination or within 72 hours of their resignation of employment and
20 continue to refuse to do so. This practice is in violation of Labor Code §§ 201-203.

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in
22 this same practice with respect to all other aggrieved employees whose employment separated.
23 Specifically, Plaintiff alleges that Defendants' aggrieved employees are owed wages for unpaid
24 overtime, 10-minute rest periods, and unreimbursed business expenses. These outstanding sums
25 continued to accumulate every pay period. At the time of their discharge or resignation, Defendants'
26 aggrieved employees were not paid all compensation due.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
28 have known that Plaintiff and other aggrieved employees were entitled to timely payment of all wages

1 earned upon termination of employment. In violation of the Labor Code, Plaintiff and other aggrieved
2 employees did not receive payment of all wages due, including overtime wages, and rest period
3 premiums, within the time periods required by law.

4 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
6 other aggrieved employees for all hours worked, and that Defendants had the financial ability to pay
7 such compensation, but willfully, knowingly, and intentionally failed to do so.

8 **FIRST CAUSE OF ACTION**
9 **CIVIL PENALTIES IN VIOLATION OF**
10 **LABOR CODE § 2698, ET SEQ.**
11 **(AGAINST ALL DEFENDANTS)**

12 1. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as
13 though fully set forth herein.

14 2. Under Labor Code §2698, et seq., Plaintiff, as an aggrieved employee, may bring an
15 action against Defendants, on behalf of himself and other current or former employees, seeking civil
16 penalties for defendants' violations of the California Labor Code.

17 **Failure to Pay Overtime**

18 3. "Any work in excess of eight hours in one workday and any work in excess of 40 hours
19 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
20 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
21 employee." Lab. Code § 510; IWC Wage Order Nos. 1–2001 to 16–2001, § 3; IWC Wage Order No.
22 17-2001, § 4; 8 Cal Code Regs §§ 11010-11160, § 3; 8 Cal Code Regs § 11170, § 4. Labor Code §
23 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the
24 applicable wage order. California Labor Code § 1198 requires that "the standard conditions of labor
25 fixed by the commission shall be the . . . standard conditions of labor for employees. The employment
26 of any employee . . . under conditions of labor prohibited by the order is unlawful."

27 35. Employees were not paid overtime premiums for all of the hours they worked in excess
28 of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week. Defendants

1 had, and continue to have, a company-wide policy of failing to implement any policies to authorize
2 and permit employees to take compliant meal periods and, instead, engaged in a practice of
3 discouraging and impeding employees from taking meal periods by assigning them a heavy workload
4 and understaffing their facilities. Therefore, there were no other employees available to relieve
5 employees of their duties so as to allow them to take their meal periods.

6 36. Defendants had no policy for scheduling second meal periods and no practice of
7 permitting employees to take second 30-minute meal periods. As a result, on days that employees
8 worked in excess of 10 hours, they were not provided with second 30-minute meal periods.

9 37. Defendants knew or should have known that, as a result of their policies and practices,
10 employees were performing some of their assigned duties off-the-clock and/or during unpaid meal
11 periods, and were suffered or permitted to perform work for which they were not paid. Because
12 employees worked shifts in excess of 8 hours a day or more and 40 hours a week or more, much of
13 this off-the-clock work qualified for overtime premium pay. Therefore, employees were not paid
14 overtime wages for all of the overtime hours they actually worked. To the extent employees worked
15 shifts in excess of 12 hours a day, or in excess of 8 hours on the seventh consecutive day of a work
16 in a workweek, they were not paid double time wages for all overtime hours they actually worked.

17 38. Defendants' failure to pay employees the balance of overtime compensation, as
18 required by California law, violates the provisions of California Labor Code §§ 510 and 1198.

19 **Failure to Pay Minimum Wage**

20 39. "The minimum wage for employees fixed by the commission or by any applicable state
21 or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the
22 minimum so fixed is unlawful." Lab. Code § 1197; IWC Wage Order Nos. 1–2001 to 16–2001, § 4; 8
23 Cal Code Regs §§ 11010-11160, § 4. Compensable work time is defined by the applicable wage order
24 as "the time during which an employee is subject to the control of an employer, and includes all the
25 time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
26 Regs. tit. 8, § 11010 (2) (G).

27 40. Due to Defendants' company-wide scheduling practices and policies, employees were
28 forced to forego meal periods and/or have their meal periods interrupted by work, and were not

1 relieved of all duties for unpaid meal periods in order to meet their deadlines and handle their
2 workloads. Defendants did not pay minimum wages for the time employees continued to perform
3 their duties during their meal periods.

4 41. Defendants had no policy and/or practice for scheduling second meal periods for
5 employees or for authorizing and permitting employees to take second 30-minute meal periods on
6 days they worked in excess of 10 hours in one day. As a result, Defendants did not provide employees
7 with all second 30-minute meal periods to which they were entitled.

8 42. Defendants did not pay at least minimum wages for all hours worked by Plaintiff and
9 other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime
10 premium payment, Defendants did not pay at least minimum wages for those hours Plaintiff and other
11 aggrieved employees worked off-the-clock in violation of California Labor Code sections 1182.12,
12 1194, 1197, 1197.1, and 1198. Accordingly, Defendants regularly failed to pay at least minimum
13 wages to Plaintiff and other aggrieved employees for all of the hours they worked. Defendants' failure
14 to pay Plaintiff and other aggrieved employees minimum wages violates California Labor Code
15 sections 1182.12, 1194, 1197, 1197.1, and 1198.

16 **Failure to Provide Meal Periods**

17 43. "An employer shall not employ an employee for a work period of more than five hours
18 per day without providing the employee with a meal period of not less than 30 minutes, except that if
19 the total work period per day of the employee is no more than six hours, the meal period may be
20 waived by mutual consent of both the employer and employee. An employer shall not employ an
21 employee for a work period of more than 10 hours per day without providing the employee with a
22 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
23 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
24 only if the first meal period was not waived." Lab. Code § 512; IWC Wage Order Nos. 1–2001 to 16–
25 2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code
26 Regs § 11170, § 9.

27 44. "An employer shall not require an employee to work during a meal ... period mandated
28 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare

1 Commission If an employer fails to provide an employee a meal ... period in accordance with a
2 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
3 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
4 pay at the employee's regular rate of compensation for each workday that the meal ... period is not
5 provided.” Lab. Code § 226.7 (b) & (c).

6 45. At all relevant times, Defendants’ employees regularly worked more than five hours
7 per day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

8 46. At all relevant times herein, Defendants had, and continue to have, a company-wide
9 policy and/or practice of understaffing its locations while simultaneously assigning demanding
10 workloads, which had the combined effect of preventing employees from taking all timely,
11 uninterrupted meal periods to which they were entitled. Therefore, there were no other employees
12 available to relieve employees of their duties so as to allow them to take their meal periods. As a result
13 of Defendants’ policies and/or practices, employees had to work through some or all of their meal
14 periods, have their meal periods interrupted to return to work, and/or wait extended periods of time
15 before taking meal periods.

16 47. Defendants did not provide employees with second 30-minute meal periods on days
17 that they worked in excess of 10 hours in one day. Defendants engaged in a systematic, company-wide
18 practice and/or policy of not paying meal period premiums for employees, regardless of whether they
19 were able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor
20 Code sections 226.7 and 512 (a). As a result, Defendants failed to provide employees compliant meal
21 periods in violation of California Labor Code §§ 226.7 and 512 and failed to pay the full meal period
22 premiums due.

23 48. During Plaintiff’s employment, Defendants’ employees have been interrupted during
24 their meal periods, including to respond to managers and address urgent maintenance issues. These
25 practices are in violation of Labor Code § 512.

26 **Failure to Provide Uninterrupted Rest Periods**

27 49. Employees must be given 10-minute net rest periods for every 4 hours of work, to be
28 taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be

1 provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to
2 one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6
3 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker*
4 *Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); IWC Wage Order Nos. 1–2001 to
5 16–2001, § 12; § 8 Cal Code Regs §§ 11010-11160, § 12. No employer may require an employee to
6 work during any rest period mandated by an applicable order of the Industrial Welfare Commission.
7 Lab. Code §§ 226.7.

8 50. Defendants’ company-wide policy and practice of understaffing while simultaneously
9 assigning demanding workloads, prevented employees from being relieved of all duty in order to take
10 compliant rest periods.

11 51. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
12 employees did not receive 10-minute rest periods and were required to continue working.

13 52. Employees worked shifts in excess of 3 ½ hours, in excess of 6 hours, and/or in excess
14 or 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

15 53. Defendants have also engaged in a systematic, company-wide practice and/or policy
16 of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
17 Defendants denied employees rest periods and failed to pay them rest period premium wages due, in
18 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

19 54. As discussed above, Plaintiff did not receive compliant rest periods. Plaintiff is
20 informed and believes that his 10 minute rest periods were interrupted about 15 times per month due
21 to emergency maintenance issues and lack of appropriate staffing of Maintenance Technicians to deal
22 with urgent repairs.

23 55. Plaintiff further alleges that Defendants engaged in the same practices with their other
24 California employees.

25 **Failure to Reimburse for Business Expenditures**

26 56. “An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
28 or her obedience to the directions of the employer, even though unlawful, unless the employee, at the

1 time of obeying the directions, believed them to be unlawful.” Lab. Code § 2802.

2 57. All technicians and mechanics employed by Defendants are required to supply their
3 own tools to perform their job duties because it fails to supply them with a sufficient quantity at their
4 work location. Defendants did not provide Plaintiff and its other employees with adequate tools
5 necessary to perform their job duties. As such, technicians were required to incur tool expenditures,
6 which have not been reimbursed by Defendants in violation of Labor Code § 2802.

7 58. Additionally, Plaintiff is informed and believes, and thereon alleges that Defendants
8 only provided welder and power tools to its employees. As a result of Defendants’ failure to provide
9 adequate tools to its employees to perform their job duties, Plaintiff incurred \$1,100 expense
10 purchasing tools but to date has not been reimbursed by Defendants.

11 59. Defendants’ practice of failing to reimburse non-double minimum wage-earning
12 technicians for the purchase of tools and equipment is a violation of Labor Code § 2802.

13 **Failure to Furnish Itemized Wage Statements and Maintain Accurate Pay Records**

14 60. “An employer ... shall furnish to his or her employee ... an accurate itemized statement
15 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided
16 in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
18 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only
20 the last four digits of his or her social security number or an employee identification number other
21 than a social security number, (8) the name and address of the legal entity that is the employer ... and
22 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee” Lab. Code § 226 (a).

24 61. “An employee is deemed to suffer injury for purposes of this subdivision if the
25 employer fails to provide accurate and complete information as required by any one or more of items
26 (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from
27 the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages
28 paid to the employee during the pay period or any of the other information required to be provided on

1 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).”
2 Lab. Code § 226 (e)(2)(B)(i).

3 62. “For purposes of this paragraph, "promptly and easily determine" means a reasonable
4 person would be able to readily ascertain the information without reference to other documents or
5 information.” Lab. Code § 226 (e)(2)(C).

6 63. California Labor Code § 1198 provides that the maximum hours of work and the standard
7 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
8 IWC Wage Orders. § 1198 further provides that “the employment of any employees for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
10 Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records
11 showing when the employee begins and ends each work period and meal period.

12 64. As detailed above, Defendants failed to pay employees for all hours worked by virtue
13 of uncompensated time worked during missed and/or incomplete meal periods. As a result, their wage
14 statements did not accurately reflect the total hours they worked or the corresponding number of hours
15 worked at each hourly rate. This practice is in violation of Lab. Code § 226 (a).

16 65. Because Defendants failed to document and deducted time worked from employees’ wage
17 statements and employment records for meal periods they did not actually receive, Defendants failed
18 to document wages earned and meal period premiums that should have been paid. Thus, Defendants
19 did not furnish wage statements to employees containing the correct amount of gross wages earned
20 in violation of Labor Code § 226 (a) (1), accurate total hours worked in violation of Labor Code §
21 226 (a) (2), correct amount of net wages earned in violation of Labor Code § 226 (a) (5), or accurate
22 number of hours worked at each corresponding hourly rate in violation of Labor Code § 226 (a) (9).

23 66. To the extent that Defendants paid any meal break premium and/or rest break premium
24 payments, they failed to identify such payments on employees’ wage statements and employment
25 records, and they otherwise failed to provide information on the wage statements sufficient to identify
26 how many premium payments were paid during each pay period, the specific dates worked giving
27 rise to the premium payments owed, or to determine whether such premium payments adequately
28 and/or accurately compensated employees for any and all premiums owed.

67. At all relevant times, Defendants failed to keep records of meal period start and stop times for employees in violation of Labor Code § 1198.

68. Plaintiff further alleges that Defendants failed to furnish itemized wage statements that were in compliance with Labor Code § 226(a). Specifically, Defendants did not list the address of the employer violation of Labor Code § 226(a) (8).

Willful Failure to Pay Wages

69. "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Lab. Code § 201.

70. “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Lab. Code § 202.

71. “If an employer willfully fails to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced.” Lab. Code § 203.

72. “A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs. tit. 8 § 13520.

73. Defendants' employees are owed wages for unpaid meal and rest periods and unreimbursed business expenses. At no time since their separation of employment were these outstanding sums ever paid to them.

74. Further, Defendants knew or should have known that it owed these outstanding sums to employees and intentionally failed and refused to pay these sums immediately upon their termination or within 72 hours of their resignation of employment and continue to refuse to do so. This practice is in violation of Labor Code §§ 201-203.

Failure to Pay Wages

75. "All wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays

1 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
2 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following
3 the close of the payroll period.” Lab. Code § 204.

4 76. “In addition to, and entirely independent and apart from, any other penalty provided in
5 this article, every person who fails to pay the wages of each employee as provided in Sections ... 204
6 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
7 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
8 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
9 amount unlawfully withheld.” Lab. Code § 210.

10 77. At all times relevant, Defendants’ employees are owed wages for unpaid minimum
11 wage, overtime, meal and rest periods and unreimbursed business expenses. At no time during their
12 employment were these outstanding sums ever paid to them. Instead, these outstanding sums continued
13 to accumulate every pay period. Therefore, Defendants’ employees were not paid all wages earned by
14 the seventh calendar day following the close of their pay periods. This practice is in violation of Labor
15 Code § 204.

16 78. Plaintiff was an aggrieved employees within the meaning of Labor Code §2698, et seq.
17 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

18 79. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
19 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
20 for necessary business expenditures in violation of Labor Code § 2802, failing to pay overtime in
21 violation Labor Code §§ 510 and 1198, failure to pay minimum wage in violation of §§ 1182.12, 1194,
22 1197, 1197.1, and 1198 , failing to provide rest periods in violation of Labor Code §§ 226.7 and 1198,
23 failure to provide meal periods in violation of Labor Code §§ 226.7 and 512 (a), failure to timely pay
24 wages in violation of Labor Code § 204 and willful failure to pay wages in violation of Labor Code §
25 201-203.

26 80. On March 28, 2022, Plaintiff provided written notice by online filing with the Labor
27 and Workforce Development Agency and by certified mail to Defendants Kagome Inc. and Luis De
28 Oliveira of the specific provisions of the Labor Code alleged to have been violated, including the facts

1 and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

2 81. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
3 Workforce Development Agency of its intent to pursue an action against Defendants.

4 82. As a direct and proximate result of Defendants' California Labor Code violations as set
5 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period
6 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
7 violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing
8 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
9 provide for a penalty.

10 83. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
11 recovered civil penalties.

12 **PRAYER FOR RELIEF**

13 Plaintiff prays for relief and judgment against Defendants as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess
15 of \$25,000, exclusive of interest and costs.

16 **As to the First Cause of Action**

17 **(Civil Penalties under the PAGA)**

18 2. That the Court declare, adjudge, and decree that Defendants violated all California
19 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174,
20 1182.12, 1197, 1197.1, 1198 and 2802;

21 3. For civil penalties pursuant to 210, 226.3, 256, 558, 2699 (a) and/or 2699 (a), (f) and
22 (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-
23 204, 226, 226.7, 510, 1198 and 2802;

24 4. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any
25 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
26 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 1198 and 2802;

27 5. For pre-judgment and post-judgment interest as provided by law; and

28 6. For such other and further relief as the Court deems just and appropriate.

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PIMENTEL LAW, P.C.

Dated: March 30, 2022

By: 
Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff