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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13

14 MANUEL POLANCO, individually, and on
15 behalf of other aggrieved employees pursuant
16 to the California Private Attorneys General
Act,

17 Plaintiff,

18 v.

19 RAG & BONE INDUSTRIES LLC; and
20 DOES 1 through 100,

21 Defendants.
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Case No.: **22STCV24380**

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
ET SEQ.)**

1 Plaintiff MANUEL POLANCO (“Plaintiff”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorneys General Act of 2004, sections 2698, *et seq.* (“PAGA”) complains of
4 defendant RAG & BONE INDUSTRIES LLC; and DOES 1 through 100 (collectively,
5 “Defendants”) and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code sections 2699, *et*
8 *seq.*, on behalf of the State of California and on behalf of aggrieved employees as follows: ***All***
9 ***current and former hourly paid or non-exempt employees who worked for Defendants, and/or***
10 ***their predecessor or merged entities, within the State of California within the longest applicable***
11 ***limitations period*** (the “Aggrieved Employees”).

12 2. Plaintiff and Defendant Rag & Bone Industries, LLC entered into a tolling
13 agreement to toll all applicable statute of limitations through July 31, 2022. Plaintiff and
14 Defendant Rag & Bone Industries, LLC agreed that should Plaintiff file an action asserting claims
15 on behalf of himself and Aggrieved Employees by July 31, 2022, the complaint shall be
16 considered filed no later than December 6, 2021, rather than the actual filing date.

17 3. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
18 May 29, 2020) provides: “Notwithstanding any other law, the statutes of limitations and repose for
19 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”
20 The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to
21 toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.
22 The term “civil causes of action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363
23 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed
24 “as including a special proceeding of a civil nature”)] The rule also applies to statutes of
25 limitations on filing of causes of action in court found in codes other than the Code of Civil
26 Procedure.”

27 4. Throughout the time period involved in this case, Defendants willfully maintained
28 a policy and/or practice of failing to pay all wages, including minimum and overtime wages;

1 failing to provide timely duty-free meal periods; failing to authorize and permit timely duty-free
2 rest breaks; failing to maintain and provide accurate itemized wage statements; failing to keep
3 accurate and complete records showing the hours worked daily and wages paid; and failing to pay
4 all wages owed timely and upon separation of employment. Defendants' illegal conduct has given
5 rise to claims for violation of PAGA.

6 5. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
7 action against Defendants to recover penalties owed pursuant to Labor Code section 2699.
8 Plaintiff was compelled to retain the services of counsel to file this action to protect his interests
9 and those of Aggrieved Employees and has thereby incurred attorneys' fees and costs, which he is
10 entitled to recover under Labor Code section 2699.

11 **II. JURISDICTION**

12 6. This Court has subject matter jurisdiction over any and all causes of action asserted
13 herein pursuant to Article VI, section 10 of the California Constitution and California Code of
14 Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
15 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
16 arises under the laws of the State of California or is subject to adjudication in the courts of the
17 State of California.

18 7. This Court has personal jurisdiction over Defendants because they have caused
19 injuries in Los Angeles County and the State of California through their acts and by their violation
20 of the California Labor Code and California state common law. Defendants also transact business
21 throughout California and have obtained the benefits of the laws of the United States and the State
22 of California and are therefore subject to the personal jurisdiction of this Court. Defendants
23 transact at least \$500,000 dollars of business within the State of California.

24 **III. VENUE**

25 8. Venue as to each defendant is proper in this judicial district, pursuant to Code of
26 Civil Procedure section 395. Defendants operate within California and do business within Los
27 Angeles County.

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1 **IV. PARTIES**

2 9. At all relevant times herein, Defendants employed Plaintiff as an hourly paid, non-
3 exempt employee in the State of California, and subjected him to the same employment policies
4 and practices that affected Aggrieved Employees.

5 10. Plaintiff represents the State of California as well as Aggrieved Employees.

6 11. Plaintiff and Aggrieved Employees at all times pertinent hereto are or were
7 employees of Defendants during the statutory time period ("PAGA period").

8 12. Upon information and belief, Plaintiff and Aggrieved Employees are covered by
9 California Industrial Welfare Commission ("IWC") Occupational Wage Order Nos. 1-2001 and 7-
10 2001.¹

11 13. Defendants are in the business of apparel manufacturing and retailing.

12 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
13 business in the State of California and, at all times hereinafter mentioned, were and are employers
14 as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are engaged
15 throughout this county and the State of California. During the relevant period, Defendants
16 employed Plaintiff and Aggrieved Employees within the State of California.

17 15. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
19 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
20 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
21 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
22 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
23 names and capacities of the defendants designated hereinafter as DOES when such identities
24 become known.

25
26 _____
27 ¹ Upon information and belief, Plaintiff alleges that Wage Order Nos. 1-2001 and 7-2001 are
28 applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage
Orders that may be gleaned relevant after discovery.

1 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
2 include DOES 1 through 100 identified herein.

3 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to other Defendants. Plaintiff is further informed and believes and based
7 thereon alleges that Defendants are joint employers in that they employed Plaintiff and Aggrieved
8 Employees at the same time and were operating as a joint enterprise and single entity at all
9 relevant time periods.

10 18. California courts have recognized that the definition of “employer” for purposes of
11 enforcement of the California Labor Code goes beyond the concept of traditional employment to
12 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
13 California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who
14 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
15 person to work or exercises control over the wages, hours, or working conditions of any person
16 may be liable for violations of the California Labor Code as to that person.

17 19. California law also permits and recognizes the piercing of a corporate veil between
18 sister companies under the single enterprise rule. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107,
19 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512.) The single enterprise rule
20 applies where “there are two or more personalities, there is but one enterprise; and that this
21 enterprise has been so handled that it should respond, as a whole, for the debts of certain
22 component elements of it.” (*Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191
23 Cal.App.4th at p. 512.)

24 20. At all times throughout their employment, Plaintiff and Aggrieved Employees were
25 regularly and consistently subject to the common policies and/or practices utilized by Defendants.

26 21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
27 Aggrieved Employees to perform services from which they benefitted. Moreover, the
28 aforementioned Defendants had the right to exercise control over the wages, hours, and/or

1 working conditions over Plaintiff and Aggrieved Employees at all relevant times herein, so as to
2 be considered joint employers. By reason of their status as joint employers, they are each liable for
3 civil penalties for violation of the California Labor Code as to Plaintiff and Aggrieved Employees
4 as set forth herein.

5 **V. REPRESENTATIVE ACTION ALLEGATIONS**

6 **Defendants Systematically Violated State Wage and Hour Laws**

7 22. Defendants employed over 100 individuals in California during the PAGA period.

8 23. Plaintiff and Aggrieved Employees are, and were at all times pertinent hereto,
9 hourly paid or non-exempt employees for the purposes of minimum wages, overtime wages, rest
10 breaks, meal periods, and the other underlying claims alleged herein.

11 24. Labor Code section 510 requires an employer to compensate an employee who
12 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
13 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
14 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
15 compensate employees at no less than twice the regular rate of pay when an employee works more
16 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
17 work.

18 25. During the relevant period, Defendants have had a policy and/or practice of failing
19 to pay overtime wages to Plaintiff and Aggrieved Employees for all overtime hours they worked.
20 The work times of Plaintiff and Aggrieved Employees have been, and continue to be, greater than
21 eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay
22 Plaintiff and Aggrieved Employees wages for, *inter alia*, hours that were worked off the clock,
23 including work performed during meal periods and pre- and post-shift and also as a result of
24 Defendants' unlawful rounding policy, as discussed and alleged *infra*, Plaintiff and Aggrieved
25 Employees were deprived wages at overtime premium amounts attributable to overtime hours.
26 Additionally, if there was any overtime paid to Plaintiff and Aggrieved Employees, upon
27 information and belief, Defendants incorrectly calculated the regular rate for purposes of
28 calculating overtime; Defendants failed to include, *inter alia*, non-discretionary forms of pay in

1 the regular rate calculations for Plaintiff and Aggrieved Employees, thus depriving them of the full
2 and proper amount of overtime pay.

3 26. By their common policy and/or practice of requiring Plaintiff and Aggrieved
4 Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a
5 workweek without compensating them at the applicable overtime rate of pay, Defendants willfully
6 violated the provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order Nos. 1-
7 2001 and 7-2001.

8 27. Plaintiff and Aggrieved Employees were compelled to perform pre- and post- shift
9 duties that were off the clock, resulting in uncompensated minimum and overtime wages. Because
10 Plaintiff and Aggrieved Employees regularly worked full-time schedules, this off-the-clock work
11 results in unpaid overtime; and for these off-the-clock hours, Plaintiff and Aggrieved Employees
12 did not even receive straight pay: they received no pay at all. Defendants willingly acquiesced to
13 and willingly ratified the practice of off-the-clock work to minimize the incidence of reported
14 overtime, thereby reducing labor costs.

15 28. Plaintiff and Aggrieved Employees also worked during meal periods as described
16 herein. Hence, some of the unpaid meal period time constitutes off-the-clock hours resulting in
17 unpaid minimum wages (along with unpaid overtime wages) owed to Plaintiff and Aggrieved
18 Employees.

19 29. In addition, Defendants maintained a practice of requiring Plaintiff and Aggrieved
20 Employees to work off-the-clock in that they rounded Plaintiff's and Aggrieved Employees' work
21 time. The rounding is unlawful because it was possible, practical, and feasible for Defendants to
22 count and pay for Plaintiff's and Aggrieved Employees' actual work time, but they did not, and
23 Defendants failed, over time, to fully compensate Plaintiff and Aggrieved Employees for all hours
24 actually worked.

25 30. Throughout the applicable period of time, Defendants did not pay Plaintiff and
26 Aggrieved Employees at least the California minimum wage for all hours worked. Labor Code
27 section 1197 states the California requirement that employees must be paid at least the minimum
28 wage fixed by the Commission, and any payment of less than the minimum wage is unlawful.

1 Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum
2 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”
3 The applicable IWC Wage Order(s) also obligate employers to pay each employee minimum
4 wages for all hours worked.

5 31. These minimum wage standards apply to each hour employees worked for which
6 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
7 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
8 or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005)
9 135 Cal.App.4th 314, 324.)

10 32. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
11 violations of Labor Code section 1194. Where an employee, like Plaintiff and Aggrieved
12 Employees, is not paid for all hours worked under Labor Code section 1194, the employee may
13 recover minimum wages and liquidated damages for the time for which he or she received no
14 compensation. (*Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding
15 that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2
16 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby’s Rest.*
17 *Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-
18 21.) Since Defendants failed to provide Plaintiff and Aggrieved Employees with compensation for
19 all hours worked, they are entitled to recover liquidated damages under Labor Code section 1194.2
20 through PAGA.

21 33. Labor Code section 1197.1 authorizes employees who are paid less than the
22 minimum fixed by an applicable state or local law, or by an order of the commission, a civil
23 penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation
24 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
25 pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
26 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
27 period for which the employee is underpaid regardless of whether the initial violation is
28 intentionally committed.” Accordingly, through PAGA and to the extent permitted by law,

1 Plaintiff and Aggrieved Employees are entitled to recover for violations of Labor Code section
2 1197.1.

3 34. Defendants failed to provide Plaintiff and Aggrieved Employees with timely duty-
4 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001 and 7-2001
5 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free
6 meal period within the first five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012)
7 53 Cal.4th 1004, 1042 [“Accordingly, first meal periods must start after no more than five
8 hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled to
9 receive a second thirty (30) minute uninterrupted and duty-free meal period. (See Labor Code §
10 512.)

11 35. Defendants denied Plaintiff and Aggrieved Employees meal periods that comply
12 with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001 and 7-2001. Plaintiff and
13 Aggrieved Employees suffered late, missed, short, interrupted and/or rounded first and second
14 meal periods. (See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 [the California Supreme
15 Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not
16 permitted to round time records when determining if employees are entitled to meal premium pay, and
17 (2) it is the employer’s burden to show that compliant meal periods were provided to employees if the
18 time records show otherwise].) Plaintiff and Aggrieved Employees did not receive compliant meal
19 periods within the first five (5) hours of their work, and did not receive compliant second meal periods
20 when working shifts of ten (10) hours or more.

21 36. Defendants were also obligated but failed to provide Plaintiff and Aggrieved
22 Employees with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major
23 fraction thereof worked as required by Labor Code section 226.7 and IWC Wage Order Nos. 1-
24 2001 and 7-2001. The California Supreme Court held in *Augustus v. ABM Security Services Inc.*,
25 (2016) 2 Cal. 5th 257 that employees must be relieved of all duties during rest breaks pursuant to
26 Labor Code section 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found
27 that the Wage Orders and the Labor Code require employers to “relinquish control over how
28

employees spend their time” and “relieve employees of all duties” during employees’ ten-minute rest periods. Plaintiff and Aggrieved Employees did not receive compliant rest breaks.

37. In addition to failing to authorize and permit compliant meal and rest breaks, Plaintiff and Aggrieved Employees were not compensated with one (1) hour’s worth of pay at their regular rates of pay as premium pay when they were not provided with compliant meal and rest breaks in accordance with Labor Code section 226.7(b). (*See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858).

38. Labor Code section 203 provides “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...” for up to 30 days. (Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

39. Due to Defendants’ non-compliant policies and/or practices described herein, Plaintiff and Aggrieved Employees whose employment with Defendants concluded were not compensated for all straight-time and overtime hours worked, and were not paid all meal and rest break premiums at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff and Aggrieved Employees all wages owed, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

40. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.”

41. Due to Defendants’ failure to pay Plaintiff and Aggrieved Employees minimum and overtime wages, along with meal period and rest break premiums, as described above, Defendants failed to timely pay employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis.

42. Plaintiff and Aggrieved Employees were not furnished with accurate itemized wage statements that accurately showed their gross wages earned, net wages earned, premium payments at their regular rates of pay for noncompliant meal and rest breaks, all applicable hourly rates and

1 corresponding number of hours worked at each hourly rate in effect during their pay periods, and
2 other information required by Labor Code section 226(a).

3 43. As a result of Defendants' violation of Labor Code section 226(a), Plaintiff and
4 Aggrieved Employees suffered injury because, among other things: (a) the violations kept them
5 from determining the amounts of wages owed; (b) the violations caused them to have to perform
6 mathematical computations to determine the amounts of wages owed to them and made it
7 exponentially more difficult than if the wage statement contained the required accurate
8 information; and (c) the wage statements inaccurately understated the wages, hours, and wage
9 rates to which they were entitled.

10 44. In addition to Labor Code section 226(a), Defendants also knowingly and
11 intentionally failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
12 statements in violation of Labor Code section 226(e). Defendants undeniably knew that they were
13 not providing Plaintiff and Aggrieved Employees with wage statements required by California
14 law. (*See Garnett v. ADT LLC* (E.D. Cal. Oct. 6, 2015) 139 F.Supp. 1121, 1131 [finding that the
15 defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew
16 that it was not providing total hours worked to plaintiff or other employees paid on commission”
17 even though it believed that employees paid solely on commission or commission and salary “are
18 exempt and therefore we do not record hours on a wage statement.”].)

19 45. Plaintiff and Aggrieved Employees are entitled to PAGA penalties under Labor
20 Code section 226(a). (*See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.4th 773, 788
21 [“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
22 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
23 226(e)(1).”]; *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F.Supp.3d 1116, 1136 [To obtain
24 judgment on a PAGA claim, “all [Plaintiffs] needs to establish is a violation of section 226(a),
25 which she has done, as discussed above.”]; *McKenzie v. Fed Exp. Corp.* (C.D. Cal. 2011) 765
26 F.Supp.2d 1222, 1232 [holding that “for the purposes of recovering PAGA penalties, one need
27 only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”]; *Aguirre*
28 *v. Genesis Logistics* (C.D. Cal. July 3, 2013) 2013 U.S. Dist. LEXIS 189815, at *28 [“Plaintiffs do

1 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of
2 PAGA.”].)

3 46. Following *Friant*, courts have found that employees can recover separate penalties
4 under PAGA for a defendant’s violations of Labor Code section 226(a) and (e). (*See, e.g., Bell v.*
5 *Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
6 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was
7 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
8 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
9 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
10 226(a).”].)

11 47. Further and in addition to the penalties outlined above, Labor Code section 226.3
12 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
13 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
14 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
15 citation, for which the employer fails to provide the employee a wage deduction statement or fails
16 to keep the records required in subdivision (a) of Section 226.” As explained in detail above,
17 Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
18 statements.

19 48. Accordingly, Plaintiff and Aggrieved Employees may also recover Labor Code
20 section 226.3 penalties for Defendants’ violations of Labor Code section 226(a). (*See Finder v.*
21 *Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151,
22 at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a
23 PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at
24 *6 (C.D. Cal. June 14, 2012) [“Lab. Code § 226.3 merely provides that failure to perform actions
25 mandated by § 226(a) may trigger civil penalties.”].)

26 49. Finally, California Labor sections 1174(d) and 1174.5 require an employer to keep,
27 at a central location in the state or at the plants or establishments at which employees are
28 employed, payroll records showing the hours worked daily by and the wages paid to employees

1 employed at the respective plants or establishments. These records shall be kept with rules
2 established for this purpose by the commission but in any case, shall be kept on file for not less
3 than three years. During the relevant time period, Defendants failed to keep accurate and complete
4 payroll records showing the actual hours worked daily and the wages earned by Plaintiff and
5 Aggrieved Employees, including earned and unpaid minimum, overtime, and premium wages
6 discussed herein.

7 **FIRST CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**

9 **Cal. Labor Code §§ 2698, *et seq.***

10 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

11 50. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
12 incorporates by reference all of the allegations contained in the previous paragraphs of this
13 Complaint as though fully set forth herein.

14 51. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
15 action against Defendants to recover wages and penalties pursuant to PAGA.

16 52. Based on the above allegations incorporated by reference, Defendants have violated
17 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
18 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 as well as IWC Wage Order Nos. 1-2001 and
19 7-2001.

20 53. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
21 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
22 following formula:

23 \$100 for the initial violation per employee per pay period; and

24 \$200 for each subsequent violation per employee per pay period.

25 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
26 Development Agency (LWDA) and twenty-five percent (25%) to Aggrieved Employees.

27 54. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
28 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate

1 PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). (*Lopez v. Friant*
2 & Assocs., LLC (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
3 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
4 that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was
5 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative
6 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
7 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
8 226(a)."].) For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
9 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
10 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
11 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
12 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
13 fails to provide the employee a wage deduction statement or fails to keep the required records in
14 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
15 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
16 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
17 Labor Code section 226(a).

18 55. Labor Code section 210 provides that "[i]n addition to, and entirely independent
19 and apart from, any other penalty provided in this article, every person who fails to pay the wages
20 of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
21 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
22 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
23 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
24 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
25 also entitled to recover penalties under Labor Code section 210 through PAGA.

26 56. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
27 liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally
28 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for

1 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
2 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
3 which the employee is underpaid regardless of whether the initial violation is intentionally
4 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
5 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

6 57. Plaintiff has fully and completely exhausted his administrative remedies under
7 PAGA prior to proceeding with the PAGA claim. On December 6, 2021, Plaintiff filed his PAGA
8 Notice online with the LWDA and sent a letter by certified mail to Defendant Rag & Bone
9 Industries LLC setting forth the facts and theories of the violations alleged against Defendants, as
10 prescribed by Labor Code sections 2698, *et seq.* As required by PAGA, Plaintiff submitted the
11 \$75.00 filing fee to the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was
12 received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65)
13 calendar days of the postmark date of the PAGA Notice. Plaintiff is therefore entitled to
14 commence and proceed with a civil action pursuant to Labor Code section 2699.

15 58. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the PAGA period, in an amount according to proof, as to those penalties that are otherwise
18 only available to public agency enforcement actions. Funds recovered will be distributed in
19 accordance with PAGA, with 75% of the penalties recovered being reimbursed to the State of
20 California and the LWDA.

21 59. Plaintiff was compelled to retain the services of counsel to file this action to protect
22 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
23 owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled
24 to recover under Labor Code section 2699(g)(1).

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff, on behalf of the State of California, prays for judgment against
27 Defendants as follows:

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1 1. For penalties and other relief allowable under Labor Code section 2699, *et seq.*
2 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,
3 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, as well as
4 IWC Wage Order Nos. 1-2001 and 7-2001;

5 2. A civil penalty against Defendants in the amount of \$100 for the initial violation
6 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor
7 Code for Plaintiff and Aggrieved Employees for each and every pay period that occurred during
8 the PAGA period;

9 3. A civil penalty against Defendants pursuant to Labor Code section 1197.1 for the
10 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee is underpaid, and for each
12 subsequent violation, two hundred fifty dollars (\$250) for each subsequent violation for each pay
13 period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and
14 every pay period that occurred during the PAGA period;

15 4. A civil penalty against Defendants pursuant to Labor Code section 210 for the
16 initial violation that was committed, in the amount of one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee is underpaid, and for each
18 subsequent violation, two hundred dollars (\$200) for each underpaid employee for each pay period
19 for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and every
20 pay period that occurred during the PAGA period;

21 5. A civil penalty in the amount of \$50 for the initial violation and \$100 for each
22 subsequent violation as specified by Labor Code sections 2699(f) and 226(e) for Plaintiff and
23 Aggrieved Employees for each and every pay period that occurred during the PAGA period;

24 6. A civil penalty in the amount of \$250 for the initial violation and \$1,000 for each
25 subsequent violation as specified by Labor Code sections 2699(f) and 226.3 for Plaintiff and
26 Aggrieved Employees for each and every pay period that occurred during the PAGA period for
27 violations of Labor Code section 226(a);

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7. An award of reasonable attorney's fees against Defendants as specified in Labor Code section 2699(g) and Code of Civil Procedure section 1021.5, for all the work performed by the undersigned counsel in connection with the PAGA claims;

8. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and Aggrieved Employees' claims against Defendants as provided for in Labor Code section 2699(g)(1); and

9. All other relief as this Court deems proper.

Respectfully submitted,

DATED: July 27, 2022

COUNSELONE, PC

By 
 Anthony J. Orshansky
 Jennifer L. Connor
 Justin Kachadoorian
 Attorneys for Plaintiff and Aggrieved
 Employees