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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SHAH SAWARI, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

CEDAR FAIR MANAGEMENT, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21CV391149

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff SHAH SAWARI, an individual, on behalf of himself, all others similarly situated,
2 and on behalf of the people of the State of California and as an “aggrieved employee” under Labor
3 Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”), complains of
4 Defendant CEDAR FAIR MANAGEMENT, INC. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382 and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as a non-
10 exempt employee at Great America by CEDAR FAIR
11 MANAGEMENT, INC., in the State of California who worked one
12 or more shifts over ten (10) hours since four (4) years prior to the
13 filing of this action to the present plus any additional time during
14 which the statutes of limitation for the causes of action herein were
tollled pursuant to Emergency Rule 9 of the California Rules of
Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed
Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. From at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
25 meal periods and failed to provide compliant second meal periods. Further, Defendant failed to
26 pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each
27 workday that the second meal period was not provided within the first ten (10) hours of the shift.
28 Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme

1 Court set forth the formula for calculating the one extra hour of premium pay that employees are
2 owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court
3 held that those premium payments must include the hourly value of any nondiscretionary earnings
4 (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.
5 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
6 blended rate in violation of Labor Code §§ 226.7 and 512.

7 4. From at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
9 rest periods and failed to provide compliant third rest periods. Defendant maintained a consistent
10 policy of failing to provide Plaintiff and the Proposed Class a third rest period of at least ten (10)
11 minutes per four (4) hours worked or major fraction thereof. Plaintiff and the Proposed Class are
12 required to work over ten (10) hours without being provided with a third ten (10) minute rest
13 period. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
14 at the regular rate of compensation for each missed rest period in violation of *Ferra* and as required
15 by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments
16 must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and
17 cannot simply be paid at an employee's base hourly rate.

18 5. For at least one (1) year prior to the filing of this action and continuing to the
19 present, Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order
20 10-2001 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate
21 itemized wage statements that show all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
23 Proposed Class are issued wage statements that do not include meal and rest premiums as a result
24 of the claims alleged above and when they do include the premiums, they are not at the applicable
25 rate.

26 6. For at least three (3) years prior to the filing of this action continuing to the present,
27 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
28 the Proposed Class.

7. Plaintiff, on behalf of himself and all Proposed Class Members brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512; Wage Order 10-2001; and California Code of Regulations, Title 8, Section 11100, seeking meal and rest period penalties, accurate itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s failure to provide lawful meal periods, failure to provide lawful rest periods, failure to provide accurate itemized wage statements, and failure to pay all wages due at the time of termination.

II.

JURISDICTION AND VENUE

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

11. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Santa Clara and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business &

Professions Code § 17200, *et seq.*

12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Santa Clara County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of Santa Clara.

13. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

14. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code §2699, et seq. as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

15. Plaintiff SHAH SAWARI is a resident of California.

16. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being provided second meal periods;
- b. Work without being provided third rest periods; and
- c. Work without being provided accurate itemized wage statements on shifts over ten hours.

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

19. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

20. Defendant CEDAR FAIR MANAGEMENT, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be One Cedar Point Drive, Sandusky, OH 44870. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

23. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

1 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
2 California Industrial Welfare Commission Occupational Wage Order No. 10-2001 (Title 8 Cal.
3 Code of Regs. § 11100).

4 26. Plaintiff and all Proposed Class members have been forced by Defendant to work
5 over ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted
6 meal break and not being compensated one (1) hour of pay at their regular rate of compensation
7 for each workday that a second meal period was not provided or provided after ten (10) hours, all
8 in violation of California labor laws, regulations, and Industrial Welfare Commission Wage
9 Orders. Defendant also failed to inform Plaintiff and the members of the Proposed Class of their
10 right to take compliant second meal periods by way of a lawful policy. Plaintiff and the Proposed
11 Class were not compensated with one (1) hour of wages at the regular rate of compensation for
12 each missed meal period as required.

13 27. Defendant failed to provide Plaintiff and the Proposed Class members with
14 compliant third rest breaks of not less than ten (10) minutes per four (4) hour work period or major
15 fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class
16 of this right. Plaintiff and the Proposed Class have been required to work over ten (10) hours
17 without being provided with a third ten (10) minute rest period. Further, Plaintiff and the Proposed
18 Class were not compensated with one (1) hour of wages at the regular rate of compensation for
19 each missed rest period as required.

20 28. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
21 Wage Order 10-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
22 statements that show all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
24 Proposed Class are provided wage statements that do not include meal and rest premiums as a
25 result of the claims alleged above and/or do not include them at the appropriate rate.

26 29. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
27 Proposed Class Members quit or were discharged. This failure was willful, without legal
28 justification, and interfered with Plaintiff’s and Class Members’ rights.

30. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee at Great America by CEDAR FAIR MANAGEMENT, INC., in the State of California who worked one or more shifts over ten (10) hours since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

33. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

34. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

35. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class Members. Joinder of all members of the Proposed Class is not practicable.

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1 **B. COMMONALITY**

2 36. There are questions of law and fact common to the Proposed Class that predominate
3 over any questions affecting only individual Proposed Class Members. These common questions
4 of law and fact include, without limitation:

5 a. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC Wage
6 Order 10-2001 or other applicable IWC Wage Orders by failing to provide required second meal
7 periods throughout the term of employment and/or failing to compensate said employees one (1)
8 hour of wages at their regular rate of compensation in lieu of meal periods;

9 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 10-
10 2001 or other applicable IWC Wage Orders by failing to provide required third rest periods
11 throughout the term of employment and/or failing to compensate said employees one (1) hour of
12 wages at their regular rate of compensation in lieu of rest periods;

13 c. Whether Defendant violated Labor Code § 226(a) and Wage Order 10-2001
14 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11100 by failing to
15 provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class as
16 a result of the allegations regarding second meal periods and third rest periods;

17 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
18 compensation due and owing at the time that any Proposed Class Member's employment with
19 Defendant terminated;

20 e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
21 Code by engaging in the acts previously alleged; and

22 f. Whether Plaintiff and the members of the Proposed Class are entitled to
23 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

24 g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
25 acts alleged herein.

26 **C. TYPICALITY**

27 37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
28 all members of the Proposed Class sustained injuries and damages arising out of and caused by

1 Defendant's common course of conduct in violation of laws, regulations that have the force and
2 effect of law, and statutes as alleged herein.

3 **D. ADEQUACY OF REPRESENTATION**

4 38. Plaintiff will fairly and adequately represent and protect the interests of the
5 members of the proposed Class. Counsel who represent Plaintiff and the Proposed Class are
6 competent and experienced in litigating large employment class actions.

7 **E. SUPERIORITY OF CLASS ACTION**

8 39. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
10 practicable, and questions of law and fact common to the Proposed Class predominate over any
11 questions affecting only individual members of the Proposed Class. Each member of the Proposed
12 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
13 practice of failing to provide meal and rest periods, failing to provide accurate itemized wage
14 statements, and failing to pay all wages upon resignation or termination.

15 40. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
18 action that would preclude its maintenance as a class action.

19 **VI.**

20 **FIRST CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

22 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

23 **LABOR CODE § 226.7 AND LABOR CODE § 512**

24 41. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 42. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each meal period the employer fails to provide. Employees are entitled to a first
28 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the

1 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
2 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
3 no more than ten (10) hours of work.

4 43. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
5 these rights.

6 44. On a regular and consistent basis, Defendant failed to adequately allow employees
7 to be relieved. Although there was a desire to allow Plaintiff and the Proposed Class to leave
8 before ten (10) hours, there was too much work to be done. Plaintiff and the Proposed Class were
9 required to continue working, preventing them from being able to take their required second meal
10 break.

11 45. Plaintiff and the Proposed Class consistently worked shifts over ten (10) hours.
12 Defendant failed to provide Plaintiff and the Proposed Class with timely second meal periods of
13 not less than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours work
14 as required by the Labor Code during the relevant time period.

15 46. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed
16 Class one (1) hour of pay at the employees' regular rate of compensation for each workday that
17 the first meal period was not provided within the first (5) hours of the shift. On July 15, 2021, in
18 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
19 calculating the one extra hour of premium pay that employees are owed if an employer fails to
20 provide a compliant meal period or rest break. Specifically, the Court held that those premium
21 payments must include the hourly value of any nondiscretionary earnings (such as a
22 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here,
23 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
24 appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

25 47. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
26 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
27 missed meal break, per day in a sum to be proven at trial.

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1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7**

6 48. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 49. Labor Code § 226.7 and IWC Wage Order 10 require an employer to provide rest
9 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
10 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
11 major fraction thereof.

12 50. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 this right as it relates to shifts over ten (10) hours.

14 51. As mentioned above, Defendant consistently failed to adequately allow employees
15 to be relieved. Plaintiff and the Proposed Class were required to continue working, preventing
16 them from being able to take their required third rest break.

17 52. Defendant maintained a consistent policy of failing to provide Plaintiff and the
18 Proposed Class with third rest breaks of not less than ten (10) minutes per four (4) hour work
19 period or major fraction thereof. Plaintiff and the Proposed Class have been required to work over
20 ten (10) hours without being provided with a third ten (10) minute rest period.

21 53. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
22 at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7.
23 *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must include the
24 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
25 paid at an employee's base hourly rate.

26 54. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
27 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
28 missed rest break, per day in a sum to be proven at trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

55. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

56. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issues Plaintiff and the Proposed Class wage statements that do not properly indicate all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

57. As a result of Defendant's failure to pay wages as described above, Defendant has failed to properly include meal and rest premiums for Plaintiff and the Proposed Class.

58. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

59. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorneys' fees.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 60. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 61. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 62. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 63. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
16 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
17 Members' daily wage multiplied by thirty (30) days.

18 **X.**

19 **FIFTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

22 64. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 65. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure § 1021.5.

2 66. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
3 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
4 appropriate equitable relief.

5 67. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 68. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State and
9 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
10 vigorously minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower their costs by failing to comply with minimum labor
13 standards.

14 69. Defendant has violated statutes and public policies as alleged herein. Through the
15 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
16 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
17 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
18 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
19 guaranteed to all employees under law.

20 70. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of § 17200, *et seq.* of the Business & Professions Code.

22 71. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 § 17200, *et seq.* of the Business & Professions Code.

25 72. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 73. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

1 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
2 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
3 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
4 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
5 proposed Class the money Defendant has unlawfully failed to pay.

6 **XI.**

7 **SIXTH CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

9 74. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
10 incorporates by reference all previous paragraphs.

11 75. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
12 seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§
13 201, 202, 203, 226(a), 226.7, 512; Wage Order 10-2001; and California Code of Regulations, Title
14 8, Section 11100, which call for civil penalties.

15 76. For each such penalty, Plaintiff and the aggrieved employees are entitled to
16 penalties in an amount to be shown at trial, subject to the following formula:

17 a. \$100 for the initial violation per employee per pay period.

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

19 77. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
20 twenty-five percent (25%) to the affected employees.

21 78. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
22 LWDA¹ and mailed a letter by certified mail to Defendant Cedar Fair Management, Inc.'s entity
23 address, which is One Cedar Point Drive, Sandusky, OH 44870, as proscribed by the Code on
24 December 2, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203,
25 226(a), 226.7, and 512. (see Exhibit "1.") On December 7, 2021, Plaintiff received a signed green
26 return receipt from Defendant, indicating that it received Plaintiff's notice letter. (see Exhibit "2.")

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice
2 (see Exhibit “3”).

3 79. As no letter evidencing the LWDA’s intention to investigate was received by
4 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
5 action as though the LWDA had not chosen to investigate pursuant to Labor Code
6 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
7 Amended Class and Representative Action Complaint immediately.

8 **RELIEF REQUESTED**

9 **WHEREFORE**, Plaintiff prays for the following relief:

10 1. For compensatory damages in the amount of Plaintiff’s and each Proposed Class
11 Members’ hourly wage for each rest period and/or meal period missed or taken late from at least
12 four (4) years prior to the filing of this action to the present as may be proven;

13 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
14 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
15 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
16 an aggregate penalty of four thousand dollars (\$4,000);

17 3. For penalties pursuant to Labor Code § 203 for all employees who were terminated
18 or resigned equal to their daily wage times thirty (30) days;

19 4. An award of prejudgment and post judgment interest;

20 5. An order enjoining Defendant and its agents, servants, and employees, and all
21 persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods,
22 rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant
23 to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and IWC 10-2001;

24 6. For restitution for unfair competition pursuant to Business & Professions Code
25 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

26 7. For penalties under Labor Code §2699, *et seq.* for Defendant’s violation of Labor
27 Code §§ 201, 202, 203, 226(a), 226.7, 512, and Wage Order 10-2001;

28 8. An award providing for payment of costs of suit;

1 9. An award of attorneys' fees; and

2 10. Such other and further relief as this Court may deem proper and just.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

5
6 DATED: February 7, 2022

KINGSLEY & KINGSLEY, APC

7
8 By: _____

Liane Katzenstein Ly
Attorneys for Plaintiff Shah Sawari and the
Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

December 2, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

CEDAR FAIR MANAGEMENT, INC.
One Cedar Point Drive
Sandusky, OH 44870

Re: SHAH SAWARI v. CEDAR FAIR MANAGEMENT, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents SHAH SAWARI (“Plaintiff”) and a proposed group of current and former employees working for CEDAR FAIR MANAGEMENT, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee at Great America by CEDAR FAIR MANAGEMENT, INC., in the State of California who worked one or more shifts over ten (10) hours since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 2, 2021

Page 2 of 3

are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Likewise, the Wage Orders (10-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (2) failing to pay such employees one (1) hour of pay at the employee's regular rate of compensation for each workday that a second meal period was not provided. In addition, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant failed to adequately allow employees to be relieved. Although there was a desire to allow Plaintiff and the aggrieved employees to leave before ten (10) hours, there was too much work to be done. Plaintiff and the aggrieved employees were required to continue working and therefore were unable to take lawful meal periods.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 10-2001, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a third ten (10) minute rest period. As mentioned above, Defendant failed to adequately allow employees to be relieved. Plaintiff and the aggrieved employees were required to continue working and therefore were unable to take lawful rest periods. As such, Defendant failed to provide Plaintiff and the Proposed Class with compliant third rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. As discussed above, *Ferra* requires

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 2, 2021

Page 3 of 3

the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issues Plaintiff and all aggrieved employees wage statements that do not properly indicate all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and they are not paid premiums at the appropriate rate of pay. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that 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; but the wages shall not continue for more than 30 days.”

Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due 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 § 203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

LKL/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. CEDAR FAIR MANAGEMENT, INC. via USPS Certified Mail # 7020 0640 0002 1439 7939
 3. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
CEDAR FAIR MANAGEMENT, INC.
One Cedar Point Drive
Sandusky, OH 44870



9590 9402 7019 1225 1721 95

2. Article Number (Transfer from service label)
7020 0640 0002 1439 7939

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted
Delivery

☐ Signature Confirmation™

☐ Signature Confirmation
Restricted Delivery

USPS TRACKING #



CLEVELAND OH 440

7 DEC 2021 PM 7 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1721 95

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY

A PROFESSIONAL CORPORATION

CITY NATIONAL BANK BUILDING

16133 VENTURA BOULEVARD, SUITE 1200

ENCINO, CALIFORNIA 91436

PAGA LETTER
CEDAR FAIR MANAGEMENT, INC.

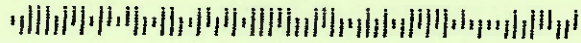


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Shah Sawari

Plaintiff/Aggrieved Employee Occupation *

Ride operator

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

Cedar Fair Management, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

One Cedar Point Drive	Sandusky
Employer State *	Employer Zip/Postal Code *
Ohio	44870
Employer Industry *	Employer Industry for "Other" *
Other	Leisure

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File PAGA Letter- ...ment, Inc.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, December 2, 2021 10:31 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

12/2/2021

LWDA Case No. LWDA-CM-855414-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Shah Sawari
Employer: Cedar Fair Management, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CJulie%40kingsleykingsley.com%7C5281eacca5a74a0c253208d9b5c1f57a%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637740666929833656%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCi6Mn0%3D%7C3000&data=Bh%2BMczwWdP3Kj%2Frlg2Ask9fM3AF%2FJehwNfuLmLhmrC0%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, December 2, 2021 10:32 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-855414-21

Order Number: ORD-000144380

Total:\$75.00

Card Type: Master Card

Date: 12/2/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436