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GARAY and aggrieved employees

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

CESAR J BARRIOS GARAY individually
and behalf of those similarly situated

Plaintiff,

v.

MYDATT SERVICES INC., dba BLOCK BY
BLOCK, an Ohio corporation; and DOES 1 to
10, inclusive

Defendant.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

03/03/2022 at 12:49:32 PM

By: Xian-xii Bowie, Deputy Clerk

CASE NO. 22CV007899

**REPRESENTATIVE ACTION
COMPLAINT:**

- 1. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.**

1 Plaintiff, CESAR J BARRIOS GARAY (hereinafter “Plaintiff”) by and through his
2 undersigned attorneys, hereby brings this civil law enforcement action under the California Private
3 Attorneys General Act (“PAGA”) against Defendant MYDATT SERVICES INC., dba BLOCK
4 BY BLOCK, an Ohio corporation; and DOES 1 to 10 (hereinafter referred to as “Defendant”).
5 Plaintiff is informed and believes, and on the basis of that information alleges, as follows:

6 **NATURE OF THE CASE**

7 1. This is a law enforcement and representative action under the Private Attorneys
8 General Act of the California Labor Code, arising from Defendant’s failure to provide their non-
9 exempt employees with all wages, meal and rest periods in compliance with the applicable Wage
10 Order and/or the California *Labor Code*, by failing to reimburse business expenses, and by failing
11 to provide accurate, itemized wage statements.

12 2. MYDATT SERVICES INC., dba BLOCK BY BLOCK, is an Ohio corporation that
13 is part of the investigation and security services industry, with its principal location in Nashville,
14 Tennessee. At all relevant times, Defendant issued and maintained uniform, standardized
15 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in
16 California, including Plaintiff and others similarly situated, regardless of their location or position.

17 3. Defendant has maintained practices across its locations which have failed and
18 continues to fail to pay Plaintiff and aggrieved employees all wages. Specifically, Defendant
19 subjects its non-exempt employees to work off-the-clock. Plaintiff and other aggrieved employees
20 are required to arrive to their work locations approximately five (5) minutes early and put on their
21 uniforms and wash hands prior to each shift. Further, Plaintiff alleges Defendant only had one time-
22 clock, and there would be four to five employees clocking in at the same time. As a result, Plaintiff
23 and other aggrieved employees were required to wait in line without compensation.

24 4. Plaintiff and aggrieved employees were also required to change out of their
25 uniforms after each shift.

26 5. Further, meal breaks are short and frequently interrupted as a result of needing to
27 wash hands post Covid, and as a result of Defendant’s requirement that Plaintiff and other
28 aggrieved employees change out of their uniforms. Further, meal and rest breaks are late as a result

1 of requiring Plaintiff and other aggrieved employees to work off the clock.

2 6. Plaintiff and aggrieved employees were also required to keep their phones on during
3 their meal breaks so that management may contact them as needed.

4 7. In light of the foregoing, Defendant failed to provide Plaintiff and other aggrieved
5 employees with compliant wage statements.

6 8. Defendant also had a practice of failing to reimburse business related expenses such
7 as the purchase of face masks as Plaintiff and aggrieved employees are required to wear face masks
8 while carrying out their job duties.

9 9. Plaintiff, on behalf of himself and all other aggrieved employees, seek civil
10 penalties under PAGA based on Defendant's Labor Code violations.

11 10. Labor Code §§ 2698 et seq. grants California employees the right to bring a civil
12 action for violation of any provision of the Labor Code on behalf of themselves and other current
13 and former employees to recover civil penalties. In passing PAGA, the California Legislature
14 "declared that adequate financing of labor law enforcement was necessary to achieve maximum
15 compliance with state labor law, that staffing levels for labor law enforcement agencies had
16 declined and were unlikely to keep pace with future growth of the labor market, and that it was
17 therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to
18 recover civil penalties for Labor Code violations." *Arias v. Super Ct.* (2009) 46 Cal. 4th 969, 980.

19 11. PAGA permits aggrieved employees to collect the civil penalties authorized by law
20 and normally collected by the Labor and Workforce Development Agency ("LWDA") or any of its
21 departments or division. See Lab. Code § 2699(a). However, because the action is brought on
22 behalf of the state, 75% of the fees collected are distributed to the LWDA for the enforcement of
23 labor laws and for the education of employers and employees. The remaining 25% is shared
24 between aggrieved employees. See Lab. Code § 2699(i).

25 12. PAGA provides that any civil penalty assessed and collected by the LWDA for
26 violation of applicable provisions of the California Labor Code may, as an alternative, be recovered
27 through a civil action brought by an aggrieved employee on behalf of herself or himself and other
28 current or former employees pursuant to procedure outlined in California Labor Code § 2699.3.

13. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil action, an aggrieved employee must first give notice by online filing with the LWDA and by certified mail to the employer of the alleged violations, including facts and theories to support the allegations. If the LWDA fails to investigate the alleged violations within 65 calendar days of the date of the notice, the aggrieved employee may then file a civil action to seek penalties.

14. On December 17, 2021, Plaintiff provided written notice of the violations alleged in this Complaint, including the facts and theories supporting his allegations, to the LWDA via online submission, with a certified copy mailed to Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this Complaint.

15. Plaintiff on behalf of himself and all others similarly situated, also request reasonable attorneys' fees and costs pursuant to, inter alia, California Labor Code § 2699 (g).

PARTIES

16. Plaintiff, Cesar J Barrios Garay is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. Plaintiff has worked for Defendant since approximately 2014. Plaintiff currently works for a contract that Defendant has with the City of West Hollywood. Plaintiff works as an ‘ambassador’ and earns approximately \$18.60 per hour.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendant Mydatt Services Inc. dba Block by Block is an Ohio corporation. Plaintiff is further informed and believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State of California.

18. Plaintiff is informed and believes, and based upon such information and belief alleges, that Defendant is, now and/or at all times mentioned in this Complaint was in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

19. Plaintiff is further informed and believes, and based upon such information and belief alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,

1 complaints, injuries and/or damages alleged in this Complaint.

2 20. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned, Defendant and DOES 1 through 10, are and were corporations, business entities,
4 individuals, and partnerships, licensed to do business and actually doing business in the State of
5 California.

6 21. Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendant sued herein as DOES 1 through 10, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
9 complaint when the true names and capacities are known. Plaintiff is informed and believes and
10 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
11 matters alleged herein and proximately caused Plaintiff and members of the general public and to
12 be subject to the illegal employment practices, wrongs and injuries complained of herein.

13 22. At all times herein mentioned, each of said Defendants participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
15 Defendants, and each of them, were the agents, servants and employees of each of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
17 within the course and scope of said agency and employment.

18 23. Plaintiff is informed and believes and based thereon alleges that at all times material
19 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
20 venturer of, or working in concert with each of the other co-Defendants and were acting within the
21 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
22 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
23 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 24. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 25. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
2 herein mentioned, Defendants, and each of them, ratified each and every act or omission
3 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
4 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
5 damages as herein alleged.

6 **JURISDICTION AND VENUE**

7 26. The Court has jurisdiction over this action pursuant to Article 6, § 10 of the
8 California Constitution and California *Code of Civil Procedure* § 410.10.

9 27. The Court has jurisdiction over Defendant because it is authorized to do business in
10 the State of California and is registered with the California Secretary of State. Defendant does
11 sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally
12 avails itself of the California market through the advertising, marketing and sale of goods and
13 services, to render the exercise of jurisdiction over Defendant by the California court consistent
14 with traditional notions of fair play and substantial justice.

15 28. Venue is proper in Alameda County because Defendant has employed aggrieved
16 employees in this county and transacts business in this County.

17 **FACTUAL ALLEGATIONS**

18 29. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19 ***Defendant's Failure to Pay Overtime Wages***

20 30. During the Relevant Time Period, upon information and belief, Defendant had, and
21 continues to have, a company-wide policy of discouraging and impeding Plaintiff and aggrieved
22 employees from recording hours worked that were outside of their scheduled shifts in order to limit
23 the amount of overtime employees could accrue. On information and belief, this policy of limiting
24 overtime, led Plaintiff and other aggrieved employees to work off-the-clock before and after their
25 scheduled shift times. For example, prior to almost every shift, Plaintiff is required to arrive
26 approximately five (5) minutes early and put on his uniform and wash hands. Further, as Defendant
27 only has one time clock, Plaintiff is required to wait in line to clock in, as four to five other
28 employees would be clocking in at the same time. Defendant also requires Plaintiff and aggrieved

1 employees to change out their uniforms during their lunch breaks and after clocking out. When this
2 occurs, Plaintiff is unable to record this off-the-clock work because Defendant's management
3 prohibited them from recording hours worked outside of their scheduled shifts.

4 31. At all times, Plaintiff and aggrieved employees remained under the control of
5 Defendant. Defendant could have recorded this off-the-clock work, but refused to do so to avoid
6 paying Plaintiff and aggrieved employees overtime wages.

7 32. Therefore, Plaintiff and aggrieved employees were not paid overtime wages for all
8 of the overtime hours they actually worked.

9 ***Defendant's Failure to Pay all Wages and Minimum Wages***

10 33. As stated above, during the relevant time period, as a result of Defendant's policy of
11 limiting the amount of overtime employees could accrue, Plaintiff and aggrieved employees are
12 forced to work off-the-clock before their scheduled shift start times to change into their uniforms,
13 wash hands, and wait in line to clock in. In addition, as set forth above, Defendant has a company-
14 wide practice of requiring employees to change out of their uniforms during their meal breaks and
15 after clocking out.

16 34. To the extent that these off-the-clock hours did not qualify for overtime premium
17 payment, Defendant did not pay at least minimum wages for those hours worked off-the-clock.

18 ***Defendant's Failure to Provide Compliant Meal Periods***

19 35. Plaintiff is informed and believes, and thereon alleges, that the aggrieved employees
20 regularly worked more than five (5) hours per shift and were entitled to a meal period of not less
21 than thirty (30) minutes without duty.

22 36. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
23 routinely failed to provide Plaintiff and aggrieved employees with such meal periods without duty,
24 notwithstanding the fact that Plaintiff and aggrieved employees had not waived their right to the
25 same. Thus, Defendant failed to provide Plaintiff and aggrieved employees with meal periods
26 required by California Labor Code §§ 226.7, 512, 516 and IWC Wage Order, section 11 and
27 categorically failed to pay any and all meal period wages due.

1 37. Plaintiff and aggrieved employees seek damages pursuant to California Labor Code
2 § 226.7(b) and IWC Wage Order section 11(D), in the amount of one additional hour of pay at the
3 regular rate for each work day that the meal period is/was not provided to Plaintiff and any
4 aggrieved employee, the cumulative sum of which is to be determined at trial.

5 38. Under the foregoing, California employers must provide meal periods and authorize
6 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services,*
7 *Inc.*, 2 Cal.5th 257 (2016), the California Supreme Court reaffirmed that the required meal and rest
8 periods must be “off-duty,” which means that employees must be relieved of “all work-related
9 duties,” including the duty to remain “on call,” and they must be “free from employer control” over
10 how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and
11 rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th
12 1004, 1038-39 (2012).

13 39. Yet Defendant did and does not provide Plaintiff and aggrieved employees with
14 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
15 the fifth hour of work and again by the tenth hour of work.

16 40. Rather, Plaintiff and aggrieved employees’ meal periods are cut short as a result of
17 hand washing and needing to change out of their uniforms during each meal period. Further,
18 Plaintiff alleges that meal breaks have been interrupted by the requirement to keep their phones on
19 during their meal breaks so that management may contact them as needed. Meal breaks are also
20 late, as the assigned meal period time did not take into consideration the time Plaintiff and
21 aggrieved employees worked off the clock.

22 41. Thus, Defendant has failed to perform its obligations to provide Plaintiff and
23 aggrieved employees with off-duty meal periods by the end of the fifth hour of work and a second
24 meal period by the end of the tenth hour of work. Defendant also has failed to pay Plaintiff and
25 aggrieved employees (1) hour of pay at the regular rate for each off-duty meal period that they have
26 been denied.

27 42. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
28 *Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021) where the court unanimously held that employers

1 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
2 employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be
3 higher than the base hourly rate because the regular rate of pay must include all nondiscretionary
4 incentive payments, including nondiscretionary bonuses and overtime.

5 43. Defendant knew or should have known that as a result of its policies and/or
6 practices, that Plaintiff and aggrieved employees were not actually relieved of all duties to take
7 timely, uninterrupted meal periods. Defendant further knew or should have known that it did not
8 pay Plaintiff and aggrieved employees all meal period premiums when meal periods were missed,
9 late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide practice
10 and/or policy of not paying meal period premiums owed when compliant meal periods are not
11 provided. Because of this practice and/or policy, Plaintiff and aggrieved employees have not
12 received all premium pay for missed, interrupted, or late meal periods.

13 44. Accordingly, Defendant failed to provide all meal periods in violation of California
14 Labor Code §§ 226.7, 512(a), 516, and 1198.

15 ***Defendant's Failure to Provide Compliant Rest Periods***

16 45. California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage
17 Order require employers to provide rest periods and to pay an employee one (1) additional hour of
18 pay at the employee's regular rate for each work day that a meal or rest period is not provided.

19 46. California Labor Code section 226.7 provides that no employer shall require an
20 employee to work during any rest period mandated by an applicable order of the California IWC.
21 The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all
22 employees to take rest periods, which insofar as practicable shall be in the middle of each work
23 period" and that the "rest period time shall be based on the total hours worked daily at the rate of
24 ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily
25 work time is less than three and one-half (3 ½) hours.

26 47. To comply with its obligation to authorize and permit rest periods under California
27 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any
28 control over how employees spend their break time, and relieve their employees of all duties—

1 including the obligation that an employee remain on call. A rest period, in short, must be a period
2 of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

3 48. During the Relevant Time Period, Defendant regularly failed to authorize and
4 permit aggrieved employees to take a ten (10) minute rest period per each four (4) hour period
5 worked or major fraction thereof. This was a result of Defendant requiring aggrieved employees to
6 have their phones on in case management needed to contact them. Further, as a result of requiring
7 Plaintiff and aggrieved employees to work off the clock, rest breaks were provided late.

8 49. As a result of Defendant’s practices and policies, aggrieved employees worked
9 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving an
10 uninterrupted 10-minute rest periods to which they were entitled.

11 50. Defendant also has engaged in a company-wide practice and/or policy of not paying
12 rest period premiums owed when compliant rest periods are not authorized and permitted. Because
13 of this practice and/or policy, Plaintiff and aggrieved employees have not received premium pay
14 for all missed rest periods. Alternatively, to the extent that Defendant did pay Plaintiff and
15 aggrieved employees one (1) additional hour of premium pay for missed rest periods, Defendant
16 did not pay Plaintiff and aggrieved employees at the correct rate of pay for premiums because
17 Defendant failed to include all forms of compensation, such as overtime pay in the regular rate of
18 pay.

19 51. Accordingly, Defendant failed to authorize and permit all rest periods in violation of
20 California Labor Code sections 226.7, 516, and 1198.

21 ***Defendant’s Failure to Provide Compliant Wage Statements***

22 52. During the relevant time period, Defendant has knowingly and intentionally
23 provided Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage
24 statements. For example, Defendant issued uniform wage statements to Plaintiff and aggrieved
25 employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
26 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
27 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
28 each hourly rate.

1 53. Because Defendant did not record the time Plaintiff and aggrieved employees spent
2 working off-the-clock and cut meal breaks short (and therefore time for which they should have
3 been paid), and failed to provide compliant rest breaks, Defendant did not list the correct amount of
4 gross wages and net wages earned by Plaintiff and aggrieved employees in compliance with
5 California *Labor Code* §§ 226(a)(1) and 226(a)(5), respectively.

6 54. For the same reason, Defendant failed to accurately list the total number of hours
7 worked by Plaintiff and aggrieved employees, and failed to list the applicable hourly rates of pay in
8 effect during the pay period and the corresponding accurate number of hours worked at each hourly
9 rate.

10 55. Because Defendant failed to provide the correct net and gross wages earned,
11 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
12 aggrieved employees have been prevented from verifying, solely from information on the wage
13 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and aggrieved
14 employees have had to look to sources outside of the wage statements themselves and reconstruct
15 time records to determine whether in fact they were paid correctly and the extent of underpayment,
16 thereby causing them injury.

17 ***Defendant's Failure to Reimburse Business Expenses***

18 56. California Labor Code § 2802 requires employers to pay for all necessary
19 expenditures and losses incurred by the employee in the performance of his or her job. The purpose
20 of Labor Code § 2802 is to prevent employers from passing off their cost of doing business and
21 operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App.
22 4th 1137, 1144 (2014).

23 57. The applicable wage order, provides that: “[w]hen tools or equipment are required
24 by the employer or are necessary to the performance of a job, such tools and equipment shall be
25 provided and maintained by the employer, except that an employee whose wages are at least two
26 (2) times the minimum wage provided herein may be required to provide and maintain hand tools
27 and equipment customarily required by the trade or craft.”
28

1 58. During the Relevant Time Period Defendant had a company-wide policy requiring
2 Plaintiff and aggrieved employees to purchase their own face masks which were mandatory for the
3 job.

4 59. Defendant could have provided Plaintiff and aggrieved employees with face masks.
5 Or, Defendant could have reimbursed employees for the costs of their masks or provided. Instead,
6 Defendant passed these operating costs off onto Plaintiff and aggrieved employees. At all relevant
7 times, Plaintiff did not earn at least two (2) times the minimum wage.

8 60. Thus, Defendant had, and continues to have, a company-wide policy and/or practice
9 of not reimbursing employees for expenses necessarily incurred in violation of California Labor
10 Code § 2802.

11 ***Facts Regarding Willfulness***

12 61. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
13 was advised by skilled lawyers, other professionals, employees with human resources background
14 and advisors with knowledge of the requirements of California wage and hour laws and that at all
15 relevant times, Defendant knew or should have known, that aggrieved employees, including
16 Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of compensation
17 for each day that a meal period was not provided and were and are entitled to received pay for all
18 hours worked and accurate itemized wage statements.

19 ***Plaintiff's Exhaustion of Administrative Remedies***

20 62. Plaintiff has complied with the procedures for bringing suit specified in California
21 *Labor Code* § 2699.3.

22 63. By letter dated December 17, 2021, required notice was provided to the Labor and
23 Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the
24 California *Labor Code* alleged to have been violated, including the facts and theories to support the
25 alleged violations.

26 64. More than sixty (60) days have passed since the date the notice was mailed to
27 Defendants and the LWDA. Accordingly, Plaintiff has satisfied the administrative prerequisites
28 under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for

violations of California Labor Code identified in this Complaint.

FIRST CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendant)

65. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

66. Plaintiff asserts claims for civil penalties as representatives of the State of California, as authorized by the Private Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.*, and to the extent permitted by law, on behalf of himself and other aggrieved employees who work or worked for Defendant in California at any time beginning December 17, 2020, through the resolution of this action and who are classified by Defendant as non-exempt from the wage and hour provisions of the California Labor Code.

67. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section 2699(c) and is a proper representative to bring a civil action on behalf of himself and other current and former employees of Defendants pursuant to the procedures specified in Labor Code section 2699.3(a) because Plaintiff was employed by Defendants and one or more Labor Code violations alleged herein was against him.

68. Pursuant to Labor Code §§ 118.12, 1194, 1197 and 1198, Defendants are and were required to compensate Plaintiff and aggrieved employees for all hours worked upon reporting for work at the appointed time stated by the employer. By failing to pay Plaintiff and aggrieved employees all minimum wages, Defendant has failed to comply with the Labor Code.

69. Pursuant to Labor Code § 510 and 1198 and the applicable Wage Order, Defendants were required to pay Plaintiff and aggrieved employees for all overtime worked at the correct rate, however failed to do so as a result of requiring Plaintiff and aggrieved employees to work off-the-clock and by failing to provide compliant meal and rest periods.

70. Pursuant to Labor Code §§ 200, 226.7, 512 and the applicable Wage Order, Defendants are required to provide Plaintiff and aggrieved employees with a meal period of not less than 30 minutes after working five hours, and if an employer fails to provide a meal period, the

1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of pay.
2 Defendant has failed to provide mandated meal periods and have not provided pay in lieu of such
3 meal breaks.

4 71. Pursuant to Labor Code §§ 200, 226.7, 512 and the applicable Wage Order,
5 Defendants are required to provide Plaintiff and aggrieved employees with a ten-minute rest break
6 per each four hours worked. As rest breaks were typically late, Defendant has failed to comply with
7 the Labor Code and applicable Wage Order.

8 72. Labor Code § 226 requires employers to make, keep and provide true, accurate and
9 complete employment records. Defendants have failed to comply with the Labor Code as it
10 intentionally provided Plaintiff and aggrieved employees with uniform, incomplete, inaccurate
11 wage statements.

12 73. Labor Code § 2802 requires that employers reimburse employees for business
13 related expenses. Defendants failed to comply with section 2802 as it failed to reimburse Plaintiff
14 and aggrieved employees for face masks.

15 74. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil action, an
16 aggrieved employee must first give notice by online filing with the LWDA and by certified mail to
17 the employer of the alleged violations, including facts and theories to support the allegations. If the
18 LWDA fails to investigate the alleged violations within 65 calendar days of the date of the notice,
19 the aggrieved employee may then file a civil action to seek penalties.

20 75. On December 17, 2021, Plaintiff provided written notice of the violations alleged in
21 this Complaint, including the facts and theories supporting her allegations, to the LWDA via online
22 submission, with a certified copy mailed to Defendants. Accordingly, Plaintiff has satisfied the
23 administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil
24 penalties against Defendant for violations of California Labor Code identified in this Complaint.

25 76. Plaintiff and other aggrieved employees hereby seek civil penalties for the Labor
26 Code violations during the applicable limitations period described herein, in the following
27 amounts:

28 a. For violations of California Labor Code sections 200, 512, 1197, 1194, 1198,

1 2802, \$100 for each aggrieved employee per pay period for the initial violation
2 and \$200 for each aggrieved employee per pay period for each subsequent
3 violation. Cal. Labor Code § 2699(f);

- 4 b. For violation of California Labor Code Section 226, \$250 per employee for an
5 initial violation and one thousand per employee for each subsequent violation.
6 Cal. Labor Code § 226.3.

7 77. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself
8 and other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and aggrieved employees pray for judgment as follows:

- 11 1. That the Court find that Defendant has been in violation of Labor Code §§ 200, 226,
12 510, 512, 1197, 1194, 1198, 2802;
13 2. Prejudgment interest under Cal. Civ. C. § 3287, and other applicable law;
14 3. That the Court award to Plaintiff and the Aggrieved Employees civil penalties as
15 provided herein, including but not limited to Labor Code §§ 2699(a) and 2699(f);
16 4. That Plaintiff and other Aggrieved Employees be awarded reasonable attorneys'
17 fees and costs pursuant to Labor Code § 2699(g)(1), Code of Civil Procedure §
18 1021.5, and/or other applicable law;
19 5. Any and all applicable civil penalties, as provided by law; and
20 6. For such other and further relief as this Court deems just and proper

21 DATED: March 3, 2022

BRADLEY/GROMBACHER, LLP
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22
23 By: 

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26
27 Attorneys for Plaintiff and Aggrieved
28 Employees