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VENTURA
SUPERIOR COURT
FILED

MAR 28 2022

BRENDA L. MCCORMICK
Executive Officer and Clerk
By: _____ Deputy
IVONNE PEACOCK

Attorneys for Plaintiff OSCAR PORTILLO, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

OSCAR PORTILLO, as an individual and
on behalf of all employees similarly
situated,

Plaintiff,

v.

BR MERCHANT SERVICE LLC, and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 56-2022-00564028-CU-OE-VTA

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES AND FINES**

1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statement; and
5. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide All Wages Due Upon Termination of Employment.
6. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Provide Adequate Sick Leave
7. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Reimburse for Necessary Business Expenditures.

BjFA2

1 Plaintiff OSCAR PORTILLO (“Plaintiff” or “Mr. Portillo”), as a representative of the
2 state of California and the Labor and Workforce Development Agency (LWDA”), and on behalf
3 of himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
7 Defendant BR MERCHANT SERVICE LLC (“Defendant” or “BRMS”). The term “Relevant
8 Time Period” or “Time Period” is defined as one (1) year plus sixty-five (65) days prior to the
9 filing of the complaint. Plaintiff reserves the right to amend this complaint to reflect a different
10 “Time Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to grant the sole discretion of designating and taking sick leave; (3) failure to provide
14 meal periods or premium compensation in lieu thereof; (4) failure to provide rest periods or
15 premium compensation in lieu thereof; (5) failure to keep accurate payroll records and provide
16 accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures;
17 and (7) failure to pay all wages earned and owed at separation of employment.

18 3. At all relevant times herein, Defendant has consistently maintained and enforced
19 the following unlawful policies and practices against Plaintiff:

- 20 a. Willfully refusing to pay all hours worked, including both regular and overtime
21 wages;
- 22 b. Willfully refusing to permit off-duty meal periods or providing compensation
23 in lieu thereof;
- 24 c. Willfully refusing to permit rest periods or providing compensation in lieu
25 thereof;
- 26 d. Willfully refusing to furnish accurate itemized wage statements upon payment
27 of wages.
- 28 e. Willfully refusing to pay all wages due upon termination of employment.

- 1 f. Willfully refusing to grant employees the sole discretion of designating and
2 taking sick leave; and
3 g. Willfully refusing to reimburse for necessary business expenses.

4 **JURISDICTION AND VENUE**

5 4. This Court has subject matter jurisdiction over the causes of action alleged in this
6 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
7 excluded from exercising subject matter jurisdiction over said causes of action.

8 5. Venue is proper in the County of Ventura, because the Defendant maintains its
9 location and transacts business in this county, the obligations and liability arise in this county,
10 and work performed by Plaintiff and Aggrieved Employees that form the subject of this action
11 occurred in this county.

12 6. The California Superior Court has jurisdiction in the matter, because of the
13 individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold
14 for federal court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or
15 domiciled in the State of California. Defendants are a corporation and a partnership doing
16 business in the State of California.

17 7. Further, there is no federal question at issue as the issues herein are based solely
18 on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
19 Professions Code, and California Rules of Court.

20 **THE PARTIES**

21 **Plaintiff**

22 8. Plaintiff at various relevant times herein, was an employee of the Defendant and
23 entitled to compensation for all hours worked, overtime compensation, and penalties from
24 Defendant. Plaintiff was employed by the Defendant from October 2020, until on or about
25 February 5, 2021, in Ventura County at Defendant's place of business located at 4680 E. Los
26 Angeles Avenue, Simi Valley, California 93063. Plaintiff was employed by the Defendant during
27 the Relevant Time Period in non-exempt hourly position as a non-exempt, hourly tech support.
28 Each of the Aggrieved Employees are identifiable, current and/or formerly similarly situated

1 persons who were employed in non-exempt hourly positions in California for the Defendant
2 during the Relevant Time Period.

3 **Defendants**

4 9. Plaintiff is informed and believes, and based thereon alleges that, Defendant BR
5 Merchant Service LLC (“Defendant” or “BRMS”) is a California corporation, operating a credit
6 card processing business in California and is and/or was the employer of the Plaintiff and
7 Aggrieved Employees during the Relevant Time Period. During the Relevant Time Period,
8 Defendant employed Plaintiff and similarly situated persons and failed to pay Plaintiff and
9 Aggrieved Employees for all hours worked as a result of failing to pay minimum and overtime
10 wages, failing to grant employees sole discretion in designating and taking sick leave, failing to
11 provide meal periods or pay a meal period penalty in lieu of, failed to provide rest periods or pay
12 a rest period penalty in lieu of, failed to provide accurate and itemized wage statements, and failed
13 to reimburse employees for necessary business expenditures. On information and belief, and
14 based thereon alleges that Defendant is conducting business in good standing in California.

15 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
16 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
17 inclusive, but on information and belief alleges that said Defendants are legally responsible for
18 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
19 capacities of the DOE Defendant when ascertained.

20 11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
21 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
22 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
23 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
24 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
25 joint employers and conspire with one another to increase profits by engaging in the conduct
26 described in this complaint.

27 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
28 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,

managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

13. By this complaint, Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by PAGA, Labor Code section 2698 et seq., to the extent permitted by law, as an Aggrieved Employee who was employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5. Plaintiff and other Aggrieved Employees are current and former employees of Defendant starting from three hundred sixty-five (365) days from the submission of the written notice to the LWDA and Defendant to the resolution of this matter. Plaintiff specifically alleged the following in his notice to the Labor and Workforce Development Agency (“LWDA”) and the employer: violations of Labor Code sections 201, 202, 203, 226, 226.7, 233, 510, 512, 1171, 1194, and 2802, as well as Industrial Welfare Commission (IWC) Wage Order No.4-2001 (“Wage Order 4”).

14. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the Defendant of the Labor Code section alleged to have been violated, and after sixty-five (65) days have passed without notice. Prior to filing this complaint, on January 21, 2022, Plaintiff gave written notice to the LWDA and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given a LWDA case number of LWDA-CM- 864047-22. A true and correct copy of Plaintiff’s notice to the LWDA and Defendant(s), is attached hereto as Exhibit A.

15. More than sixty-five (65) days have passed since Plaintiff submitted his January 21, 2022, notice to the LWDA and Defendant of the specific alleged Labor Code violations and

1 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
2 Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations.
3 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
4 to his January 21, 2022, PAGA notice.

5 **FACTUAL ALLEGATIONS**

6 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
7 employees the benefits due under California's wage and hour laws for work performed in
8 California. Defendant wrongfully refused to provide Plaintiff and the Aggrieved Employees
9 minimum wages, overtime compensation, meal and rest periods, and other statutory benefits
10 mandated by California.

11 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and
12 Aggrieved Employees in non-exempt positions at its Simi Valley location. Accordingly, these
13 positions remain non-exempt from California's wage and hour laws, yet Defendant failed to pay
14 overtime, provide meal and rest breaks and otherwise pay all wages due to these non-exempt
15 employees as required by law.

16 18. During the Relevant Time Period, Defendant failed to compensate Plaintiff and
17 Aggrieved Employees legally mandated minimum wages and overtime rate for all work
18 performed during their shifts in violation of the Labor Code and the Labor Code and Industrial
19 Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with
20 Defendant, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per
21 day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees
22 primarily performed non-exempt work in excess of the maximum regular rate hours set by the
23 IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff
24 and Aggrieved Employees to overtime compensation at time and a half rate, and when applicable,
25 double time rates as set forth by the applicable Wage Orders, regulations and/or statutes.

26 19. During the Relevant Time Period, Defendants, and each of them failed and/or
27 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
28 reasonably provide meal and/or rest breaks and/or shift relief for Plaintiff and Aggrieved

1 Employees, thereby causing members of the Aggrieved Employees to work without being given
2 paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked (even
3 when working six (6) to eight (8) hour shifts and shifts and ten (10) hour shifts) and without being
4 given a thirty (30) minute meal period for shifts of at least five (5) hours and second thirty (30)
5 minute meal periods for shifts of at least ten (10) hours during which Aggrieved Employees were
6 relieved of all duties and free to leave the premises. Defendants further failed and/or refused to
7 schedule Plaintiff and Aggrieved Employees in an overlapping manner and/or provide shift relief
8 for Plaintiff and Aggrieved Employees so as to reasonably ensure meal and/or rest breaks were
9 taken within the required statutory time frame as required by law. Furthermore, Defendants failed
10 and/or refused to pay any Aggrieved Employee one (1) hour's pay at the employees' regular rate
11 of pay as premium compensation for failure to provide rest and/or meal periods or to providing
12 such rest and/or meal periods within the statutory time frame as a result of their scheduling policy,
13 as required by Labor Code sections 226.7 and 512 and the applicable IWC Wage Order.

14 20. Mr. Portillo further alleges that Defendant failed to compensate him and the
15 Aggrieved Employees at the legally mandated wage rates for all hours worked. Mr. Portillo and
16 the Aggrieved Employees performed work off-the-clock during meal periods resulting in unpaid
17 overtime wages.

18 21. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
19 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
20 times the employee's base rate of pay. However, Defendant failed to provide Plaintiff and the
21 Aggrieved Employees any pay whatsoever for off-the-clock hours worked. This failure, therefore
22 necessarily resulted in overtime violations as well.

23 22. Furthermore, Defendant failed to keep accurate time records showing the accurate
24 number of hours worked, accurate rate of pay for each hour worked, premium wages earned, and
25 accurate gross and net wages paid in violation of Labor Code section 226, 1174, and 1174.5.

26 23. By failing to include on Plaintiff and the Aggrieved Employees' paystubs all owed
27 meal and rest premium pay, and all minimum wage and overtime owed, Defendant failed to keep
28 accurate payroll records and failed to provide Plaintiff and the Aggrieved Employees with

complete and accurate wage statements.

24. Plaintiff and Aggrieved Employees who ended their employment during the Relevant Time Period, were not paid the above due compensation or premium compensation timely upon the termination of their employment as required by Labor Code.

25. Defendant further failed to reimburse Plaintiff and Aggrieved Employees for any necessary business expenses. Defendants had a policy and/or practice of failing to reimburse Plaintiff and Aggrieved Employees for incurring necessary business expenditures as required by Labor Code sections 2802. Specifically, Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to without limitation, communicate with supervisors, for training purposes, and other things to carry out other work-related duties. Despite this requirement, Defendant failed to reimburse Plaintiff and Aggrieved Employees for the reasonable percentage of their cellphone bills.

26. During the Relevant Time Period, Defendant and each of them, required Plaintiff and Aggrieved Employees to work without lawful compensation, in violation of the California Labor Code, applicable Wage Orders, regulations and statutes, and Defendants: (1) willfully ailed and refused, and continue to fail and refuse to pay compensation for all hours worked for the Plaintiff and Aggrieved Employees: and (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and Aggrieved Employees.

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY MINIMUM WAGE AND

OVERTIME

(Labor Code Sections 510, 1194 and 1197)

(Plaintiff Against All Defendants)

27. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

28. Plaintiff and Aggrieved Employees often worked over eight (8) hours per day and/or forty (40) hours per week. Defendants failed to pay Plaintiffs and Aggrieved Employees

1 minimum wage for all hours worked and overtime premium for hours worked in excess of eight
2 (8) hours per day and/or forty (40) hours per week for work performed for Defendant. Defendants
3 failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed Plaintiffs
4 and Aggrieved Employees to be relieved of their shift immediately, thereby causing Plaintiffs and
5 Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40) hours per
6 week. Defendant failed or refused to provide premium compensation to Mr. Portillo and
7 Aggrieved Employees for late meal periods. Defendant failed or refused to provide premium
8 compensation to Mr. Portillo and Aggrieved Employees for late rest periods.

9 29. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
10 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
11 Aggrieved Employees were denied proper wages as a result of Defendant's policy of having
12 Plaintiff and Aggrieved Employees work after clocking out for their meal periods, for taking late
13 meal breaks and rest breaks, and failing to compensate Mr. Portillo and Aggrieved Employees for
14 all hours worked at the proper rate of pay pursuant to Labor Code section 510.

15 30. Labor Code section 510, subdivision (a) states in pertinent part: "Any work in
16 excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one
17 (1) workweek... shall be compensated at the rate of no less than one and one-half times the regular
18 rate of pay for any employee."

19 31. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement
20 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
21 overtime compensation applicable to the employee is entitled to recover in a civil action the
22 unpaid balance of the full amount of this minimum wage or overtime compensation, including
23 interest thereon, reasonable attorney's fees, and costs of suit."

24 32. Further, pursuant to Labor Code section 1197, payment of less than the minimum
25 wage fixed by the Labor Commission is unlawful.

26 33. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
27 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
28 IWC Wage Order(s).

1 34. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
2 Aggrieved Employees for all hours worked, meaning the time during which an employee is
3 subject to the control of an employer, including all the time the employee is suffered or permitted
4 to work, whether or not required to do so.

5 35. Because Defendant required the Aggrieved Employees to remain under
6 Defendant's control without paying therefore, this resulted in the Aggrieved Employees earning
7 less than the legal minimum wage in the State of California

8 36. Since the LWDA has not indicated that it will be investigating more than sixty-
9 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to
10 remedy the allegations set forth above, Plaintiff, as representatives of the State of California, seeks
11 any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
12 and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the
13 following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
14 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

15 37. Plaintiff is informed and believes that Defendant has violated, and continues to
16 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
17 minimum wages and overtime.

18 38. Plaintiff, as representative of the State of California, seek to recover any and all
19 penalties for each and every violation shown to exist or to have occurred during the Relevant
20 Time Period, in an amount according to proof, as to those penalties that are otherwise only
21 available to public agency enforcement actions. Funds recovered will be distributed in accordance
22 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
23 reimbursed to the LWDA.

24 36. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
25 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
26 interest.

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SECOND CAUSE OF ACTION
VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF
(Labor Code Sections 226.7 and 512)
(Plaintiff against all Defendants)

39. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

40. Labor Code sections 226.7 and 512 and IWC Wage Order 4-2001, Sect. 11 provide that no Defendant shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

41. Labor Code section 226.7 provides that if a Defendant fails to provide an employee a meal period in accordance with this section, the Defendant shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiffs allege that Defendants failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods. Specifically, Plaintiff alleges that Defendant frequently denied Mr. Patillo and Aggrieved Employees their meal period until after the fifth (5th) hour of work. Defendant did not permit Mr. Patillo and Aggrieved Employees to take their meal period until their coworkers returned from their meal period. Often, Defendant required Mr. Portillo and Aggrieved Employees to clock out for their meal period but forced them to continue working until they were relieved of their duties by a coworker.

42. Industrial Welfare Commission (IWC) Wage Order No. 4-2001 section 11(A) states, "Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from

1 being relieved of all duty and when by written agreement between the parties an on-the-job paid
2 meal period is agreed to. The written agreement shall state that the employee may, in writing,
3 revoke the agreement at any time.”

4 43. The burden to prove that a meal or rest period violation has occurred normally
5 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th
6 1138, 1159-60, where an employer fails to keep accurate records of meal and rest periods, a
7 presumption of meal and rest period violations is created, shifting the burden to the employer to
8 prove that meal and rest period violations did not occur.

9 44. Defendants failed to schedule non-exempt employees in an adequately
10 overlapping manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take
11 and/or receive such meal periods within the statutory timeframe. Further, Defendants obligated
12 Plaintiff and Aggrieved Employees to work through meal periods while off-the-clock.
13 Defendants denied Plaintiffs and Aggrieved Employees duty-free meal periods, as a result,
14 Plaintiff and Aggrieved Employees were often forced to forego meal periods and/or work during
15 their meal periods. In so doing, Defendants have intentionally and improperly denied meal periods
16 to Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and
17 other regulations and statutes.

18 45. Defendants failed to keep accurate records of the meal periods taken by Plaintiff
19 and Aggrieved Employees.

20 46. At all relevant times, Plaintiff and the Aggrieved Employees have worked shifts
21 of more than five (5) hours in a workday.

22 47. At varying times relevant hereto, Plaintiff and the Aggrieved Employees have
23 worked shifts of more than ten (10) hours in a workday.

24 48. At all times relevant hereto, Defendants, failed offer or to schedule non-exempt
25 positions in a manner so as to reasonably provide meal and/or work free meal period as required
26 by Labor Code sections 226.7 and 512.

27 49. Defendants’ failure to schedule Plaintiff and Aggrieved Employees in such a way
28 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,

1 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
2 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
3 ascertained according to proof at trial.

4 50. Further, Defendant's failure to maintain accurate records of the meal periods taken
5 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
6 and shifts the burden to Defendants to prove they did not occur.

7 51. Plaintiff individually, and the Aggrieved Employees, request recovery of any civil
8 penalties against Defendants, and each of them, in a sum as provided by the Labor Code.

9 52. Since the LWDA has not indicated that it will be investigating and sixty-five (65)
10 days have passed since Plaintiff mailed her letter, and because Defendant took no corrective
11 action to remedy the allegations set forth above, Plaintiff, as representatives of the people of the
12 State of California, seek any and all penalties otherwise capable of being collected by the Labor
13 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
14 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
15 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7
16 and 512.

17 53. Plaintiff is informed and believes that Defendant has violated and continues to
18 violate provisions of the Labor Code and applicable Wage orders related to the payment of
19 minimum wages, including overtime.

20 54. Plaintiff, as representatives of the State of California, seek to recover any and all
21 penalties for each and every violation shown to exist or to have occurred during the Relevant
22 Time Period, in an amount according to proof, as to those penalties that are otherwise only
23 available to public agency enforcement actions. Funds recovered will be distributed in accordance
24 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
25 reimbursed to the LWDA.

26 55. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
27 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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**VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF**

(Plaintiff against All Defendants)

59. Defendants, and each of them, failed and or refused to implement a relief system by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest periods. Defendants denied Plaintiff and Aggrieved Employees duty free rest periods by interrupting Plaintiff and Aggrieved Employees' rest periods. Further, Defendant did not permit Mr. Portillo and Aggrieved Employees to take a rest period if they had calls coming in. At times, Mr. Portillo and Aggrieved Employees were required to work for six (6) hours before being permitted to take a rest period. When they worked six (6) to eight (8) hours in a workday, Mr. Portillo and Aggrieved Employees sometimes only received one rest period instead of the two required by law. Further, when Ms. Portillo and Aggrieved Employees worked more than ten (10) hours in a workday, they never received the requisite third rest period. By and through their actions, Defendants intentionally and improperly denied duty free rest periods to the Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

60. Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest

1 periods all together in violation of Labor Code section 226.7 and 512.

2 61. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
3 Aggrieved Employees.

4 62. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
5 more than four (4) hours in a workday.

6 63. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
7 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
8 Aggrieved Employees have suffered, and will continue to suffer damages.

9 64. Plaintiff, by virtue of their employment with Defendant, and Defendant's failure
10 to provide Plaintiff and Aggrieved Employees with rest breaks, requiring Plaintiff and Aggrieved
11 Employees to work through their rest periods without receiving compensation in lieu thereof, is
12 an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied
13 all prerequisites to serve as a representative of the general public to enforce California's labor
14 laws, and the penalty provisions identified in Labor Code section 2699.5.

15 65. Plaintiff individually, and the Aggrieved Employees, as a representative of the
16 State of California, seek any and all penalties otherwise capable of being collected by the Labor
17 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
18 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
19 alleged violation of the following provisions: 226.7 and 512.

20 66. Plaintiff, as representative of the State of California, seek to recover any and all
21 penalties for each and every violation shown to exist or to have occurred during the Relevant
22 Time Period, in an amount according to proof, as to those penalties that are otherwise only
23 available to public agency enforcement actions. Funds recovered will be distributed in accordance
24 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
25 reimbursed to the LWDA.

26 67. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
27 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
3 **AND TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 **(Labor Code Sections 1174 and 226, subdivisions (A),(E))**

5 **(Plaintiff against All Defendants)**

6 68. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
7 fully set forth herein.

8 69. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
9 Orders, provide that employers must keep records and provide employees with itemized wage
10 statements showing all hours worked and each applicable rate of pay in effect during the pay
11 period with the corresponding number of hours worked at each hourly rate.

12 Labor Code section 1174, subdivision (d), requires employers to keep at a central location
13 in California or at the plant or establishment at which the employees are employed, payroll records
14 showing the hours worked daily, and the wages paid to, each employee. Plaintiff is informed and
15 believes, based thereon alleges, that Defendants willfully failed to make or keep accurate records
16 for Plaintiff and similarly-aggrieved employees.

17 70. Labor Code section 226, subdivision (a), requires employers to provide employees
18 – either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
19 separately when wages are paid by personal check or cash – an accurate itemized wage statement
20 in writing including specified information, including, but not limited to: (1) gross wages earned;
21 (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4)
22 all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
23 paid; (7) the name of the employee and only the last four digits of his or his social security number
24 or an employee identification number other than a social security number; (8) the name and
25 address of the legal entity that is the Defendant . . . ; and (9) all applicable hourly rates in effect
26 during the pay period and corresponding number of hours worked at each hourly rate by the
27 employee... (Lab. Code, § 226.)

28 71. Labor Code section 226, subdivision €, provides that if an Defendant knowingly

1 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
2 the total hours worked by the employee and the applicable hourly overtime rates, causing the
3 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
4 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
5 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
6 Defendant willfully failed to make or keep accurate records for Plaintiff and Aggrieved
7 Employees.

8 72. IWC Wage Orders require that every Defendant shall keep accurate information
9 with respect to each employee, including time records showing when each employee begins and
10 ends each work periods, the total daily hours worked by each employee and the total hours worked
11 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
12 Defendant willfully and intentionally failed to make and/or keep records which accurately reflect
13 the hours worked by Plaintiff and the Aggrieved Employees. Specifically, Plaintiff believes that
14 Defendant did not maintain accurate records for Plaintiff and the Aggrieved Employees reflecting
15 when they were working during their meal periods.

16 73. An employee is deemed to suffer injury if the Defendant fails to provide a wage
17 statement containing all of the required information set forth in Labor Code section 226,
18 subdivision (a). (Lab. Code § 226, subd. (e)(2).) In addition, the omission of time worked, proper
19 rates of pay, records of missed meal and rest breaks and/or premium pay make it difficult for
20 employees to determine whether they were paid all wages due without complicated calculations
21 and/or reconstruction of records required to be maintained by the employer.

22 74. Defendants knowingly and intentionally failed to provide timely and accurate
23 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
24 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
25 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
26 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
27 Employees.

28 / / /

1 75. For each employee suffering an injury as a result of Defendant's knowing and
2 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
3 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
4 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
5 subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

6 76. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
7 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
8 subdivision (a), and the applicable Wage Order. By failing to pay Mr. Portillo and Aggrieved
9 Employees for all hours worked during meal break and premium compensation for missed and/or
10 late meal and rest periods, Defendant provided wage statements that were incomplete and
11 inaccurate. Specifically, Defendant provided wage statements with an inaccurate total number of
12 hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding
13 number of hours worked at each hourly rate.

14 77. Plaintiff, as a personal representative of the general public, will and does seek to
15 recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
17 otherwise only available to public agency enforcement actions. Funds recovered will be
18 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
19 recovered being reimbursed to the LWDA.

20 78. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
21 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

22 **FIFTH CAUSE OF ACTION**

23 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

24 **TERMINATION OF EMPLOYMENT**

25 **(Labor Code Sections 201-203)**

26 **(Plaintiff against all Defendants)**

27 79. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
28 fully set forth herein.

1 80. Plaintiff is informed and believes that certain members of the Aggrieved
2 Employees who ended their employment with Defendant during the Relevant Time Period, were
3 entitled to be promptly paid both minimum wage and lawful overtime compensation and other
4 premiums as required by Labor Code sections 201, 202, and 203.

5 81. Plaintiff is informed and believes, and based thereon alleges, that as part of
6 Defendant's ongoing unfair business practices, Defendant failed to promptly compensate
7 Aggrieved Employees wages owed at the time of their separation in violation of Labor Code
8 sections 201, 202, and 203.

9 82. Labor Code section 201 provides that employers are required to pay an employee
10 whose employment is terminated by the Defendant all wages earned throughout their employment
11 and unpaid immediately upon termination.

12 83. Labor Code section 202 requires employers to pay an employee who quits his or
13 her employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

14 84. Labor Code section 203 provides that when a Defendant who fails to pay all wages
15 earned and due to an employee, who is discharged or quits within the appropriate timeframes set
16 forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the
17 employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up
18 to thirty (30) days.

19 85. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
20 with standing to bring an action under the PAGA and has suffered injury as to one or more
21 violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a
22 representative of the general public to enforce California's labor laws, and the penalty provisions
23 identified in Labor Code section 2699.5.

24 86. Plaintiff, as a representative of the people of the State of California, will seek any
25 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
26 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
27 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
28 201-203, 226, 226.7, 510, 512, 1174, and 1194.

87. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy five percent (75%) of the penalties recovered being reimbursed to the LWDA.

SIXTH CAUSE OF ACTION

(Plaintiff against all Defendants)

90. Labor Code section 233, subsection (a), provides that any Defendant must provide paid sick leave for employees “for the reasons specified in subdivision (a) of Section 246.5. The designation of sick leave taken for these reasons shall be made at the sole discretion of the employee.”

92. Defendant forced Mr. Patillo and Aggrieved Employees to take sick time for its own reasons, contrary to California law. Specifically, at times, Defendant would require Mr. Patillo and Aggrieved Employees to report to work only to be informed that they needed to return home due to the power being out. Rather than paying Mr. Patillo and Aggrieved Employees reporting time pay, as required under IWC Wage Order 4-2001, Sect. 5 and Labor Code Section

1 1194, subsection (a), Defendant forced Mr. Patillo and Aggrieved Employees to use their accrued
2 sick hours.

3 93. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
4 with standing to bring an action under the PAGA and has suffered injury as to one or more
5 violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a
6 representative of the general public to enforce California's labor laws, and the penalty provisions
7 identified in Labor Code section 2699.5.

8 94. Plaintiff, as a personal representative of the general public, will and does seek to
9 recover any and all penalties for each and every violation shown to exist or to have occurred
10 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
11 otherwise only available to public agency enforcement actions. Funds recovered will be
12 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
13 recovered being reimbursed to the LWDA.

14 95. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
15 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

16 **SEVENTH CAUSE OF ACTION**

17 **VIOLATION OF PAGA FOR FAILURE TO INDEMNIFY FOR EXPENDITURES OR**
18 **LOSSES IN DISCHARGE OF DUTIES**

19 **(Labor Code Section 2802)**

20 **(Plaintiff against all Defendants)**

21 96. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
22 fully set forth herein.

23 97. Pursuant to Labor Code section 2802, "[a]n Defendant shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

26 98. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for
27 necessary expenditures as a direct consequence of the discharge of their duties.

28 99. Defendants knowingly, willingly and intentionally attempted to offset the cost of

1 doing business on the Plaintiff and Aggrieved Employees. Defendant had a policy and practice
2 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of
3 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary business
4 expenditures. Specifically, Defendant required Plaintiff and Aggrieved Employees to use their
5 personal cellphones to communicate with supervisors, for training purposes, among other things.
6 However, despite the foregoing, Defendant failed to reimburse Plaintiff and Aggrieved
7 Employees with a reasonable percentage of their cellular phone bills.

8 100. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
9 "necessary expenditures or losses" which shall include all reasonable costs, including, but not
10 limited to, attorney's fees and interest.

11 101. Plaintiff by virtue of her employment with Defendants and the Defendants' policy
12 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendants' cost of
13 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
14 expenditures, is an aggrieved employee withstanding to bring an action under the PAGA. Plaintiff
15 has satisfied all prerequisites to serve as a representative of the general public to enforce
16 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5

17 102. Plaintiff, as a personal representative of the general public, will and does seek to
18 recover any and all penalties for each and every violation shown to exist or to have occurred
19 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
20 otherwise only available to public agency enforcement actions. Funds recovered will be
21 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
22 recovered being reimbursed to the LWDA.

23 103. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
24 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1. For penalties pursuant to Labor Code sections 2698-2699;
2. For attorneys' fees pursuant to Labor Code sections 2698-2699;
3. For costs pursuant to Labor Code sections 2698-2699; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC

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