

DOUGLAS HAN (SBN 232858)
 SHUNT TATAVOS-GHARAJEH (SBN 272164)
 PHILLIP SONG (SBN 326572)
 JOSH B. TRAN (SBN 335699)
JUSTICE LAW CORPORATION
 751 N. Fair Oaks Avenue, Suite 101
 Pasadena, California 91103
 Telephone: (818) 230-7502
 Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

JAMESHA BURNS, individually, on behalf
 of other members of the general public
 similarly situated, and on behalf of aggrieved
 employees pursuant to the Private Attorneys
 General Act of 2004 ("PAGA");

Plaintiff,

v.

A. M. CASTLE & CO., a Maryland
 corporation; and DOES 1 through 100,
 inclusive;

Defendants.

Case No.: 20STCV45602

**FIRST AMENDED CLASS AND
 PAGA ACTION COMPLAINT
 FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 246, 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201- 204 (Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§551-552 (One Day of Rest)

FILED
 Superior Court of California
 County of Los Angeles
02/09/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Miro Deputy

(9) Violation of California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and

(10) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JAMESHA BURNS (“Plaintiff”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff JAMESHA BURNS is an individual residing in the State of California, County of Los Angeles.

6. Defendant A. M. CASTLE & CO., at all times herein mentioned, was and is, upon information and belief, a Maryland corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

7. At all relevant times, Defendant A. M. CASTLE & CO. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants A. M. CASTLE & CO. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendants A. M. CASTLE & CO. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

///

///

///

11. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time between December 1, 2016 and the trial date.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

///

/ / /

///

1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom she has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

26 ///

27 ///

- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members who worked overtime and earned incentive pay;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code, including, inter alia, section 226;
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants failed to properly calculate and pay sick pay to Plaintiff and other class members;
- l. Whether Defendants failed to provide Plaintiff and other class members with one (1) day's rest in seven (7);

- 1 m. Whether Defendants' conduct was willful or reckless;
- 2 n. Whether Defendants engaged in unfair business practices in violation of
- 3 California Business & Professions Code section 17200, *et seq.*;
- 4 o. The appropriate amount of damages, restitution, and/or monetary
- 5 penalties resulting from Defendants' violation of California law; and
- 6 p. Whether Plaintiff and the other class members are entitled to
- 7 compensatory damages pursuant to the California Labor Code.

8 **GENERAL ALLEGATIONS**

9 17. During the relevant time period set forth herein, Defendants employed Plaintiff

10 and other persons as hourly-paid or non-exempt employees within the State of California.

11 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-

12 exempt employee from 2018 to 2019 in the State of California, County of Los Angeles.

13 19. Defendants had the authority to hire and terminate Plaintiff and other class

14 members; to set work rules and conditions governing Plaintiff's and other class members'

15 employment; and to supervise their daily employment activities.

16 20. Defendants exercised sufficient authority over the terms and conditions of

17 Plaintiff and other class members' employment for them to be joint employers of Plaintiff and

18 the other class members.

19 21. Defendants directly hired and paid wages and benefits to Plaintiff and other class

20 members.

21 22. Defendants continue to employ hourly-paid or non-exempt employees within the

22 State of California.

23 23. Plaintiff and other class members worked over eight (8) hours in a day, and/or

24 forty (40) hours in a week during their employment with Defendants.

25 ///

26 ///

27 ///

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked and/or at the correct rate of pay, missed meal periods, and missed rest breaks in violation of California law.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive certain wages for overtime compensation and that Plaintiff and other class members were not receiving wages for overtime compensation.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and other class members the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rates of pay when a meal period was missed, late or interrupted, and that Plaintiff and other class members did not receive all timely and proper meal periods or payment of one additional hour of pay at their regular rates of pay when a meal period was missed.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive all timely rest periods without interruption or payment of one additional hour of pay at Plaintiff and the other class members' regular rates of pay when a rest period was missed, late or interrupted, and that Plaintiff and other class members did not receive all rest periods or payment of one additional hour of pay at their regular rates of pay when a rest period was missed.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive at least minimum wages for compensation and that Plaintiff and other class members were not receiving at least minimum wages for all hours worked.

30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive the wages owed to them upon discharge or resignation, including overtime and minimum wages and meal and rest period premiums, and that Plaintiff and other class members did not, in fact, receive such wages owed to them at the time of their discharge or resignation.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff and other class members did not receive complete and accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to include the total number of hours worked by Plaintiff and other class members.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to reimbursement for necessary business-related expenses.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive sick pay calculated according to one of the three methods set forth under California Labor Code section 246(l), but Defendants improperly paid Plaintiff and the other class members sick pay at their base hourly rates throughout the relevant period.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to one (1) day's rest in seven (7), but Defendants required Plaintiff and the other class members to work on seven (7) consecutive days in the workweek without a waiver.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and other class members in accordance with California law, but, in fact, did not keep complete and accurate payroll records for Plaintiff and other class members.

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that they had a duty to compensate Plaintiff and other class members pursuant to California law, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other class members that they were properly denied wages, all in order to increase Defendants' profits.

37. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay overtime wages to Plaintiff and other class members for all hours worked. Plaintiff and other class members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation.

38. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiff and other class members.

39. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members at least minimum wages for all hours worked.

40. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members the wages owed to them upon discharge or resignation.

41. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and other class members.

///

42. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and other class members.

43. As a pattern and practice, during the relevant time period set forth herein, Defendant failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

44. As a pattern and practice, during the relevant time period set forth herein, Defendant failed to properly calculate and pay sick pay to Plaintiff and other class members.

45. As a pattern and practice, during the relevant time period set forth herein, Defendant failed to provide Plaintiff and other class members with one (1) day's rest in seven (7).

46. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and other class members pursuant to California law in order to increase Defendants' profits.

47. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against A. M. CASTLE & CO. and DOES 1 through 100)

48. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 47, and each and every part thereof with the same force and effect as though fully set forth herein.

///

///

///

49. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

50. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

51. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other class members overtime compensation at a rate of two times their regular rates of pay for all hours worked in excess of twelve (12) hours in a day.

52. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

53. During the relevant time period set forth herein, Plaintiff and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

54. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other class members (but not all).

///

///

55. Defendants' pattern and practice of failing to pay Plaintiff and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

56. Pursuant to California Labor Code section 1194, Plaintiff and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against A. M. CASTLE & CO. and DOES 1 through 100)

57. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 56, and each and every part thereof with the same force and effect as though fully set forth herein.

58. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

59. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

60. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

/ / /

///

61. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause, or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted 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.

62. As a pattern and practice, during the relevant time period set forth herein, Plaintiff and other class members (but not all) who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

63. As a pattern and practice, during the relevant time period set forth herein, Plaintiff and other class members (but not all) who were scheduled to work for a period of time no longer than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

64. As a pattern and practice, during the relevant time period set forth herein, Plaintiff and other class members (but not all) who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

///

///

///

1 65. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiff and other class members (but not all) who were scheduled to work for a period of
3 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
4 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
5 a rest period.

6 66. As a pattern and practice, during the relevant time period set forth herein,
7 Defendants intentionally and willfully required Plaintiff and other class members (but not all)
8 to work during meal periods and failed to compensate Plaintiff and the other class members
9 (but not all) the full meal period premium for work performed during meal periods.

10 67. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to pay Plaintiff and other class members (but not all) the full meal period
12 premium due pursuant to California Labor Code section 226.7.

13 68. Defendants' conduct violates applicable IWC Wage Order and California Labor
14 Code sections 226.7 and 512(a).

15 69. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
17 additional hour of pay at the employee's regular rate of compensation for each workday that
18 the meal or rest period is not provided.

19 **THIRD CAUSE OF ACTION**

20 **(Violation of California Labor Code § 226.7)**

21 **(Against A. M. CASTLE & CO. and DOES 1 through 100)**

22 70. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 69, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 71. During the relevant time period set forth herein, the applicable IWC Wage Order
26 and California Labor Code section 226.7 were applicable to Plaintiff's and other class
27 members' employment by Defendants.

1 72. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any rest period
3 mandated by an applicable order of the California IWC.

4 73. During the relevant time period set forth herein, the applicable IWC Wage Order
5 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
6 which insofar as practicable shall be in the middle of each work period” and that the “rest
7 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
8 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
9 than three and one-half (3 ½) hours.

10 74. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants required Plaintiff and other class members (but not all) to work four (4) or more
12 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
13 period worked.

14 75. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants willfully required Plaintiff and other class members (but not all) to work during
16 rest periods and failed to pay Plaintiff and the other class members the full rest period premium
17 for work performed during rest periods.

18 76. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants failed to pay Plaintiff and the other class members (but not all) the full rest period
20 premium due pursuant to California Labor Code section 226.7

21 77. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
22 Code section 226.7.

23 78. Pursuant to the applicable IWC Wage Orders and California Labor Code section
24 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
25 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
26 that the rest period was not provided.

27 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 246, 1194 and 1197)**

3 **(Against A. M. CASTLE & CO. and DOES 1 through 100)**

4 79. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 78 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 80. At all times relevant herein, Defendants were required to pay their employees
8 within a specified time period, pursuant to the mandate of Labor Code section 204.

9 81. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
10 aggrieved employees all wages due and owing them within the required time period.

11 82. During the relevant time period set forth herein, California Labor Code sections
12 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of
13 a lesser wage than the minimum so fixed, is unlawful.

14 83. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay minimum wages to Plaintiff and other class members (but not all) as
16 required, pursuant to California Labor Code sections 1194 and 1197.

17 84. Defendants failed to properly calculate sick pay according to one of the three
18 methods set forth under California Labor Code section 246(l), throughout the relevant period
19 resulting in underpayment of sick pay wages.

20 85. Defendants' failure to pay Plaintiff and other class members the minimum wage
21 as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections,
22 Plaintiff and other class members are entitled to recover the unpaid balance of their minimum
23 wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in
24 an amount equal to the wages unlawfully unpaid and interest thereon.

25 ///

26 ///

27 ///

86. Pursuant to California Labor Code section 246, Plaintiff and the other class members are entitled to collect civil penalties for violation of Labor Code section 246(l). Additionally, pursuant to California Labor Code section 1194.2, Plaintiff and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201- 203)

(Against A. M. CASTLE & CO. and DOES 1 through 100)

87. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

88. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

89. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

90. Defendants' pattern and practice of failing to pay Plaintiff and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

///

1 91. California Labor Code section 203 provides that if an employer willfully fails to
2 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
3 shall continue as a penalty from the due date thereof at the same rate until paid or until an
4 action is commenced; but the wages shall not continue for more than thirty (30) days.

5 92. Plaintiff and other class members are entitled to recover from Defendants the
6 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
7 as provided by Labor Code section 203.

8 **SIXTH CAUSE OF ACTION**

9 **(Violation of California Labor Code § 226(a))**

10 **(Against A. M. CASTLE & CO. and DOES 1 through 100)**

11 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
12 through 92, and each and every part thereof with the same force and effect as though fully set
13 forth herein.

14 94. During the relevant time period set forth herein, California Labor Code section
15 226(a) provides that every employer shall furnish each of his or her employees an accurate
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
19 on written orders of the employee may be aggregated and shown as one item, (5) net wages
20 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
21 the employee and his or her Social Security number, (8) the name and address of the legal
22 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
23 and the corresponding number of hours worked at each hourly rate by the employee. The
24 deductions made from payments of wages shall be recorded in ink or other indelible form,
25 properly dated, showing the month, day, and year, and a copy of the statement or a record of
26 the deductions shall be kept on file by the employer for at least three years at the place of
27 employment or at a central location within the State of California.

95. As a pattern and practice, Defendants have intentionally and willfully failed to provide Plaintiff and other class members (but not all) with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff and other class members.

96. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and other class members have suffered injury and damage to their statutorily protected rights.

97. More specifically, Plaintiff and other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

98. Plaintiff and other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

99. Plaintiff and other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against A. M. CASTLE & CO. and DOES 1 through 100)

100. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 99, and each and every part thereof with the same force and effect as though fully set forth herein.

101. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

102. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses and costs. Plaintiff and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code §550-552)

(Against A. M. CASTLE & CO. and DOES 1 through 100)

103. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 102, and each and every part thereof with the same force and effect as though fully set forth herein.

104. At all times relevant herein, Defendants were required to provide their employees with one (1) day's rest in seven (7) pursuant to the mandates of Labor Code sections 551 and 552.

105. As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved current and former employees with one (1) day's rest in seven (7) and, instead, required employees to work on seven (7) consecutive days in the workweek without a waiver.

106. As result of violation of Labor Code sections 551 and 552, Plaintiff and the class members are entitled to recover civil penalties under Labor Code section 558.

NINTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, *et seq.* ("PAGA"))

(Against A. M. CASTLE & CO. and DOES 1 through 100)

107. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 105, and each and every part thereof with the same force and effect as though fully set forth herein.

///

108. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

109. On May 23, 2018, the Court of Appeal published its decision in the case *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, clarifying that an employee who brings a representative action and who was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but also for violations affecting other employees and can recover penalties.

110. On January 13, 2022, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the January 13, 2022 written notice to the LWDA. Plaintiff believes that on or about March 18, 2022, the sixty-five (65) days’ notice period will expire, and Plaintiff will have exhausted the statutory time period to bring this action.

111. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they all are or were California non-exempt employees of Defendant at any time between December 23, 2020 and the trial date, and one or more of the alleged violations of the Labor Code was committed against them, specifically Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 246, 510, 512, 551, 552, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698, 2699, 2699.3, 2699.5, et seq. Plaintiff and the other non-exempt aggrieved employees seek PAGA penalties for the Labor Code violations.

///

1

2

6

9

10

15

18

19

21

23

24

27

119. As a pattern and practice, as a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiff and other aggrieved former employees their final wages, pursuant to the mandates of Labor Code sections 201 through 204. Accordingly, Defendants owe waiting time penalties pursuant to Labor Code section 203.

Failure to Provide Complete and Accurate Wage Statements

120. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees, pursuant to the mandates of Labor Code sections 226 and 1174.

121. As a pattern and practice, as a result of Defendants' various Labor Code violations, Defendants willfully failed to keep accurate records regarding Plaintiff and other aggrieved employees. Specifically, Defendants willfully failed in their affirmative obligations to keep accurate records regarding Plaintiff's and other aggrieved employees' gross wages earned, total hours worked, net wages earned, as well as all deductions, all applicable hourly rates, and the number of hours worked at each hourly rate. Defendants thereby failed to provide Plaintiff and other aggrieved employees with complete and accurate wage statements, pursuant to the mandate of Labor Code section 226(a). Defendants also willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiff and other aggrieved employees, pursuant to the mandate of Labor Code section 1174(d). Accordingly, Defendants owe penalties pursuant to Labor Code section 1174.5.

Failure to Reimburse Business Expenses

122. At all times relevant herein, Defendants were required to reimburse their employees for any and all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of their duties, pursuant to the mandates of Labor Code sections 2800 and 2802.

123. As a pattern and practice, Defendants regularly failed to reimburse Plaintiff and other aggrieved employees for all business expenses incurred and owed to them within the required time period.

1 **Failure to Properly Calculate and Pay Sick Pay**

2 124. At all times relevant herein, Defendants were required to calculate paid sick time
3 for non-exempt employees: (1) in the same manner as the non-exempt employee's regular rate
4 of pay for the workweek in which the employee used the paid sick time was calculated; (2) by
5 dividing the non-exempt employee's total wages (not including overtime premium pay) by the
6 employee's total hours worked in the full pay periods in the past ninety (90) days of
7 employment; or (3) in the same manner as the rate for other forms of paid leave time was
8 calculated, pursuant to the mandates of Labor Code section 246(l).

9 125. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved
10 employees paid sick leave at the proper rate and instead paid sick pay at Plaintiff's and other
11 aggrieved employees' base hourly rates throughout the relevant period.

12 **Failure to Provide One Day's Rest in Seven**

13 126. At all times relevant herein, Defendants were required to provide their
14 employees with one (1) day's rest in seven (7) pursuant to the mandates of Labor Code sections
15 551 and 552.

16 127. As a pattern and practice, Defendants failed to provide Plaintiff and other
17 aggrieved current and former employees with one (1) day's rest in seven (7) and, instead,
18 required employees to work on seven (7) consecutive days in the workweek without a waiver.

19 **Penalties**

20 128. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
21 behalf of other current and former aggrieved employees, requests and is entitled to recover
22 from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant,
23 as well as all statutory penalties against Defendants, and each of them, including but not
24 limited to:

25 ///

26 ///

27 ///

- a. Penalties under California Labor Code section 2699 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Wages under California Labor Code section 558 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code;
- f. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- g. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

///

///

1 **TENTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

3 **(Against A. M. CASTLE & CO. and DOES 1 through 100)**

4 129. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 128, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 130. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
8 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
9 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
10 interest within the meaning of Code of Civil Procedure section 1021.5.

11 131. Defendants' activities as alleged herein are violations of California law, and
12 constitute unlawful business acts and practices in violation of California Business &
13 Professions Code section 17200, *et seq.*

14 132. A violation of California Business & Professions Code section 17200, *et seq.*
15 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
16 pattern and practice of requiring Plaintiff and other class members work overtime hours
17 without paying them proper compensation violate California Labor Code sections 510 and
18 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class
19 members to work through their meal and rest periods without paying them proper
20 compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
21 Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class
22 members violate California Labor Code sections 201 through 204. Defendants also violated
23 California Labor Code sections 226(a), 246, 1194, 1197, 2800, 2802 and the other Labor Code
24 provisions referenced in paragraphs 1 through 128.

25 133. As a result of the herein described violations of California law, Defendants
26 unlawfully gained an unfair advantage over other businesses.

27 ///

134. Plaintiff and other class members (but not all) have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

135. Pursuant to California Business & Professions Code section 17200, *et seq.*, Plaintiff and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and other class members (but not all);

6. For general unpaid wages including overtime wage rates and such general and special damages as may be appropriate;

1 7. For pre-judgment interest on any unpaid wages including overtime
2 compensation commencing from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code section 1194; and

5 9. For such other and further relief as the court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiff and other class members
10 (but not all);

11 11. That the Court make an award to Plaintiff and the other class members of one
12 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
13 period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts were
18 due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiff and other class members (but not all);

25 18. That the Court make an award to Plaintiff and the other class members of one
26 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
27 period was not provided;

1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 20. For premium wages pursuant to California Labor Code section 226.7(b);

4 21. For pre-judgment interest on any unpaid wages from the date such amounts were
5 due; and

6 22. For such other and further relief as the court may deem just and proper.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 204, 246, 1194 and 1197 by willfully failing to pay minimum wages to
10 Plaintiff and other class members (but not all);

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

13 25. For pre-judgment interest on any unpaid compensation from the date such
14 amounts were due;

15 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a);

17 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

18 28. For such other and further relief as the court may deem just and proper.

19 **As to the Fifth Cause of Action**

20 29. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
22 the time of termination of the employment of Plaintiff and other class members (but not all)
23 no longer employed by Defendants;

24 30. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 31. For statutory wage penalties pursuant to California Labor Code section 203 for
27 the other class members who have left Defendants' employ;
28

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and other class members (but not all), and willfully failed to provide accurate itemized wage statements thereto;

35. For actual, consequential and incidental losses and damages, according to proof;

36. For statutory penalties pursuant to California Labor Code section 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 550-552 by failing to provide their employees with one (1) day's rest in seven (7) pursuant to the mandates of Labor Code sections 551 and 552.

46. For actual, consequential and incidental losses and damages, according to proof;
47. For the imposition of civil penalties under Labor Code 558 and/or statutory penalties;
48. For punitive damages and/or exemplary damages according to proof at trial;
49. For reasonable attorneys' fees and costs of suit incurred herein; and
50. For such other and further relief as the court may deem just and proper.

As to the Ninth Cause of Action

51. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks, failing to timely pay wages during employment and upon termination, failing to pay sick pay at the correct rate, failing to provide employees with one day off in a workweek, failing to provide complete and accurate wage statements, and failing to reimburse business expenses;

52. For civil penalties pursuant to Labor Code section 2699 *et seq.*, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 246(l), 510, 512(a), 550, 551, 552, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5, 2800 and 2802;

53. For costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, 2699, and any other applicable statute; and

54. For such other and further relief that the court may deem just and proper.

As to the Tenth Cause of Action

55. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code section 17200, *et seq.* by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all sick pay, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages timely as required by California Labor Code sections 201 through

204 and/or 246.

56. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

57. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business & Professions Code section 17200, *et seq.*;

58. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

59. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code section 17200, *et seq.*; and

60. For such other and further relief as the court may deem just and proper.

Dated: February 9, 2022

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Josh B. Tran
Attorneys for Plaintiff

EXHIBIT 1

January 13, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Burns v. A. M. Castle & Co.

Dear Representative:

We have been retained to represent Jamesha Burns against A. M. Castle & Co. for violations of California wage-and-hour laws (hereinafter referred to as "A. M.").

Ms. Burns is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Burns may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

A. M. is a Maryland corporation headquartered at 1420 Kensington Road, Suite 220, Oak Brook, Illinois 60523. A. M. also has locations throughout North America, Europe, and Asia.

A. M. employed Ms. Burns as an hourly-paid non-exempt Operations Assistant during the relevant time period in the State of California. A. M. directly controlled the wages, hours, and working conditions of Ms. Burns and other aggrieved employees' employment, including supervision, scheduling, timekeeping, and termination.

The "aggrieved employees" that Ms. Burns may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of A. M. within the State of California at any time during the period from one year prior to the date of this notice to final judgment.

A. M. failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly pay minimum and overtime wages, failed to pay premium wages for noncompliant meal and rest breaks, failed to keep complete and accurate payroll records, failed to issue compliant wage statements, failed to provide timely wages (including final wages due at the separation of employment), and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Burns has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at A. M., regardless of her classification, job title, location, or whether she was hired directly or through a staffing agency.

A. M. has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510, 512(a), 551, 552, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight (8) hours in one day and/or over forty (40) hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Burns and other aggrieved employees routinely worked in excess of eight (8) hours in a day and forty (40) hours in a week. A. M. failed to compensate Ms. Burns and other aggrieved employees for all hours worked. Specifically, A. M. forced employees to work additional hours off-the-clock pre-shift, post-shift, and during meal breaks for which they were not compensated (*i.e.*, waiting in line to clock in and out, donning and doffing personal protective equipment, and performing close-out tasks). A. M. also maintained a practice of rounding employees' total amount of hours worked that had a net negative effect on employees' compensated time. Further, A. M. failed to include nondiscretionary bonuses and incentives in employees' regular rates of pay for purposes of overtime compensation. Therefore, Ms. Burns and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one (1) additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, A. M. routinely required Ms. Burns and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with A. M.'s policies and expectations. Specifically, the time-sensitive deadlines and high volumes of work A. M. regularly assigned Ms. Burns and other aggrieved employees prevented them from having reasonable opportunities to take their meal and rest breaks. As a result, Ms. Burns and the other aggrieved employees were consistently not provided with the requisite number of meal and rest breaks, including second rest breaks for shifts of eight (8) hours or more and second meal breaks for shifts of ten (10) hours or more. Despite these facts, A. M. failed to compensate Ms. Burns and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than thirty (30) days. During the relevant time period, A. M. failed to pay Ms. Burns and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, as explained above, within any time period specified by California Labor Code sections 201, 202, and 203, and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, A. M. failed to pay Ms. Burns and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work and premium wages, as explained above, within any time period specified by California Labor Code section 204.

///

///

///

California Labor Code section 226 requires employers to make, keep, and provide complete and accurate itemized wage statements to their employees. During the relevant time period, A. M. did not provide Ms. Burns and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from A. M. were in violation of California Labor Code section 226(a). The violations stem from A. M.'s failure to pay Ms. Burns and other aggrieved employees all wages due and owing them, including overtime wages, minimum wages, and meal and rest premium wages. In addition, due to A. M.'s improper rounding policy and its timekeeping practice of automatically deducting thirty (30) minute meal breaks for eligible employees, regardless of whether employees received compliant meal breaks, A. M.'s wage statements fail to accurately indicate employees' total hours worked. As a result, the wage statements A. M. provided Ms. Burns and other aggrieved employees are necessarily incomplete and inaccurate.

California Labor Code section 551 states "every person employed in any occupation of labor is entitled to one day's rest therefrom in seven." California Labor Code section 552 states "no employer of labor shall cause his employees to work more than six days in seven." A. M. often required Ms. Burns and other aggrieved employees to work seven (7) days in a row without providing them a proper day off. Thus, A. M. owes Plaintiff and other aggrieved employees penalties.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Burns and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

///

///

///

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, A. M. willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Burns and other aggrieved employees. California Labor Code section 1174.5 provides that any person who willfully fails to maintain the records required in California Labor Code section 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, A. M. did not provide Ms. Burns and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre-shift, post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Burns and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by A. M., including for out-of-pocket purchases of tools, steel-toed boots, office supplies, and cleaning supplies, and for personal cell phone and vehicle use for work-related purposes.

California Labor Code section 246(l) requires an employer to calculate paid sick time for non-exempt employees: (1) in the same manner as the non-exempt employee's regular rate of pay for the workweek in which the employee used the paid sick time was calculated; (2) by dividing the non-exempt employee's total wages (not including overtime premium pay) by the employee's total hours worked in the full pay periods in the past ninety (90) days of employment; or (3) in the same manner as the rate for other forms of paid leave time was calculated. During the relevant time period, A. M. did not properly calculate and pay sick pay to Ms. Burns and other aggrieved employees according to any of the three methods outlined in California Labor Code section 246(l). Instead, A. M. paid Ms. Burns and other aggrieved employees sick pay at their base hourly rates throughout the relevant period.

///

///

We believe that Ms. Burns and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510, 512(a), 551, 552, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699 prior to seeking penalties allowed by law for the statutory violations. We look forward to determining whether the California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Burns will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of A. M. within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Electronic Mail Only):

Lizbeth Ochoa, Esq.
lochoa@fisherphillips.com
FISHER & PHILLIPS LLP
Counsel of Record for A. M. Castle & Co.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On February 9, 2022, I served the foregoing document described as

FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT FOR DAMAGES

on interested parties in this action by submitting a true and correct electronic copy thereof, to the below as follows:

Lizbeth Ochoa (lochoa@fisherphillips.com)
FISHER & PHILLIPS
2050 Main Street, Suite 1000
Irvine, CA 92614

Attorney(s) for Defendant A.M. Castle & Co.

[X] BY ELECTRONIC SERVICE

Pursuant to the Court's Order or an agreement between the Parties regarding Electronic Service, I caused the documents described above to be E-Served through Caseanywhere.com by electronically mailing a true and correct copy to the individual(s) listed above, at the time indicated by Caseanywhere.com.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 9, 2022, at Pasadena, California.



Sophia Hanneyan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is shanneyan@justicelawcorp.com

On February 10, 2022, I served the foregoing document described as

FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT FOR DAMAGES

for the following case: **A.M. Castle & Co. adv. Burns**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-862626-22**
Court Case No.: 20STCV45602
Los Angeles Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 10, 2022, at Pasadena, California.



Sophia Hanneyan