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Attorneys for Plaintiff DIEGO MEJIA DUARTE,
on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

DIEGO MEJIA DUARTE, on behalf of himself and other aggrieved employees,

Plaintiff,

vs.

APPLE INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 22STCV17978

PAGA ACTION

PLAINTIFF DIEGO MEJIA DUARTE'S COMPLAINT FOR:

1. CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"), LABOR CODE SECTION 2698, *et seq.*

COME NOW Plaintiff DIEGO MEJIA DUARTE("Plaintiff"), who alleges and complains against Defendants APPLE INC. and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq. ("PAGA"). representative action brought by Plaintiff on behalf of the State of California, himself and other current and former aggrieved employees of Defendants who worked as hourly, non-exempt employees, in California during the relevant time period seeking civil penalties associated with Defendants' violation of the Labor Code based on Defendant's failure to include additional

renumeration when calculating overtime wages, failure to pay meal period premium wages, failure to pay rest period premium wages, failure to timely pay earned wages during employment, failure to provide complete and accurate wage statements, and failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

2. In response to the COVID-19 pandemic, the Judicial Council of California enacted Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks civil penalties on behalf of himself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of twenty-five thousand dollars ($25,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to Los Angeles County at The Grove, 189 The Grove Dr., Los Angeles, CA 90036.

III. PARTIES

4. Plaintiff brings this action as a representative of the Labor and Workforce Development Agency on behalf of himself and other current and former employees subject to violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is filed include current, former and/or future employees of Defendants who worked, work, or will work for Defendants as non-exempt hourly employees in California. At all times mentioned herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California

and was employed by Defendants in an hourly position at one of Defendants' locations in Los Angeles County from approximately September 2018 until his termination on or about November 1, 2021.

5. Plaintiff is informed and believes and thereon alleges that Defendant APPLE INC. is authorized to do business within the State of California and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant APPLE INC. in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant APPLE INC. operates in Los Angeles County and employed Plaintiff and aggrieved employees in Los Angeles County, including but not limited to, at The Grove, 189 The Grove Dr., Los Angeles, CA 90036.

6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

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9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(Against all Defendants)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime**: Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees, with a compensation structure that includes additional remuneration, including but not limited to: bonus pay, shutdown pay, Apple Music pay, and fitness reimbursement. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.

14. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

> Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

> seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

15. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

16. In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration, including but not limited to, bonus pay, shutdown pay, Apple Music pay, and fitness reimbursement, when calculating Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees regular rate of pay for the purpose of paying overtime.

17. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants failing to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees at their overtime rate of pay for all overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

18. **Failure to pay meal period premium wages at the employees' regular rate of pay:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

19. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Applicable Wage Order at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the

employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

20. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Applicable Wage Order at §11.

21. Here, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked shifts long enough to entitle them to meal periods under California law. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit meal periods to Plaintiff and similarly situated employees of no less than thirty (30) minutes for each five-hour period of work as required by law.

22. Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a meal period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday the employees did not receive all legally required and compliant meal periods. Defendants employed policies and procedures which ensured that employees did not receive any meal period premium wages to compensate them for workdays in which they did not receive all legally required and compliant meal periods.

23. Finally, on occasions when Defendants paid Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff's and other aggrieved employees' regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration, including but not limited to: bonus pay, shutdown pay, Apple Music pay, and

fitness reimbursement, when calculating Plaintiff's and other aggrieved employees' regular rate of pay for the purpose of paying meal period premium wages.

24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

25. **Failure to pay rest period premiums at the employees' regular rate of pay:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

26. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Applicable Wage Order at §12. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Applicable Wage Order at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Applicable Wage Order at §12. Additionally, the rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id*.

27. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Applicable Wage Order at § 12.

28. Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a rest period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday the employees did not receive

all legally required and compliant rest periods. Defendants employed policies and procedures which ensured that employees did not receive any rest period premium wages to compensate them for workdays in which they did not receive all legally required and compliant rest periods.

29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays in which Defendants did not provide them with rest periods in compliance with California law.

30. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id*. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code section 204(d).

31. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' earned wages (including overtime wages, meal period premium wages at the regular rate of pay, and/or rest period premium wages at the regular rate of pay), in violation of Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' their earned wages within the applicable time frames outlined in Labor Code section 204.

32. **Failure to provide complete and accurate wage statements:** Labor Code section 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the

employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

33. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages earned (including overtime wages, meal period premium wages at the regular rate of pay, and/or rest period premium wages at the regular rate of pay) rendered Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

34. **Failure to pay employees all wages due at time of termination/resignation**: An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72) hours of resignation (Labor Code section 202).

35. As a derivative of Plaintiff's allegations above, because Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all their earned wages (overtime wages, meal period premium wages at the regular rate of pay, and/or rest period premium wages at the regular rate of pay), Defendants failed to pay those employees timely after each employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

36. Defendants' violations of the Wage Orders constituted violations of Labor Code section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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37. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code section 2699.3.

38. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On February 11, 2022, Plaintiff filed notice with LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

39. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate Plaintiff's claims.

40. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, 1197, and 1198, during the Civil Penalty Period in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512, and 1198; 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 [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars ($250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars ($1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars ($50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars ($100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars ($250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

41. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: June 1, 2022

Respectfully submitted,
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