

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/09/2022 at 11:34:00 AM

Clerk of the Superior Court

LURTZ LEGAL
3511 Camino del Rio South, Suite 101
San Diego, California 92108

1 1. Plaintiff TORIN DUFFIN ("Plaintiff"), by and through his attorneys, alleges as
2 follows:

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 2. Plaintiff brings this lawsuit against Plaintiff's former employer, PITA GUYS,
5 INC. and PITA BROTHERS, INC. (collectively, "Defendant") for violations of California's
6 wage and hour laws. Plaintiff seeks to recover unpaid minimum and overtime wages, premium
7 payments for Defendant's failure to authorize and permit meal and rest periods, statutory
8 damages for inaccurate wage statements, waiting time penalties for Defendant's failure to pay all
9 wages due and owing at the time of termination, tips and gratuities unlawfully misappropriated
10 and/or converted by Defendant, back pay, prejudgment interest, costs and attorneys' fees.
11 Plaintiff also brings this lawsuit to recover civil penalties on behalf himself, other aggrieved
12 employees, and the State of California pursuant to the Labor Code Private Attorneys General Act
13 of 2004 (PAGA) for the underlying Labor Code violations.

14 3. At all times relevant herein, Defendant employed, suffered and/or permitted
15 Plaintiff to work in San Diego County, California, and Plaintiff was an "employee" within the
16 meaning of the California Labor Code and the applicable California Industrial Wage
17 Commission ("IWC") Order(s). Plaintiff resides in the State of California.

18 4. At all times relevant herein, Defendant was doing business in the State of
19 California, County of San Diego, as Pita Guys. Defendant maintains corporate offices and
20 operates throughout California and more particularly, in the County of San Diego, State of
21 California. Defendant was at all times herein mentioned, a California corporation duly existing
22 and operating under the laws of the State of California, and under the authority of the County of
23 San Diego. Plaintiff is also informed and believes and thereon alleges that at all time relevant
24 hereto, Defendant was authorized by the California Secretary of State to conduct its business in
25 California, and by the County of San Diego to transact business therein and, at all times relevant
26 herein, was an "employer" within the meaning of the California Labor Code and the applicable
27 California Industrial Wage Commission ("IWC") Order(s).

28 5. Plaintiff is not aware of the true names and capacities of the Defendants sued

1 herein as DOES 1 through 50, whether individual, corporate, associate, or otherwise and
2 therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to
3 allege their true names and capacities when ascertained. Plaintiff is informed and believes, and
4 on that basis alleges, that each of the fictitiously named Defendants is responsible in some
5 manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein were
6 legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting
7 within the course and scope of said agency and/or employment, with the knowledge and/or
8 consent of said co-Defendant.

9 6. Plaintiff is informed and believes and thereupon alleges that at all times
10 mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the
11 agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of
12 the remaining Defendants, including each Doe Defendant, in doing the things herein alleged,
13 while at all times acting within the course and scope of such agency, service, employment
14 partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged
15 herein, was acting both individually and within the course and scope of such agency and/or
16 employment, with the knowledge and/or consent of the remaining Defendants.

17 7. Plaintiff further alleges that Defendant, including each Doe Defendant identified
18 as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and
19 conditions of employment of Plaintiff and the other aggrieved employees so as to make each of
20 said Defendants employers and, as employers, liable under the statutory provisions set forth
21 herein.

22 8. Defendant PITA GUYS, INC. and PITA BROTHERS, INC., and DOES 1
23 through 50 will hereinafter collectively be referred to as "Defendant."

24 9. Defendant employed Plaintiff within the four (4) yeas prior to the filing of this
25 lawsuit at 133 N. Twin Oaks Valley Rd #104, San Marcos, CA 92069. Defendant had the
26 authority at all relevant times to hire and fire Plaintiff and other aggrieved employees, establish
27 the terms and conditions of their employment, including their compensation and work schedules,
28 and manager their employment activities.

1 10. This Court is the proper court, and this action is properly filed in the County of
2 San Diego in that Defendant does business within said district and the wrongful acts herein
3 alleged and resulting harm to Plaintiff occurred in this judicial district.

4 11. Defendant employed Plaintiff and other aggrieved employees during the relevant
5 time period.

6 12. At all times relevant herein, Defendant was subject herein to the Labor Code of
7 the State of California, and Wage Orders promulgated by the Industrial Welfare Commission
8 ("IWC") as contained in 8 Cal. Code Regs. § 11050 et. seq., including Wage Order 5-2001
9 (originally and as amended).

10 13. Defendant's uniform employment practices included a common scheme and/or
11 plan of not paying Plaintiff and other aggrieved employees for all hours worked, including all
12 overtime hours worked and/or at the appropriate overtime rate, not providing accurate itemized
13 wage statements listing all overtime hours worked during each pay period and other required
14 information, not providing them with state mandated meal and rest periods or premium
15 compensation in lieu thereof, not providing them all wages due upon termination, unlawfully
16 converting and/or misappropriating their tips and gratuities, and other wrongful acts currently
17 unknown by Plaintiff herein. These policies and practices were common and uniform and were
18 further in direct violation of Wage Order 5-2001 (originally and as amended), and California
19 Labor Code §§ 201, 202, 203, 216, 218, 226, 351, 510, 512, 558, 1174, 1194, and 1198, and
20 subparagraphs 3, 7, 11, 12, and 20 of IWC Wage Order 5-2001 of 8 Cal. Code Regs. 11050,
21 among others as hereinafter alleged.

22 14. Defendant classified Plaintiff and other aggrieved employees as non-exempt
23 employees. Plaintiff and other aggrieved employees regularly and routinely performed non-
24 exempt labor for Defendant herein, and were entitled to all minimum and overtime wages
25 pursuant to the California Labor Code and Industrial Wage Orders.

26 15. Plaintiff and other aggrieved employees were also entitled to meal and rest
27 periods in accordance with the requirements of the applicable Wage Orders and applicable
28 California law. On innumerable occasions relevant herein, Defendant failed to authorize or

1 permit Plaintiff and, upon information and belief, other aggrieved employees to take rest and/or
2 meal periods and repeatedly denied Plaintiff and other aggrieved employees overtime wages and
3 premium wages due them.

4 16. On a regular basis during the relevant time period, Defendant required, suffered or
5 permitted Plaintiff and, upon information and belief, other aggrieved employees to work daily
6 overtime hours in excess of eight (8), ten (10), and even twelve (12) hours and/or weekly
7 overtime hours in excess of forty (40), without paying Plaintiff and other aggrieved employees
8 for overtime hours worked, or at the appropriate overtime rate, and failed to fully or properly
9 document their wages and/or withhold proper taxes. When questioned, Defendant told Plaintiff
10 he was not entitled to overtime compensation because Defendant did not employ enough
11 employees. Upon information and belief, Defendant knew that this was false and further knew
12 that Plaintiff and other aggrieved employees were entitled to overtime compensation.

13 17. Defendant failed to pay Plaintiff and, upon information and belief, other
14 aggrieved employees for all overtime hours they worked and/or at the appropriate overtime rate
15 and failed to compensate them for all regular hours and all overtime hours worked at the time of
16 their separation of employment with Defendant.

17 18. At all times herein mentioned, Defendant failed to provide Plaintiff and, upon
18 information and belief, other aggrieved employees with state mandated meal and rest periods and
19 failed to pay them for each missed meal and rest period at the time of their separation of their
20 employment or any time since.

21 19. Defendants knew or should have known that Plaintiff and other aggrieved
22 employees were entitled to receive all wages owed to them upon discharge, including overtime
23 and minimum wages and meal and rest period premiums, and they did not, in fact, receive all
24 wages owed to them at the time of discharge.

25 20. As a result of Defendant's failure to pay Plaintiff all wages due him at the time of
26 discharge, Plaintiff is owed waiting time penalties pursuant to the applicable provisions of the
27 California Labor Code.

28 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant

1 knew or should have known that Defendant had a duty to compensate Plaintiff and other
2 aggrieved employees pursuant to California law, and that Defendants had the financial
3 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
4 and falsely represented to Plaintiff and other aggrieved employees that they were properly
5 paid wages.

6 22. Plaintiff is informed and believes, and based thereon on alleges, that
7 Defendant knew or should have known that tips and other gratuities paid by patrons to
8 Plaintiff and other aggrieved employees were their sole property and not the property of
9 Defendant, but Defendant nevertheless converted and misappropriated the tips and gratuities
10 for itself and did not allow Plaintiff and other employees to receive them.

11 23. Plaintiff is informed and believes, and based thereon alleged, that Defendant
12 knew or should have known that tips and other gratuities paid by patrons to Plaintiff and
13 other employees were their sole property and not the property of Defendant, but Defendant
14 nevertheless converted and misappropriated the tips and gratuities for itself and did not
15 allow Plaintiff and other employees to receive them. Plaintiff became aware of the issue and
16 reported this information to Defendant because Plaintiff believed the collection and taking
17 of the tips and other gratuities was noncompliant and/or unlawful, and, as a consequence of
18 doing do, Defendant retaliated against Plaintiff.

19 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant
20 knew or should have known that Plaintiff and other aggrieved employees were entitled to
21 receive complete and accurate wage statements in accordance with California law,
22 including Labor Code sections 226, but they did not receive complete and accurate wage
23 statements from Defendant. The deficiencies included, but were not limited to, incorrect
24 gross and net wages earned, as well as the failure to include the total number of hours
25 worked by Plaintiff and other aggrieved employees and all hourly rates in effect during the
26 applicable pay period, among other violations.

27 25. At all material times set forth herein, Defendant failed to pay Plaintiff and other
28 aggrieved employees for all hours worked and overtime hours worked and/or at the correct rate

of pay; Defendant failed to provide Plaintiff and other aggrieved employees with proper meal and rest periods or premium compensation in lieu thereof; Defendant failed to provide Plaintiff and other aggrieved employees with accurate itemized wage statements; Defendant failed to keep accurate payroll records; and Defendant failed to pay Plaintiff and other aggrieved employees all wages owed to them upon discharge. Defendant failed to properly compensate Plaintiff and other aggrieved employees in compliance with California law in order to enrich itself at the expense of Plaintiff and other employees. Defendant further retaliated against Plaintiff for disclosing to Defendant the unlawful conversion of tips and gratuities by Defendant that he had reasonable cause to believe was noncompliant and/or unlawful. Defendant terminated Plaintiff shortly after his disclosures in August 2021.

FIRST CAUSE OF ACTION

RECOVERY OF UNPAID MINIMUM WAGES

(Against ALL Defendants)

26. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

27. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. Plaintiff regularly worked hours for which they he was not paid by Defendants at a rate no less than the prevailing minimum wage.

28. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff is entitled to recover all unpaid wages and liquidated damages, plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

RECOVERY OF UNPAID OVERTIME WAGES

(Against ALL Defendants)

29. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

30. California law provides that employees must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per workday, and be paid double time, equal to 2 times the employee's regular rate of pay, for all

hours worked in excess of 12 per workday.

31. Plaintiff regularly worked more than 40 hours per week, 8 hours per workday, and/or more than 12 hours per workday, and/or in excess of seven (7) consecutive days, but was not paid all overtime wages and double time wages due and owing under California law. Plaintiff was not paid for all overtime hours worked because, as discussed herein, Defendant failed to pay Plaintiff overtime compensation at the appropriate rate of pay. Defendant only paid Plaintiff a set hourly rate (below the appropriate overtime rate) regardless of the number of hours he worked.

32. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover all unpaid overtime and double time wages, pre-judgment interest, plus reasonable attorney's fees and costs, in an amount to be proved at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(Against ALL Defendants)

33. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

34. Under the Labor Code and IWC Wage Orders, employers are required to provide employees with one 30-minute meal break free from all duties for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (as discussed above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed not meal period was provided.

35. Plaintiff regularly worked periods of more than five hours in a workday without being provided a mandatory thirty-minute, duty-free meal period, and would work periods of

1 more than ten hours in a workday without being provided a mandatory second thirty-minute,
2 duty-free meal period. Upon information and belief, Defendant did not maintain meal period
3 policies and practices that complied with California law. Defendant did not always authorize and
4 permit Plaintiff to take meal periods. Defendant further failed to compensate him properly for all
5 non-compliant meal periods including, inter alia, short, late, interrupted and missed meal periods.

6 36. Defendant failed to provide Plaintiff with all required meal periods, or with
7 compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to
8 one additional hour's pay for each day a meal period was missed, late or interrupted, all in an
9 amount to be proved at trial.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

12 **(Against ALL Defendants)**

13 37. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

14 38. California law requires an employer to authorize or permit an employee to take a
15 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such
16 rest periods must be in the middle of the four-hour period insofar as practicable. If the employer
17 fails to provide any required rest periods, or fails to provide a fully compliant rest break for a net
18 10 minutes wherein the employee is fully relieved of all duties and all employer control, the
19 employer must pay the employee one hour of pay at the employee's regular rate of compensation
20 for each workday a legally required and/or fully compliant rest period was not provided.

21 39. Defendant failed to provide Plaintiff all required and/or fully compliant rest
22 periods, or compensation in lieu thereof. Defendant employed policies and procedures that did
23 not allow Plaintiff to receive all legally required rest periods. Defendant did not always provide
24 the opportunity to take rest breaks because of inadequate staffing caused by Defendant.
25 Defendant did not authorize and permit all required rest periods in strict accordance to, and in
26 compliance with, the timing requirements of all applicable Wage Orders. Defendant further
27 employed policies and practices where Plaintiff did not receive premium wages to compensate
28 him for workdays he did not receive all legally required and fully compliant rest periods.

40. Defendant failed to provide Plaintiff with all required rest periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to one additional hour's pay for each day a rest period was missed, all in an amount to be proved at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Against All Defendants)

41. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

42. The California Labor Code provides that, at the time of each payment of wages, the employer must provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

43. Defendant knowingly and intentionally failed to provide Plaintiff with proper, itemized wage statements as the wage statements provided did not accurately state, *inter alia*, gross wages earned, total hours worked, net wages earned and the proper hourly rate for each hour worked, among other reasons. Accordingly, under Labor Code section 226, Plaintiff is entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

44. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

45. The California Labor Code Sections 201 and 202 require employers to promptly pay all wages owing to an employee at the conclusion of employment.

8 48. Under Labor Code section 203, Plaintiff, who is no longer employed with
9 Defendant, is entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees
10 and costs, in an amount to be proved at trial.

(Against All Defendants)

50. At all times relevant hereto, by and through the conduct described herein, Defendant engaged in unfair and unlawful practices by converting and/or misappropriating tips and gratuities that belonged to Plaintiff and other employees, failing to provide Plaintiff with meal and rest periods or premium compensation in lieu thereof, or pay applicable overtime pursuant to the applicable Labor Code and Industrial Welfare Commission requirements, in violation of California Business and Professions Code § 17200, et. seq., and have thereby deprived Plaintiff of fundamental rights and privileges and caused Plaintiff to suffer economic injury as herein alleged. Defendant engaged in unfair competition by unlawfully converting tips and gratuities and withholding compensation for hours worked, including overtime hours works, and Defendant further engaged in unfair and unlawful business practices by failing to keep accurate information and time records and failing to accurately itemize the total hours worked by Plaintiff in violation of California law. In doing the forgoing acts, Defendant gained an unfair business advantage by means of these unlawful practices and gained an unfair competitive advantage with respect to competing businesses, which adhered to lawful business practices.

Defendant has, therefore, been unjustly enriched and Plaintiff and others have been systematically harmed. Defendant has uniformly violated California law and regulations including, but not limited to, Labor Code §§ 201, 202, 203, 216, 218, 226, 226.7, 510, 512, 351, 1174, 1198 and other sections of the California Labor Code and IWC Orders.

51. Plaintiff is entitled to all relief available under Business and Professions Code § 17200 and Defendant should be restrained from continuing to engage in these unfair and unlawful business practices, and in addition, should be required to disgorge the unpaid monies and ill-gotten gains to Plaintiff herein.

EIGHTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE 1102.5

(Against All Defendants)

52. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

53. At all times set forth herein, Section 1102.5 was in effect and binding on Defendant. This section prohibits employers from retaliating against employees for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. An employer further shall not retaliate against an employee for refusing to participate in an activity that would result in the violation of a federal, state, or local rule or regulation.

54. Plaintiff had reasonable cause to believe that Defendant had violated or was not in compliance with state and/or federal laws and regulations concerning the conversion and/or misappropriation of tips and other gratuities given by patrons to employees, including Plaintiff.

55. Plaintiff disclosed to Defendant his belief that Defendant was not in compliance with and/or that laws had been or were being violated.

56. Defendant had authority over Plaintiff, and had the authority to investigate, discover and/or correct the violations and/or noncompliance issues raised by Plaintiff.

1 57. Defendant, and person acting on behalf of Defendant, retaliated against Plaintiff
2 for disclosing and reporting that information, including by termination, materially reducing job
3 responsibilities and job related benefits, and denying promotion and/or advancement, among
4 other adverse employment actions.

5 58. Defendant's conduct was in violation of Section 1102.5 of the California Labor
6 Code.

7 59. As a proximate result of the aforesaid acts of Defendant, Plaintiff has suffered
8 actual, consequential and incidental financial losses, including without limitation, loss of wages
9 and benefits, and the intangible loss of employment related opportunities in his field and damage
10 to his professional reputation, all in an amount subject to proof at the time of trial.

11 60. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
12 continues to suffer emotional distress, humiliation, mental anguish and embarrassment. Plaintiff
13 is informed and believes, and thereupon alleges, that he will continue to experience said physical
14 and emotional suffering for period in the future not presently ascertainable, all in an amount to
15 prove at the time of trial.

16 61. The retaliatory actions taken against Plaintiff were carried out and ratified by
17 officers and manager of Defendant. Upon information and belief, Defendant had in place policies
18 and procedures that specifically prohibited retaliation and required Defendants' managers,
19 officers, and agents to prevent retaliation. However, Defendant chose to consciously and
20 willfully ignore said policies and procedures and therefore, their outrageous conduct was
21 fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff
22 and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted,
23 participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged
24 above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each
25 Defendant in an amount to be established that is appropriate to punish each Defendant and deter
26 others from engaging in such conduct in the future.

NINTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Defendants)

62. Plaintiff incorporates all preceding paragraphs as fully alleged herein.

63. At all times mentioned, the public policy of the State of California, as codified, expressed and mandated in the Labor Code is to prohibit employers from retaliating or taking any adverse employment actions, including termination, against any individual on the basis of that employee's disclosing suspected violations of state and federal laws and regulations. This public policy of the State of California is designed to protect all employees and to promote the welfare and well being of the community at large. Accordingly, the actions of Defendant, and each of them, in terminating and discharging Plaintiff on the grounds alleged and described herein were wrongful and in contravention of the express public policy of the State of California and the laws and regulations promulgated thereunder.

64. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of wages and benefits, and the intangible loss of employment related opportunities in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

65. The actions taken against Plaintiff were carried out and ratified by officers and manager of Defendants. Upon information and belief, Defendants had in place policies and procedures that specifically prohibited retaliation on the bases alleged herein and required Defendants' and their managers, officers, and agents to prevent retaliation against whistleblowers. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be

1 awarded exemplary and punitive damages against each Defendant in an amount to be established
2 that is appropriate to punish each Defendant and deter others from engaging in such conduct in
3 the future.

4 **TENTH CAUSE OF ACTION**

5 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**

6 **(Against All Defendants)**

7 66. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

8 67. At all times herein set forth, PAGA applied to Plaintiff's employment with
9 Defendants.

10 68. At all times herein set forth, PAGA provides that any provision of law under
11 the California Labor Code that provides for a civil penalty to be assessed and collected by
12 the LWDA for violations of the California Labor Code may, as an alternative, be
13 recovered through a civil action brought by an aggrieved employee on behalf of himself
14 and other current or former employees pursuant to procedures outlined in California Labor
15 Code section 2699.3.

16 69. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by
17 Defendant during the applicable statutory limitations period and suffered one or more of the
18 Labor Code violations set forth herein. Plaintiff and the other employees are "aggrieved
19 employees" as defined by California Labor Code section 2699(c) in that they are all current
20 or former employees of Defendant, and one or more of the alleged violations were
21 committed against them. Accordingly, Plaintiff seeks to recover on behalf of himself and all
22 other current and former aggrieved employees the civil penalties provided by PAGA, plus
23 reasonable attorney's fees and costs.

24 70. Plaintiff seeks to recover the PAGA civil penalties through a representative action
25 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th
26 969 (2009).

27 71. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203, 204,
28 223, 226(a), 226.3, 226.7, 351, 353, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198,

1391, 2699 and all applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, and any other law that is enforceable through PAGA, Defendant is liable for: (1) All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute; and (2) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code Section 2699(f).

72. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any aggrieved employee, whether a party to this action or not. Further, as a PAGA action, this claim need not be certified as a class action to proceed with a company-wide recovery. (*See generally, Arias v. Superior Court* (2009) 46 Cal.4th 969; *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

73. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. By letter postmarked March 3, 2022, Plaintiff gave written notice to the California Labor and Workforce Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

74. Under 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 within 65 days of the date of the Plaintiff's written notice. As of the date of this Amended Complaint, the LWDA has not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of himself and other aggrieved employees. Defendant further has not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.3, 226.7, 351, 353, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, and 1391. Plaintiff has exhausted all administrative remedies required by law.

75. Pursuant to Labor Code § 2699(g), and/or any and all other applicable laws, Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER

WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and severally, as follows:

1. For all general damages in an amount within the jurisdictional limits of this Court;
2. For all special damages, according to proof;
3. For all loss of earnings, according to proof;
4. For all prejudgment interest, according to proof;
5. For all punitive damages;
6. For all civil penalties;
7. For all reasonable attorney's fees;
8. For costs of suit incurred herein; and
9. For such other and further relief as the Court deems just and proper.

DATED: May 9, 2022

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Torin Duffin

LURTZ LEGAL
3511 Camino del Rio South, Suite 101
San Diego, California 92108

DEMAND FOR JURY TRIAL

Plaintiff TORIN DUFFIN demands a trial by jury on all claims so triable.

DATED: May 9, 2022

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Torin Duffin