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Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Emails: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
mhuether@lelawfirm.com
wht3@lelawfirm.com

Attorneys for Plaintiff NATHAN FLYGARE,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

NATHAN FLYGARE, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

NORTHCENTRAL PIZZA, LLC; and DOES 1
to 100, inclusive,

Defendants.

Case No.:

PAGA ACTION

**PLAINTIFF NATHAN FLYGARE'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff NATHAN FLYGARE ("Plaintiff"), who alleges and complains
against Defendants NORTHCENTRAL PIZZA, LLC; 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 Defendants' failure to pay wages for all
hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure

1 to authorize or permit all legally required and compliant meal periods or pay meal period
2 premium wages; failure to authorize or permit all legally required and compliant rest periods or
3 pay rest period premium wages; statutory penalties for failure to timely produce requested
4 employment records; indemnification for all necessary expenditures or losses incurred by
5 employees in direct consequence of discharging their duties; statutory penalties for failure to
6 timely pay earned wages during employment; statutory penalties for failure to provide accurate
7 wage statements; statutory waiting time penalties in the form of continuation wages for failure to
8 timely pay employees all wages due upon separation of employment. Plaintiff seeks on a
9 representative basis, following notice to the Labor and Workforce Development Agency, civil
10 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
11 on behalf of Plaintiff, the State of California, and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
17 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Sacramento County, at 6306 Fair Oaks Boulevard,
21 Carmichael, CA 95608.

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

26 **III. PARTIES**

27 4. Plaintiff brings this action as a representative of the Labor and Workforce
28 Development Agency on behalf of himself and other current and former employees subject to

1 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
2 filed include current, former and/or future employees of Defendants who work, worked, or will
3 work for Defendants as direct employees as well as temporary employees employed through temp
4 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
5 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
6 employed by Defendants in an hourly position at Defendants' location in Sacramento from in or
7 around August 2019, until on or about February 18, 2022.

8 5. Plaintiff is informed and believes and thereon alleges that Defendant
9 NORTHCENTRAL PIZZA, LLC is authorized to do business within the State of California and is
10 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
11 relevant hereto were persons acting on behalf of Defendant NORTHCENTRAL PIZZA, LLC in
12 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
13 policies. Defendant NORTHCENTRAL PIZZA, LLC operates in Sacramento County and
14 employed Plaintiff and putative class members in Sacramento County, including but not limited
15 to, at 6306 Fair Oaks Boulevard, Carmichael, CA 95608.

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

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

27 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
28 sues said defendants by said fictitious names, and will amend this complaint when the true names

1 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
2 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
3 named defendants is in some manner responsible for the events and allegations set forth in this
4 complaint.

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

8 **FIRST CAUSE OF ACTION**

9 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

10 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

11 **(Against all Defendants by Plaintiff)**

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

13 11. During the period beginning one (1) year preceding Plaintiff sending the initial
14 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
15 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and Sections 14 and 15 of the
16 applicable Wage Orders.

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

19 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
20 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
21 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
22 which includes all time that an employee is under control of the employer and all time the
23 employee is suffered and permitted to work. This includes the time an employee spends, either
24 directly or indirectly, performing services which inure to the benefit of the employer.

25 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
26 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
27 Wage Orders.

28 15. In this case, Plaintiff and other current and former aggrieved California-based

1 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
2 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
4 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
5 not limited to:

6 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employee who worked the opening shift to arrive early to Defendants' store ("the
8 store"), then wait for the opening manager to arrive, unlock the store, and disarm the alarm system
9 prior to being allowed to clock in for the start of Plaintiff and other current and former aggrieved
10 California-based hourly non-exempt employee shifts; and

11 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employee who worked the closing shift to clock out and then wait at the front of the
13 store for the closing manager to perform routine "rounds." These "rounds" consisted of walking
14 through the store and toilet areas to ensure that no associates or customers remained in the store
15 after closing, powering down all the equipment, setting the alarm system, exiting the store together
16 with the closing manager, and locking the front door prior to being able to leave for the end of
17 Plaintiff's and similarly situated employees' shifts.

18 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
19 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
20 control without paying wages for that time. This resulted in Plaintiff and other current and former
21 aggrieved California-based hourly non-exempt employees working time for which they were not
22 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
23 Wage Order.

24 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
25 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
26 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
27 which includes all time that an employee is under control of the employer and all time the
28 employee is suffered and permitted to work. This includes the time an employee spends, either

1 directly or indirectly, performing services that inure to the benefit of the employer.’

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

5 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
6 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
7 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
8 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
9 (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.

10 Labor Code section 510.

11 19. In this case, Defendants failed to pay Plaintiff and other current and former
12 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
13 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

14 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
15 non-exempt employee who worked the opening shift to arrive early to Defendants’ store (“the
16 store”), then wait for the opening manager to arrive, unlock the store, and disarm the alarm system
17 prior to being allowed to clock in for the start of Plaintiff and other current and former aggrieved
18 California-based hourly non-exempt employee shifts; and

19 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
20 non-exempt employee who worked the closing shift to clock out and then wait at the front of the
21 store for the closing manager to perform routine “rounds.” These “rounds” consisted of walking
22 through the store and toilet areas to ensure that no associates or customers remained in the store
23 after closing, powering down all the equipment, setting the alarm system, exiting the store together
24 with the closing manager, and locking the front door prior to being able to leave for the end of
25 Plaintiff’s and similarly situated employees’ shifts.

26 20. The foregoing policies, practices, and/or procedures resulted in time during each
27 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
28 employees were under the control of Defendants but were not compensated. To the extent that the

1 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
2 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
3 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
4 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
5 sections 510 and 1194 and the applicable Wage Order.

6 21. **Failure to pay wages to hourly non-exempt employees for workdays that**
7 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
8 current and former aggrieved California-based hourly non-exempt employees regularly worked
9 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

10 22. California law requires an employer to authorize or permit an employee an
11 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
12 all duties and the employer relinquishes control over the employee's activities prior to the
13 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 7 at §11; *Brinker*
14 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
15 employee for a work period of more than ten (10) hours per day without providing the employee
16 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
17 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
18 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
19 period is only permitted when: (1) the nature of the work prevents an employee from being
20 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

21 23. If an employer fails to provide an employee a meal period in accordance with the
22 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
23 for each workday that a legally required and compliant meal period was not provided. Labor Code
24 section 226.7; Wage Order 7 at §11.

25 24. In this case, Defendants failed to authorize or permit legally required and compliant
26 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
27 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
28 limited to:

1 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees to remain on Defendants' premises and on duty during their meal periods
3 when they were working as hourly managers and were the only hourly manager scheduled to work
4 during the shift, resulting in Plaintiff and other current and former aggrieved California-based
5 hourly non-exempt employees who worked as hourly managers being subject to Defendants'
6 control and their meal periods should be counted as time worked; and

7 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
8 non-exempt employees who worked as hourly managers to continue working off the clock during
9 their meal periods as key holders and to provide employees assistance with any issues that may
10 arise during their meal periods, resulting in meal periods that were either missed, late, interrupted,
11 not duty-free and/or less than thirty (30) minutes as required by law.

12 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
15 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
16 employees did not receive legally required and compliant meal periods, in violation of Labor Code
17 section 226.7.

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

22 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
23 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
24 current and former aggrieved California-based hourly non-exempt employees regularly worked
25 shifts of more than three-and-a-half (3.5) hours.

26 28. California law requires every employer to authorize and permit an employee a rest
27 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
28 Code section 226.7; Wage Order 7 at §12. Under California law, "[e]mployees are entitled to 10

1 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
2 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
3 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
4 section 226.7; Wage Order 7 at §12. Rest periods, insofar as practicable, shall be in the middle of
5 each work period. Wage Order 7 at §12. Additionally, the rest period requirement “obligates
6 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
7 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
8 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

9 29. If the employer fails to authorize or permit a required rest period, the employer
10 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
11 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
12 Wage Order 7 at § 12.

13 30. In this case, Defendants failed to authorize or permit all legally required and
14 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
15 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
16 limited to:

17 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees to remain on Defendants’ premises during their rest periods when they
19 were working as hourly managers and were the only hourly manager scheduled to work during the
20 shift, resulting in Plaintiff and other current and former aggrieved California-based hourly non-
21 exempt employees who worked as hourly managers being subject to Defendants’ control and their
22 rest periods should be counted as time worked; and

23 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
24 non-exempt employees who worked as hourly managers to continue working off the clock during
25 their rest periods as key holders and to provide employees assistance with any issues that may
26 arise during their meal periods, resulting in rest periods that were either missed, late, interrupted,
27 not duty-free and/or less than ten (10) minutes as required by law.

28 31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
3 workday they did not receive legally required and compliant rest periods, in violation of Labor
4 Code section 226.7.

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

9 33. **Failure to produce requested employment records:** An employer must afford
10 current and former employees the right to inspect or receive a copy of records pertaining to their
11 employment, upon reasonable request to the employer. Labor Code section 226(b). An employer
12 who receives a request to inspect or receive a copy of records pertaining to a current or former
13 employee must comply with the request as soon as practicable, but no later than twenty-one (21)
14 calendar days from the date of the request. Labor Code section 226(c). Additionally, every current
15 and former employee, or his or her representative, has the right to inspect and receive a copy of the
16 personnel records that the employer maintains relating to the employee's performance or to any
17 grievance concerning the employee. Labor Code section 1198.5(a). Upon written request from a
18 current or former employee or his or her representative, an employer must make the contents of
19 those personnel records available for inspection or provide a copy of the personnel records to the
20 current or former employee, or his or her representative, not later than thirty (30) calendar days
21 from the date the employer receives the written request, subject to some limited exceptions. Labor
22 Code §1198.5(b)(1). Failure to comply with these requests allows for a civil penalty seven
23 hundred fifty dollars (\$750), pursuant to Labor Code sections 1198.5(k) and 226(f).

24 34. On March 11, 2022, Plaintiff sent a written request through his counsel to
25 Defendants for his payroll records, timecards, and personnel records pursuant to Labor Code
26 sections 226 and 1198.5. However, Defendants failed to timely produce the requested employment
27 records, in violation of Labor Code sections 226 and 1198.5. Defendants have not produced any of
28 the requested employment records as of the date of this Complaint.

1 35. Plaintiff is informed and believes and thereon alleges that other similarly situated
2 employees also sent written requests for their employment records, but Defendants failed to timely
3 produce the required and requested records, in violation of Labor Code sections 226 and 1198.5.

4 36. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
5 **Employment:** California law requires that every employer must indemnify its employees for all
6 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
7 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
8 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
9 2802.)

10 37. Defendants have violated Labor Code Section 2802 by failing to indemnify
11 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
12 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
13 employed a policy, practice, and procedures included but were not limited to:

14 (a) requiring Plaintiff and other current and former aggrieved California-based non-
15 exempt hourly employees' who worked as delivery drivers to use their own personal cars as
16 delivery vehicles in order to work for Defendants. However, Defendants failed to indemnify
17 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
18 who worked as delivery drivers for the actual mileage accumulated by each of them. Instead,
19 Defendants paid them a flat rate of a dollar-and-twenty-five-cents (\$1.25) per mile for each
20 delivery, regardless of the varying mileage of each delivery.

21 38. Moreover, Defendants employed policies and procedures which ensured Plaintiff
22 and aggrieved employees would not receive indemnification for their employment related
23 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
24 indemnification in compliance with California law.

25 39. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
26 employment related expenses, including but not limited to costs related to use of their personal
27 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

28 40. **Failure to timely pay earned wages during employment:** In California, wages

1 must be paid at least twice during each calendar month on days designated in advance by the
2 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
3 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
4 16th and the 26th day of that month and wages earned between the 16th and the last day,
5 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
6 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
7 paid within seven (7) calendar days following the close of the payroll period in which wages were
8 earned. Labor Code section 204(d).

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

16 42. **Failure to provide complete and accurate wage statements:** Labor Code section
17 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
18 employee his or her wages, the employer must "furnish each of his or her employees ... an
19 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
20 employee, except for any employee whose compensation is solely based on a salary and who is
21 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
22 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
23 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
24 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
25 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
26 name of the employee and his or her social security number, (8) the name and address of the legal
27 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
28 the corresponding number of hours worked at each hourly rate by the employee."

1 43. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
2 and other current and former aggrieved California-based hourly non-exempt employees all wages
3 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
4 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
5 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
6 section 226.

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

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

16 46. Defendants' violations of Wage Order 7 constituted violations of Labor Code
17 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

22 48. Plaintiff has complied with the procedures for bringing suit specified in Labor
23 Code section 2699.3. On May 9, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
24 provided notice to Defendants by certified mail which provided notice of the specific provisions of
25 the Labor Code alleged to have been violated, including the facts and theories to support the
26 violations alleged.

27 49. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
28 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code

1 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
2 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
3 to investigate Plaintiff's claims.

4 50. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
5 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
6 512, 1194, 1197, 1198, and 2802, beginning one (1) year preceding Plaintiff sending the initial
7 PAGA Claim Notice to the LWDA to the present, in the following amounts:

8 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,
9 and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
10 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
11 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

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

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

26 **PRAYER FOR RELIEF**

27 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
28 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

1 **ON THE FIRST CAUSE OF ACTION:**

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

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

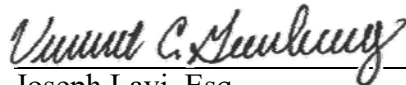
7 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
8 under California Labor Code section 2699(g); and

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

11
12 Dated: October 21, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

13
14 By:



15 Joseph Lavi, Esq.
16 Vincent C. Granberry, Esq.
17 Melissa A. Huether, Esq.
18 Attorneys for Plaintiff
19 NATHAN FLYGARE,
20 on behalf of himself and current and former
21 aggrieved employees
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