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Filed via the LWDA's PAGA Claim Notice Online Form

Copies Sent via Certified U.S. Mail to:

Luis Romero, Agent for Service
E.E. Hall, Inc.
759 S. Madera Ave.,
Kerman, California 93630

Re: *Gerson Alburez v. E. E. Hall., Inc.*
First Amended Notice of Intent to File Suit Pursuant to California Labor Code Section 2699

To Whom It May Concern:

This office represents Gerson Alburez ("Plaintiff") in his currently-pending lawsuit against E. E. Hall., Inc. ("Defendant"). An amendment in the action, entitled *Gerson Alburez v. E. E. Hall., Inc.*, is to be filed in the Superior Court of the State of California for the County of Kern as case number BCV-22-101183 (the "Action"). A copy of the second amended complaint as currently drafted, and as is intended to be filed in the Action, is enclosed as **Exhibit A**. This letter incorporates by reference the facts, law, and allegations of Exhibit A.

This letter serves as an amended notice pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6, that we intend to include representative claims in the Action for civil penalties under PAGA on behalf of a group of aggrieved employees. For the purposes of this letter, "Aggrieved Employees" is defined as: *All individuals who are or were employed by Defendant E.E. Hall, Inc. in California, from May 13, 2021, and assigned to a third-party, including but not limited to Trinitas Farming, LLC, Pomona Farming, LP, and Pomona Farming GP, LLC, to the mailing of this notice and through the date of trial.*

As set forth in more detail in Exhibit A, Defendant violated its obligations to Plaintiff and the Aggrieved Employees under California law by: failing to pay minimum wages for all hours worked, failing to pay all overtime wages earned, failing to pay all accrued vacation time, failing to provide lawful rest periods and pay rest period premiums, failing to provide lawful meal periods and pay meal period premiums, failing to provide lawful recovery periods, track and pay recovery period premiums, failing to maintain accurate records, failing to reimburse all necessary business expenses, failing to pay all wages in full and on time during employment, failing to pay all wages due upon separation of employment, failing to keep adequate or accurate time, payroll, and other employment records, failing to issue notices in compliance with Labor Code §2810.5, failing to reimburse deposits made by employees during employment, failing to provide paid sick leave and/or COVID-19 sick leave in accordance with applicable law, failing to pay paid time off and/or accrued vacation at the time of separation, failing to provide suitable seating during employment, preventing employees from disclosing the skills, knowledge, and experience they obtained with Defendant, preventing employees from disclosing violations of law or wage information with others, including preventing employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations; preventing employees from engaging in lawful conduct during non-work hours; failing to furnish and use safety devices and safeguards in employment; failing to give sufficient notice to employees of COVID-19 exposure and/or keep records of the same; failing to provide adequate and readily accessible sanitation facilities, regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition, failing to maintain an adequate supply of suitable cleansing agents, water, single-use towels or blowers, and a sufficient number of toilets for employees; requiring employees as a condition of employment to arbitrate their employment disputes; conducting unlawful background checks; unlawfully relying on the salary history information of an applicant as a factor in determining whether to offer employment or what salary to offer, among other things further described in Exhibit A..

Because of these systemic violations, Defendant violated: Labor Code sections including sections 96(k), 98.6, 201, 201.3, 202, 203, 204, 204b, 205, 221, 223, 226, 226.2, 226.7, 227.3, 232, 232.5, 233, 246, 247, 247.5, 248, 248.2, 248.6, 404, 405, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 1102.5, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2800, 2802, 2804, 2810.5, 6401, 6402, 6403, 6409.6, 6432; applicable provisions of the IWC Wage Order(s) implicated by the allegations above as enforceable under Labor Code §1185; and, 8 CCR §§1527, 3366, 3395, 3456, 6457, 8397.4, in addition to any other legal theories that may be applicable based on the facts and theories pled herein. The enclosed Complaint further details: **(1)** the alleged violations; **(2)** the facts and theories supporting these violations; **(3)** the people and entities, dates, classifications, violations, events, and actions at issue; and **(4)** the illegal practices instituted by Defendant.

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to fully prosecute the representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me if you have any questions.

Sincerely,

KYLE D. SMITH

Enclosure

<u>**EXHIBIT A**</u>

(Anticipated Second Amended Complaint in
Gerson Alburez v. E. E. Hall., Inc.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

GERSON ALBUREZ, an individual, on behalf of himself and the State of California, as a private attorney general,

Plaintiff,

v.

E. E. HALL., INC., a California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: BCV-22-101183

Second Amended Representative Action Complaint For:

1. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA")

Plaintiff Gerson Alburez ("Plaintiff"), on behalf of himself and the State of California, as a private attorney general, complains and alleges of defendants E. E. Hall., Inc. and Does 1 to 50 (collectively, "Defendants"), and each of them, as follows:

I. <u>INTRODUCTION</u>

1. This action is a representative action brought pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6.

2. The "PAGA Period" as used herein, is defined as the period from May 13, 2021, and continuing into the present and ongoing.

3. This PAGA action is brought on behalf of Plaintiff, the State of California as private attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were employed by Defendant E.E. Hall, Inc. in California during the PAGA Period and assigned to a third-party, including but not limited to Trinitas Farming, LLC, Pomona Farming, LP, and Pomona Farming GP, LLC* (the "Aggrieved Employees").

4. Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage Order 14-2001 (Cal. Code of Regs., tit. 8, § 11140) and possibly others that may be applicable (the "Applicable Wage Order").

II. <u>JURISDICTION & VENUE</u>

5. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

6. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of Kern and the State of California through their acts, and by their violation of the California Labor Code and California state common law. On information and belief, Defendants transact millions of dollars of business within the State of California. On information and belief,

Defendants own, maintain offices, transact business, have an agent or agents within the County of Kern, and/or otherwise are found within the County of Kern, and Defendants are within the jurisdiction of this Court for purposes of service of process.

7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the Code of Civil Procedure. Defendants operate within California and do business within Kern County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all Aggrieved Employees identified above within Kern County and surrounding counties where Defendants may remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (2021) 60 Cal.App.5th 1069, 1075 ["We hold that venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred."].)

III. THE PARTIES

A. PLAINTIFF

8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly employee in the County of Kern.

9. Plaintiff brings this action on behalf of himself and the State of California, as a private attorney general, and on behalf of all Aggrieved Employees.

10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the relevant statutory period.

B. DEFENDANTS

11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized to and doing business in Kern County and is and/or was the legal employer of Plaintiff and the other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved Employees were, and are, subject to Defendants' policies and/or practices complained of herein and have been deprived of the rights guaranteed to them by: California Labor Code sections including sections 96(k), 98.6, 201, 201.3, 202, 203, 204, 204b, 205, 210, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 245, 246, 247, 247.5, 248, 248.2, 248.6, 404, 405, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,

1198.5, 1199, 2800, 2802, 2804, 2810.5, 6401, 6402, 6403, 6409.6, 6432; applicable provisions of the IWC Wage Order(s) implicated by the allegations above as enforceable under Labor Code §1185; and, 8 CCR §§1527, 3366, 3395, 6457, 8397.4, in addition to any other legal theories that may be applicable based on the facts and theories pled herein.

12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA Period, Defendants did (and continue to do) business in the State of California, County of Kern.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, representatives, and employees of each and every one of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, representation, and employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

15. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there existed and now exists a unity of interest and ownership between them such that the individuality and separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, that Defendants, and each of them, have been and now are mere shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,

property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their identities as the entities responsible for their ownership, management, and financial interests.

16. Plaintiff is further informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and the other Aggrieved Employees.

IV. COMMON FACTS & ALLEGATIONS

17. Plaintiff and the other Aggrieved Employees (collectively, the "Aggrieved Employees") are, and were at all relevant times, employed by the Defendants and/or assigned to Defendants within the State of California.

18. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

19. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period, working as an hourly, non-exempt laborer for Defendants. Plaintiff's duties included spraying the fields, driving tractors, maintaining the fields, and other agricultural-related projects.

A. MINIMUM WAGE VIOLATIONS

20. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Likewise, the Applicable Wage Order also obligates employers to pay each employee minimum wages for all hours worked. (Cal. Code of Regs., tit. 8, § 11140.) Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit.

21. These minimum wage standards apply to each hour that employees work. Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

22. Here, Defendants failed to fully conform their pay practices to the requirements of the law during the relevant statutory periods. The Aggrieved Employees were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Order. Among other violations, the Aggrieved Employees were subject to the control of Defendants while off-the-clock and did not receive minimum wage for each hour worked, such as by requiring employees to work off-the-clock without the option of reporting their time (such as work performed prior to Defendants making timekeeping systems accessible and/or work performed during meal periods during which Aggrieved Employees were clocked-out of work), by requiring employees to wait in long lines to clock into work or in from a meal period as a result of the insufficient number of timekeeping systems, by requiring employees to wait in long lines for various screenings (such as security, COVID-19, or other health screenings), by knowingly permitting employees to perform pre-shift and post-trip functions prior to clocking in and/or after clocking out (such as donning/doffing work clothing and safety equipment like gloves and hairnets, washing hands for food-safety reasons, or mandatory after-hour driving activities or emails/phone calls), by requiring the Aggrieved Employees' attendance at mandatory off-the-clock events like meetings, by deducting from hours worked time spent by employees taking rest periods, and failing to play split shift premiums and/or reporting time pay when due. Any deductions made also violated Labor Code §221 insofar as the deductions were not authorized by Labor Code §221. Additionally, Defendants failed to pay all nonproductive time and/or rest and recovery time in accordance with Labor Code § 226.2

23. Additionally, the Aggrieved Employees were not paid all wages for all hours worked due to Defendants' uniform payroll policies and practices that unfairly rounded employees' wages to the detriment of the Aggrieved Employees. This rounding policy routinely failed to capture the entirety of the hours the Aggrieved Employees worked and was structured in a way that in favored underpayment. (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the Aggrieved Employees suffered periodic shortages in the hours for which they were compensated. This uncompensated time violated California's requirement that employees be compensated for all hours worked. As a result of this practice, the Aggrieved Employees were not

compensated their minimum wages for all hours worked. Separately, Defendants otherwise edited and/or manipulated time records, resulting in the records showing less hours than that worked by Aggrieved Employees. These practices also resulted in Defendants' failure to pay minimum wages.

24. Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other damages, as follows:

> (1) "For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid."
>
> (2) "For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed." (Lab. Code, § 1197.1, subd. (a).)

25. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code section 1197.1 in addition to any other applicable penalties.

B. OVERTIME VIOLATIONS

26. Labor Code section 510 requires employers to compensate employees who work more than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510, subd. (a).)

27. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

"(1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

"(2) For employers of more than 25 employees:

"(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9½) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over nine and one-half (9½) hours in any one workday or more than fifty-five (55) hours in any one workweek.

"(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek." (Cal. Code of Regs., tit. 8, § 11140, subd. 3.)

28. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Order.

29. Here, Defendants violated their duty to accurately and completely compensate the Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours that entitled them to overtime compensation under the law but were not fully compensated for those hours, for reasons discussed in paragraphs 22-23. Additionally, Defendants violated their duty to pay overtime to Aggrieved Employees for independent reasons. For example, Defendants failed to

accurately calculate the regular rate of pay when paying overtime, by failing to include all forms of remuneration (such as bonus or incentive earnings, meal allowances, mask allowances, gift cards, or similar things) in the regular rate of pay required by law. Defendants also inappropriately paid straight-time pay rates when overtime payments were required to employees, failed to pay weekly overtime in accordance with the designated workweek(s), and failed to pay overtime in accordance with seventh day rules.

30. These actions were and are in clear violation of California's overtime laws as set forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, § 11140.) As a result of Defendants' faulty policies and practices, the Aggrieved Employees were not compensated for all hours worked or paid accurate overtime compensation.

C. UNPAID ACCRUED VACATION TIME

31. California Labor Code section 227.3 states that:

> "[W]henever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

32. Thus, when an employer has a vacation policy, it must pay out all accrued but unused vacation time upon termination. An employer may not adopt policies that require forfeiture of vested vacation time without compensation. (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1571 ["California law prohibits an employer from requiring the forfeiture of vacation time"].)

33. Here, Defendants had a vacation policy, and the Aggrieved Employees had completed all prerequisites and/or necessary limitations of service required by Defendants' vacation policy to accumulate vested vacation pay. Despite that fact, many of the Aggrieved Employees were denied all accrued but unused vacation time at termination in violation of California law, or to the extent it was paid, Defendants failed to pay it at the legally required rates of pay, failed to pay it timely in accordance

with the requirements of Labor Code sections 201 and 202, or failed to pay wages at places contemplated by Labor Code section 208.

34. By failing to pay accrued vacation time at termination of employment, Defendants have violated California Labor Code provisions including, but not limited to, sections 201, 202, and 227.3.

D. REST AND RECOVERY BREAK VIOLATIONS

35. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were and are required to provide the Aggrieved Employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order, an employer must authorize and permit all employees to take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11140.)

36. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . . ." (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage Orders set when and for how long the rest period must take place and the Labor Code establishes that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees when employers fail to provide rest periods.

37. The California Supreme Court has held that, during required rest periods, "employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing control over employees during rest periods requires that employees be "free to leave the employer's premises" and be "permitted to attend to personal business." (*Id.* at p. 275.) The *Brinker* Court

explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> "An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033.)

38. Here, Defendants periodically did not permit the Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants' control as required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."].) At all relevant times, the Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants' unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to continue working through rest periods to meet the expectations Defendants and finish the workday. In some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period. Defendants failed to provide rest periods altogether in some cases, failed to provide a sufficient number of rest periods (such as third rest periods in shifts at or exceeding 10 hours) in other cases, providing short rest periods less than 10-minutes of net rest time, often unlawfully required employees to take rest periods in combination with a meal period, interrupted rest periods with work or work-related questions, mandated employees respond to communication devices (e.g., emails, cell phones, radios, etc.) during rest periods, providing rest periods but after the time(s) required by law, not allowing employees to leave the premises during rest periods, and otherwise requiring employees to remain on-duty and/or on-call during rest periods. As a result, the Aggrieved Employees were periodically unable to take compliant rest periods.

39. In such cases where Defendants did not offer the Aggrieved Employees the opportunity to receive a compliant off-duty rest period, "the court may not conclude employees voluntarily chose to skip those breaks." (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015) ["If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."]; *Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033 ["No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it."].)

40. Similarly, Defendants failed to authorize and permit employees to take recovery periods in accordance with law, namely 8 C.C.R. §3395. Defendants failed to provide recovery periods altogether, failed to provide a sufficient number of recovery periods, unlawfully required employees to take recovery periods in combination with other breaks, provided short recovery periods, interrupted recovery periods with work or work-related questions, mandated employees respond to communication devices (e.g., cell phones, radios, etc.) during recovery periods, providing recovery periods but after the time(s) required by law, not allowing employees to leave the premises during recovery periods, otherwise requiring employees to remain on-duty and/or on-call during recovery periods (such as by requiring employees to don/doff work gear or wash hands during rest periods), and failing to provide suitable places for recovery periods.

41. In addition to failing to authorize and permit compliant rest periods, the Aggrieved Employees were not compensated with one hour's worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in accordance with Labor Code section 226.7, subdivision (c). Whenever rest premiums were paid, Defendants failed to pay them at the regular rate of pay. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

E. MEAL BREAK VIOLATIONS

42. Labor Code section 512 and the Applicable Wage Order require employers to provide employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30

minutes . . . ."]; Cal. Code of Regs., tit. 8, § 11140 ["No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . ."].) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . . ."].)

43. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") and courts have "found that the nature of the work exception applies: (1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the employer's obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period." (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

44. Here, the Aggrieved Employees were never asked to sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of "external force" that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal periods within the first five hours of work for the Aggrieved Employees.

45. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 ["The IWC's wage orders have long made a meal period's duty-free nature its defining characteristic."].) Relinquishing control over employees during meal periods requires that employees be "free to leave the employer's premises" and be "permitted to attend to personal business." (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under

Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), "it has violated the wage order and is liable." (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

46. During the applicable statutory periods here, the Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to Defendants' unlawful meal period policy and practices. As a result of Defendants' uniform meal period policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants failed to provide meal periods altogether, failed to provide a sufficient number of meal periods (such as second meal periods in shift over 10 hours), provided meal periods of less than 30 minutes, unlawfully required employees to take meal periods in combination with a rest period, interrupted meal periods with work or work-related questions, mandated employees respond to communication devices (e.g., emails, cell phones, radios, etc.) during meal periods, providing meal periods but after the time(s) required by law, not allowing employees to leave the premises during meal periods, otherwise requiring employees to remain on-duty and/or on-call during rest periods (such as requiring them to wait in lines to clock-in during meal periods, travel to their work station during a meal period, don/doff work gear such as gloves and hairnets during meal periods, and requiring employees to wash their hands during meal periods), and auto-deducting meal periods. Any deductions made also violated Labor Code §221 insofar as the deductions were not authorized by Labor Code §221.Defendants thus violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts, and second meal periods within the first ten working hours of their shifts..

47. Labor Code section 226.7 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission." (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate

employers to pay employees one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11140 ["If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."].) The "regular rate" for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

48. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Aggrieved Employees applicable meal period premiums for many workdays that the employees did not receive a compliant meal period. Whenever rest premiums were paid, Defendants failed to pay them at the regular rate of pay. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

F. UNTIMELY WAGES DURING EMPLOYMENT

49. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of:

> "(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
>
> "(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." (Lab. Code, § 210, subd. (a).)

50. Notably, the penalty provided by Labor Code section 210 is "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article . . . ." (Lab. Code, § 210, subd. (a).)

51. Due to Defendants' failure to pay the Aggrieved Employees the wages described above, along with rest, recovery, and meal break premiums, Defendants failed to timely pay the Aggrieved Employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204].) To the extent Labor Code §204 is not applicable, Defendants violated similar provisions of the law applicable to them, such as Labor Code §§ 201.3, 204b, and/or 205.

G. UNTIMELY WAGES AT SEPARATION

52. Labor Code section 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty" for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result of Defendants' failure to pay the Aggrieved Employees for the wages described above, along with rest and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

53. Due to Defendants' faulty pay policies, those Aggrieved Employees whose employment with Defendants concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter. When Defendants paid all wages due to Aggrieved Employees at the time of separation, they failed to do so in a timely manner based upon whether Aggrieved Employees quit or were discharged, often paying final wages well later then contemplated by statute. For example, Defendants failed to pay Aggrieved Employees on the date of their layoffs, in cases where they were discharged via layoff, instead paying them on their regularly scheduled payday.

H. FAILURE TO REIMBURSE BUSINESS EXPENSES

54. At all relevant times herein, Defendants were subject to Labor Code section 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

55. At all relevant times herein, Defendants were subject to Labor Code section 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

56. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee."].)

57. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone, their personal vehicle (including mileage, gas, and wear and tear), uniforms and/or other work clothing or gear (including safety gear), laundering costs to employees whose job required them to launder their work clothing separate from all other clothing, and work tools they required to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

I. RECORDKEEPING VIOLATIONS

58. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

> "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law." (Lab. Code, § 226.3, emphasis added.)

59. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendants, to:

> "Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned." (Lab. Code, § 1174, subd. (d), emphasis added.)

60. As explained in detail above, Defendants failed to provide the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Aggrieved Employees, the applicable rate(s) of pay, gross, and net wages. Further, in light of the issues described above, Defendants wage statements failed to accurately reflect gross wages earned, net wages earned, all deductions, all applicable hourly rates in effect and the

corresponding hours worked at each, applicable piece units and rates, the legal name and address of the legal entity that is the employer, the name and address of the entity securing the services of Defendant E.E. Hall, Inc., the total hours of compensable rest and recovery periods, the total hours of nonproductive time. Defendants also failed to include all information regarding sick leave and/or COVID-19 supplemental sick leave in the wage statements, or other writing, in accordance with their legal obligations. Defendants also issued inaccurate wage statements insofar as the wage statements issued did not include meal, rest, and recovery period premiums on occasions when they should have been issued, and failed to include correct information regarding such premiums when they were paid. Defendants have thus failed to keep accurate records of the "total hours worked by the employee[s]" in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are "in addition to any other penalty provided by law." (Lab. Code, § 226.3.)

61. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all "payroll records showing the hours worked daily by" Defendants' employees, including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

62. Additionally, Defendants failed to keep records as required by Labor Code §§ 432 and 1198.5, and/or provide records pursuant to an employee's request as required by Labor Code §§ 226, 432, and/or 1198.5. Labor Code §432 requires an employer to provide an employee or applicant a copy of any written document signed by the employee or applicant relating to the obtaining or holding of employment upon request. Labor Code § 1198.5 provides Aggrieved Employees, or their representatives, a right to inspect and receive a copy of personnel files maintained by the employer for the employee, including files relating to the employee's performance or any grievance concerning the employee. Further, an employer is required to make the contents of those records available for inspection to the employee, or his representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date of the request, unless extended by agreement of the parties. An employer cannot charge the employee more than the reasonable cost of reproducing the records, if a copy of the records is requested. Defendants had a duty to maintain copy of these records for at least three years after separation of employment. Labor Code §226 requires an employer to afford current

and former employees the right to inspect or receive a copy of records pertaining to their employment, including payroll records. Defendants had a duty to make such records available to employees as soon as practicable, and in no cases less than 21 calendar days from the date of the request. Plaintiff made a request for records pursuant to these provisions to Defendants, but Defendants failed to timely comply with the request and/or provide all documentation to which Plaintiff was entitled, including time records maintained pursuant to the applicable IWC Wage Order and/or Labor Code §1174.

V. SICK LEAVE AND COVID-19 SICK LEAVE

63. Under Labor Code §§ 246 and 246.5, Defendants were required to provide Aggrieved Employees who worked for them for more than 30 days paid sick leave for use in accordance with law. Defendants failed to provide paid sick leave to Aggrieved Employees in compliance with the statute including in sufficient amounts and upon any oral request made by an employee, failed to provide them written notice of paid sick leave as required by the statute, and failed to pay sick leave at the rates specified by that statute. Defendants' failure to pay paid sick leave also violated the requirement that they provide paid sick leave by the payday for the next regular payroll period after the sick leave was taken. Further, under Labor Code §§ 248, 248.2, 248.6, Defendants were required to provide Aggrieved Employees who worked for them COVID-19 supplemental sick leave in accordance with law. Defendants failed to provide COVID-19 sick leave in compliance with the statutes, including in sufficient amounts and upon any oral request made by an employee, failed to provide them written notice of COVID-19 paid sick leave as required by the statutes, and failed to pay COVID-19 paid sick leave at the rates specified by statute.

VI. NOTICE AT TIME OF HIRE

64. Labor Code §2810.5 requires an employer, at the time of hiring, to provide each employee a written notice, in the language the employer normally uses to communicate with employees, containing various pieces of information.

65. On information and belief, notices Defendants provided failed to include relevant information, such as information concerning employees' (a) rates of pay, including overtime rates; (b) allowances claimed as part of the minimum wages; (c) Defendants' regular payday; (d) Defendants' business name, including any dba; (e) Defendants' physical address, and a mailing address, if different;

(f) Defendants' worker's compensation insurer's name, address, and telephone number; and, (h) required information concerning an employee's sick leave rights; (i) the existence of any disaster declaration within 30-days of an employee stating work that could impact their health and safety, and/or (j) other information deemed necessary by the Labor Commissioner. Further, Defendants failed to notify employees of required changes to such information as required by the statute. To the extent Defendants provided any notice, they failed to do so at the time of hiring and in the language Defendants normally used to communicate employment-related information to employees.

VII. EMPLOYEE DEPOSITS

66. Labor Code § 404 requires that money put up by an employee as bond under Labor Code §§ 401, 402, and/or 403, shall be returned to the employee with accrued interest thereon, immediately upon the employee's return of equipment and materials to employees. On information and belief, Defendants failed to reimburse deposits made by employees, such as for uniforms, together with interest owed in a timely manner as required by law. Instead, Defendants either never returned such deposits, returned them without accrued interest, unjustifiably returned only part of the deposits when material was not damaged, and/or failed to return the deposit in a timely manner.

VIII. SUITABLE SEATING & SAFETY

67. Under IWC Wage Order 14 (8 CCR §11040), suitable seats shall be provided for employees when the nature of the work reasonably permits the use of seats. On information and belief, Defendants failed to provide an adequate number of seats in reasonable proximity to working areas, and/or failed to permit employees to use seats provided despite the job allowing for it.

68. Under applicable law, including but not limited to Labor Code §§6401, 6402, and/or 6403, Defendants had the obligation to provide a safe work environment, including but not limited to furnishing and using safety devices and safeguards. Defendants failed to do so, by not providing certain protective gear, such as gloves or sun/rain protective gear, among other things. Additionally, Defendants failed to disinfect time clocks or other surfaces with which Aggrieved Employees frequently came into contact, and failed to ensure employees had adequate space to perform their job duties.

69. Under applicable law, including but not limited to Labor Code §6409.6, Defendants had the obligation to provide notice regarding COVID-19 cases, in accordance with law. On information and belief, despite the COVID-19 reporting requirements imposed by law being triggered, Defendants failed to provide sufficient notice in accordance with law, due to the failure to provide notice at all, the failure to provide timely notice, the failure to notify all required persons, the failure to provide all substantive information required (such as information regarding COVID-19 exposure, all COVID-19 related benefits to which employees may be entitled, the anti-retaliation provisions that protected employees, the employer's responsive cleaning and disinfection plan), among other failures. Further, Defendants failed to keep records of compliance with these laws at all, or at least for the period of time required by law. Defendants also failed to provide sufficient, accurate, and/or timely information to local health agencies, as required by law.

70. Under applicable law, including but not limited to 8 CCR §§ 1527, 3366, 3457, and 8397.4, Defendants had the obligation to, among other things, provide adequate cleaning and sanitation facilities to Aggrieved Employees, including but not limited to providing adequate potable water, toilet facilities, handwashing facilities, and related facilities to them. Additionally, Defendants had the obligation to maintain those facilities in good order, including maintaining a regular schedule for servicing, cleaning, and supplying each facility, and appropriate cleaning agents to maintain the facilities. On information and belief, Defendants failed to provide such facilities, such as a sufficient number of toilet facilities, towels or blowers, or related items to Aggrieved Employees, thus violating all or some of the provisions cited in this paragraph. Defendants separately failed to ensure adequate materials were maintained in these facilities, and failed to maintain them in good order as a result of, among other things, failing to maintain a regular cleaning/service schedule.

IX. DISCLOSURES OF INFORMATION

71. Defendants placed unlawful limitations on what Aggrieved Employees could report concerning their work with Defendants, including regarding matters such as their skills, knowledge, or experience obtained from Defendant. For example, on information and belief, Defendants prohibited employees from competing with Defendants, from disclosing their wages to third parties, and/or from disclosing their coworkers' identities to others or their employment circumstances to third parties.

Further, Defendants limited Aggrieved Employees ability to disclose information concerning perceived unsafe or discriminatory work conditions, or issues concerning Defendants' wage practices, to third parties. Additionally, Defendants prevented Aggrieved Employees from engaging in lawful activity during non-work hours, such as discussing their working conditions or engaging in other lawful pursuits, thus violating the Labor Code.

X. ARBITRATION AGREEMENTS

72. Under applicable law, including but not limited to Labor Code §§ 432.5 and 432.6, it is unlawful for an employer to require, as a condition of employment, applicants or employees to waive any right, forum, or procedure for a violation of the California Fair Employment and Housing Act ("FEHA") or the California Labor Code. During their employment, Defendants required Aggrieved Employees to sign arbitration agreements that encompassed FEHA and Labor Code claims, in violation of the Labor Code.

XI. BACKGROUND CHECKS

73. Under applicable law, including but not limited to Labor Code § 432.7, it is unlawful for an employer to require the disclosure of information concerning an arrest or a detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law; or, relatedly, from seeking the same from any source whatsoever, or for utilizing such information as a factor in making an employment decision. Similar rules apply to juvenile court records. Defendants violated these laws by requiring the disclosure of or inquiring into the criminal history prior to making a conditional offer of employment; and, impermissibly considering, distributing, and/or disseminating information concerning non-conviction, juvenile arrests/detentions, information concerning diversion programs, and dismissed convictions when considering employment actions with their workforce.

74. Under applicable law, including but not limited to Labor Code § 432.3, it is unlawful for an employer to rely on the salary history information of an applicant as a factor in determining whether to offer employment. Further, it is unlawful for an employer to seek salary history information, including information about an applicant's compensation and benefit history, from an applicant.

Defendants violated the law by relying on salary history when making hiring decision and by seeking such information from applicants, and by seeking such information (including information regarding an applicant's wage history, and other benefits) as part of their application process. Further, Defendants failed to provide the pay scale to applicants for their position when requested by Aggrieved Employees.

XII. EXHAUSTION OF REMEDIES

75. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

76. As required by PAGA, Plaintiff submitted the $75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

XIII. CAUSES OF ACTION

First Cause of Action

Penalties Pursuant to PAGA for Violations of Labor Code Sections 201, 202, 203, 204, 210, 226.7, 227.3, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the California Labor Code

(Against All Defendants)

77. Plaintiff realleges and incorporates by reference all previous paragraphs.

78. Based on the above allegations incorporated by reference, Defendants violated various provisions of the Labor Code, including sections 96(k), 98.6, 201, 201.3, 202, 203, 204, 204b, 205, 221, 223, 226, 226.2, 226.7, 227.3, 232, 232.5, 233, 246, 247, 247.5, 248, 248.2, 248.6, 404, 405, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 1102.5, 1174, 1182.12, 1197, 1197.5, 1198, 1198.5, 2800, 2802, 2810.5, 6401, 6402, 6403, 6409.6, 6432; applicable provisions of the IWC Wage Order(s) implicated by the allegations above; and, 8 CCR §§1527, 3366, 3395, 6457, 8397.4.

79. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of the Labor Code, IWC Wage Order(s), and/or California Code of Regulations. Plaintiff seeks penalties pursuant to Labor Code §210, 225.5, 226.3, 247, 248.5, 256, 423.3, 432.7, 558, 1174.5, 1197.1, 2699, and/or the civil penalties set forth under the applicable IWC Wage Order(s), among other provisions that may be applicable.

80. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. $100 for the initial violation per employee per pay period; and

B. $200 for each subsequent violation per employee per pay period.

81. These penalties must be allocated seventy-five percent to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."], internal quotation marks omitted).

82. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (g)(1).

XIV. <u>PRAYER FOR RELIEF</u>

Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For the failure to pay minimum wages in violation of Labor Code §§1181.12, 1194, 1197, and the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§558, 1197.1, 2699, and/or the applicable IWC Wage Order.

2. For the failure to pay overtime wages in violation of Labor Code §§510, 1194, and the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

3. For all unlawful deductions in violation of Labor Code §§221, 223, and the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§225.5, 558, 2699, and/or the applicable IWC Wage Order.

4. For the failure to provide meal periods in violation of Labor Code §512 and the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

5. For the failure to provide rest periods in violation of the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

6. For the failure to provide recovery periods in violation of 8 C.C.R. §3395, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

7. For the failure to pay all meal, rest, and/or recovery premiums due to employees in violation of Labor Code §226.7 and the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

8. For the failure to maintain and/or produce records in violation of Labor Code §§226, 432, 1174, 1198.5, and/or the applicable IWC Wage Order, civil penalties pursuant to Labor Code §§226, 558, 1174.5, 2699, and/or the applicable IWC Wage Order.

9. For the failure to issue accurate, itemized wage statements in violation of Labor Code §§226, 226.2, 246 et seq., and 248 et seq., civil penalties pursuant to Labor Code §226.3, 248.5, 558, 2699, and/or the applicable IWC Wage Order.

10. For the failure to issue payments during employment in a timely manner in violation of Labor Code §§201.3, 204, 204b, 205, civil penalties pursuant to Labor Code §§201.3, 210, 558, 2699, and/or the applicable IWC Wage Order.

11. For the failure to issue payments to employees upon separation in a timely manner in violation of Labor Code §§201 and 202, civil penalties pursuant to Labor Code §§203, 256, 558, 2699, and/or the applicable IWC Wage Order.

12. For the failure to issue an accurate "time of hire" notice in violation of Labor Code §2810.5, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

13. For the failure to reimburse all necessary business expenses in violation of Labor Code §2802, civil penalties pursuant to Labor Code §558, 2699, and/or the applicable IWC Wage Order.

14. For the failure to provide all paid sick leave and COVID-19 supplemental paid sick leave, and related violations of Labor Code §246 et seq. and §248 et seq., civil penalties pursuant to Labor Code §248.5, 558, 2699, and/or the applicable IWC Wage Order.

15. For the failure to reimburse employees for all deposits in violation of Labor Code §404, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

16. For the failure to timely pay vacation wages upon separation in violation of Labor Code §227.3, civil penalties pursuant to Labor Code §§558, 2699, and/or the applicable IWC Wage Order.

17. For unlawfully restricting the disclosure of information in violation of Labor Code §§232, 232.5, 1102.5, and 1197.5, civil penalties pursuant to Labor Code §§1102.5, 2699, and/or the applicable IWC Wage Order.

18. For unlawful restricting Aggrieved Employees from engaging in lawful conduct during non-working hours in violation of Labor Code §96(k), 98.6, 232, 232.5, and 1197.5, civil penalties pursuant to Labor Code §2699 and/or the applicable IWC Wage Order.

19. For workplace safety violations, including the failure to ensure a reasonably safe work environment and providing safety devices, civil penalties pursuant to Labor Code §2699 and/or the applicable IWC Wage Order.

20. For violations of COVID-19 reporting requirements imposed by Labor Code §§6409.6 and 6432, civil penalties pursuant to Labor Code §2699 and/or the applicable IWC Wage Order.

21. For failing to provide adequate sanitation facilities in violation of C.C.R. §§1527, 3366, 3457, and/or 8397.4, civil penalties pursuant to Labor Code §2699 and/or the applicable IWC Wage Order.

22. For violations of Labor Code §§432.5 and 432.6, civil penalties pursuant to Labor Code §2699 and/or the applicable IWC Wage Order.

23. For conducting unlawful background checks, civil penalties pursuant to Labor Code §§432.7, 432.8, and 2699.

24. For improperly obtaining and relying on salary history information in violation of Labor Code §432.3, civil penalties pursuant to Labor Code §§432.3 and/or the applicable IWC Wage Order.

25. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

26. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;

27. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and

28. For such other and further relief, this Court may deem just and proper.

Dated: September 8, 2025

MELMED LAW GROUP P.C.

KYLE D. SMITH

Attorneys for Plaintiff and the Aggrieved Employees