

Assigned for all purposes to: Burbank Courthouse, Judicial Officer: John Kralik

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 JOSE MORAN
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY LOS ANGELES-CENTRAL DISTRICT**

JOSE MORAN on behalf of himself and other
aggrieved employees,

Plaintiff,

vs.

MANDAC, INC.; and DOES 1 to 100, inclusive,
Defendants.

Case No.:

PAGA ACTION

**PLAINTIFF JOSE MORAN'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff JOSE MORAN ("Plaintiff"), who alleges and complains against
Defendants MANDAC, INC.; and DOES 1 to 100, inclusive (collectively "Defendants") as
follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
required and/or legally compliant meal and rest periods, failure to provide accrued and vested

1 vacation/PTO wages; failure to indemnify for employment-related expenditures; failure to timely
2 pay earned wages during employment; failure to provide complete and accurate wage statements,
3 and failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on
4 a representative basis, following notice to the Labor and Workforce Development Agency, civil
5 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
6 on behalf of Plaintiff, the State of California, and others aggrieved.

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

11 **II. JURISDICTION AND VENUE**

12 3. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Los Angeles County at 309 W. Verdugo Ave., Burbank,
20 CA 91502.

21 **III. PARTIES**

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

1 employed by Defendants in an hourly position at Defendants' location in Los Angeles from
2 approximately December 2019 until his termination on or about December 1, 2021.

3 5. Plaintiff is informed and believes and thereon alleges that Defendant MANDAC,
4 INC. is authorized to do business within the State of California and is doing business in the State
5 of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons
6 acting on behalf of Defendant MANDAC, INC. in the establishment of, or ratification of, the
7 aforementioned illegal wage and hour practices or policies. Defendant MANDAC, INC.; operates
8 in Los Angeles County and employed Plaintiff and aggrieved employees in Los Angeles County,
9 including but not limited to, at 309 W. Verdugo Ave., Burbank, CA 91502.

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

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

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

27 9. Plaintiff makes the allegations in this complaint without any admission that, as to
28 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and

1 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

2 **FIRST CAUSE OF ACTION**

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

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

5 **(Against all Defendants)**

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

7 11. During the period beginning one (1) year preceding Plaintiff sending the initial
8 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
9 202, 203, 204, 226, 226.7, 227.3 510, 512, 1194, 1197, 2802, and Sections 14 and 15 of the
10 applicable Wage Orders.

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

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

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

22 15. In this case, Plaintiff and other current and former aggrieved California-based
23 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
24 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
25 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
26 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
27 not limited to:

28 (a) "rounding" down or "shaving" Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees' total daily hours at the time of their clock-in and
2 clock-out, including clock in and clock out for meal break to the nearest quarter of an hour, to the
3 benefit of Defendants.

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

10 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
11 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
12 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
13 which includes all time that an employee is under control of the employer and all time the
14 employee is suffered and permitted to work. This includes the time an employee spends, either
15 directly or indirectly, performing services that inure to the benefit of the employer.'

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

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

27 Labor Code section 510.

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

(a) "rounding" down or "shaving" Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees' total daily hours at the time of their clock-in and
2 clock-out, including clock in and clock out for meal break to the nearest quarter of an hour, to the
3 benefit of Defendants.

4 20. The foregoing policies, practices, and/or procedures resulted in time during each
5 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees were under the control of Defendants but were not compensated. To the extent that the
7 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
8 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
9 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
10 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
11 sections 510 and 1194 and the applicable Wage Order.

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

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

27 23. If an employer fails to provide an employee a meal period in accordance with the
28 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay

1 for each workday that a legally required and compliant meal period was not provided. Labor Code
2 section 226.7; Wage Order 16 at §11.

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

7 (a) "rounding" down or "Shaving" Plaintiff and other current and former aggrieved
8 California-based hourly non-exempt employees' clock-in and clock-out for their meal periods to
9 the nearest quarter of an hour, to the benefit of Defendants.

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

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

20 27. **Failure to provide accrued and vested vacation wages:** Defendants had a policy
21 and/or procedure where Plaintiff and aggrieved California-based non-exempt employees accrued
22 paid vacation time and/or paid time off ("PTO").

23 28. Labor Code section 227.3 states in relevant part "...whenever a contract of
24 employment or employer policy provides for paid vacations, and an employee is terminated
25 without having taken off his vested vacation time, all vested vacation shall be paid to him as
26 wages at his final rate in accordance with such contract of employment or employer policy
27 respecting eligibility or time served...." Given this, vacation/PTO wages are deferred wages that
28 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the

1 time of termination at the employees' final rate of pay.

2 29. Defendants terminated Plaintiff and other former aggrieved California-based non-
3 exempt employees without paying them the full amount of their earned vacation/PTO wages, in
4 violation of California law, and employed policies and procedures which ensured Plaintiff and
5 aggrieved California-based non-exempt employees would not receive their accrued and vested
6 vacation/PTO wages upon termination, in violation of Labor Code section 227.3.

7 30. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
8 **Employment:** California law requires that every employer must indemnify its employees for all
9 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
10 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
11 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
12 2802.)

13 31. Defendants have violated Labor Code Section 2802 by failing to indemnify
14 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
15 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
16 employed a policy, practice, and/or procedure including but not limited to:

17 (a) requiring Plaintiff and other current and former aggrieved California-based non-
18 exempt hourly employees' to use and purchase their own tools and/or resources in order to work
19 for Employer, including but not limited to safety equipment, such as helmet and vest for work
20 related purposes- without reimbursing employees for such use.

21 (b) Requiring Plaintiff and other current and former aggrieved California-based non-
22 exempt hourly employees' to use their personal cell phones, including but limited to telephone
23 calls and/or cellular data use, for work related purposes -without being reimbursing Plaintiff and
24 other current and former aggrieved California-based non-exempt hourly employees' for such use.

25 32. Moreover, Defendants employed policies and procedures which ensured Plaintiff
26 and aggrieved employees would not receive indemnification for their employment related
27 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
28 indemnification in compliance with California law.

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

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

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

20 36. **Failure to provide complete and accurate wage statements:** Labor Code section
21 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
22 employee his or her wages, the employer must "furnish each of his or her employees ... an
23 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
24 employee, except for any employee whose compensation is solely based on a salary and who is
25 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
26 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
27 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
28 deductions made on written orders of the employee may be aggregated and shown as one item, (5)

1 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
2 name of the employee and his or her social security number, (8) the name and address of the legal
3 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee.”

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

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

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

19 40. Defendants’ violations of Wage Order 16 constituted violations of Labor Code
20 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

25 42. Plaintiff has complied with the procedures for bringing suit specified in Labor
26 Code section 2699.3. On May 12, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
27 provided notice to Defendants by certified mail which provided notice of the specific provisions of
28 the Labor Code alleged to have been violated, including the facts and theories to support the

1 violations alleged.

2 43. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
3 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
4 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
5 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
6 to investigate Plaintiff's claims.

7 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
8 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 227.3
9 510, 512, 1194, 1197, 1198, and 2802, beginning one (1) year preceding Plaintiff sending the
10 initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

11 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 227.3,
12 2802, 512, and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for
13 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
14 for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

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

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

1 **PRAYER FOR RELIEF**

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

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

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

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

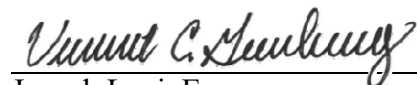
10 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
11 under California Labor Code section 2699(g); and

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

14
15 Dated: August 3, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

16
17 By:



18 Joseph Lavi, Esq.
19 Vincent C. Granberry, Esq.
20 Melissa A. Huether, Esq.
21 Attorneys for Plaintiff
22 JOSE MORAN
23 on behalf of himself and current and former
24 aggrieved employees
25
26
27
28