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and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DAVID THOMAS AVANTS, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

vs.

AFFINITY DEVELOPMENT GROUP, INC. a
Delaware corporation and DOES 1-50,
inclusive,

Defendant.

Case No.: 25CU002344N

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay For All Hours Worked,
Including Overtime Hours Worked**
- 2. Failure to Pay All Wages Owed Twice
Per Month**
- 3. Failure to Pay Minimum Wage**
- 4. Failure to Pay Wages Upon
Termination**
- 5. Failure to Provide Compliant Meal
Breaks**
- 6. Failure to Provide Rest Breaks**
- 7. Failure to Provide Accurate Itemized
Wage Statements & Violation of
Record Keeping Requirements**
- 8. Unlawful Business Practices Bus &
Prof. Code §17200**
- 9. Private Attorneys General Act
Penalties (Lab. Code §2699)**

Plaintiff DAVID THOMAS AVANTS, individually, and on behalf of all others similarly
situated, all aggrieved employees, and as a Private Attorney General for the State of California
(collectively "Plaintiff"), alleges as follows:

NATURE OF THE ACTION

1. This is an employment class and representative action on behalf of over 100 hourly, non-exempt employees against their employer for violations of numerous wage and hour laws. Plaintiff brings this employment class action complaint on behalf of himself, and all others similarly situated, all aggrieved employees, and as a Private Attorney General for the State of California against AFFINITY DEVELOPMENT GROUP, INC. and DOES 1-50, inclusive, (hereafter collectively “Defendant” or “Defendant”).

2. Defendant AFFINITY DEVELOPMENT GROUP, INC. specializes in developing affinity marketing and Customer Relationship Management (CRM) programs for companies with established brands and customer bases, doing business in California. Plaintiff worked for Defendant as a Pricing Analyst from November 2020 until January 18, 2024. Plaintiff and the proposed class earn at or near minimum wage.

3. As described further below, Defendant has violated the California Labor Code by (1) failing to pay for all hours worked, including overtime hours worked (§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, IWC Wage Orders); (2) failing to pay all wages owed twice per month (§204, 210); (3) failing to pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (4) failing to pay all wages due upon termination (§201, 202, 203, 227.3, 256); (5) failing to provide rest breaks (§226 (a), 226.7, 512, 558, 1198, Wage Order); (6) failing to permit compliant meal breaks (§226 (a), 226.7, 512, 558, 1198, Wage Order); (7) failing to provide accurate itemized wage statements and violating record keeping requirements (§226, 1174); (8) unlawful and unfair business practices (Bus. & Prof. Code §17200, *et. seq.*); and (9) penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.* Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*

4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”) §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures provided for under California law, Plaintiff, on behalf of himself, proposed Class Members and

aggrieved employees (also referred to as “Class”), also seeks injunctive relief and restitution of all benefits Defendant has received from their unlawful actions as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) and now brings this First Amended Complaint, including claims for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.* Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*

5. The “Class Period” is designated as the four-year period prior to the filing of the Complaint in this action through the date of the final disposition of this action. From the start of the Class Period through the present, Defendant has had a policy and/or practice of among other violations: late and/or interrupted meal breaks, untimely and/or interrupted rest breaks, issuing inaccurate wage statements, and ignoring and violating California wage and hour laws, in their business as more fully set forth below.

6. The “PAGA Period” is defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

7. Defendant has treated all persons employed in California in such a way as to violate California’s laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the Class Members and aggrieved employees all wages owed, including overtime wages and meal and rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class Members and aggrieved employees for the delay in receiving wages due.

8. Defendant, by and through their actions, has engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

9. Plaintiff DAVID THOMAS AVANTS is an individual who resides in California and Plaintiff worked for Defendant as a Pricing Analyst from November 2020 until January 18, 2024.

10. Defendant AFFINITY DEVELOPMENT GROUP, INC. is a Delaware corporation doing business in California with the capacity to sue and to be sued and doing business, in San Diego County, State of California. Defendant exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class throughout the liability period.

11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, Class Members and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

13. Venue is proper in this judicial district because Defendant conducts business in this County and Defendant has legal obligations to Plaintiff, aggrieved employees and many of the Class Members in this case that arose in this county.

14. The monetary damages, restitution, and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000) and less than five million dollars (\$5,000,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is incorporated in and/or qualified to do business in California

1 and regularly conduct business in California. Further, there is no federal question at issue as the
2 claims herein are based solely on California law.

3 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

4 16. During the Class and PAGA Period, Defendant committed various violations of the
5 California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more
6 detail. Defendant enforces multiple policies that violate state law which are intended to increase its
7 own profits to the detriment of its employees.

8 17. Defendant failed to (1) pay for all hours worked, including overtime hours worked
9 (§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1,
10 1198, IWC Wage Orders); (2) pay all wages owed twice per month (§204, 210); (3) pay minimum
11 wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (4) pay all wages due upon
12 termination (§201, 202, 203, 227.3, 256); (5) provide rest breaks (§226 (a), 226.7, 512, 558, 1198,
13 Wage Order); (6) permit compliant meal breaks (§226 (a), 226.7, 512, 558, 1198, Wage Order); (7)
14 provide accurate itemized wage statements and violating record keeping requirements (§226, 1174).
15 These practices also constitute unlawful and unfair business practices. These policies and practices
16 have deprived Plaintiff, Class Members, and Aggrieved Employees of payment for all hours
17 worked, and further damages, as set forth below, and render Defendant liable for damages,
18 including penalties under PAGA.

19 18. Failure to pay for all hours worked, including overtime. Defendant failed to properly
20 pay for all hours worked, including overtime compensation. Plaintiff, Class Members and aggrieved
21 employees worked in an office building and were required to undertake various tasks prior to
22 clocking in. Instead of using a timeclock or other traditional method, Plaintiff and his coworkers
23 were required to park, enter the building, wait for one of two elevators to use a key fob to enter the
24 floor, go to their locked desks, unlock their desk to remove their assigned laptop computers, boot
25 up the computer, open numerous programs, and then email the IT department to clock in. After
26 their shifts, employees had to email IT to clock out, and then shut down all programs on the
27 computer, place it back into the drawer, lock it, and then leave the facility. All this start up and shut
28 down time was off the clock.

1 19. Failure to pay all wages owed twice per month. Defendant failed to pay all wages owed
2 twice per month.

3 20. Failure to pay minimum wage. Defendant failed to pay minimum wage.

4 21. Failure to pay wages due upon termination. Defendant failed to pay all wages due upon
5 termination.

6 22. Rest Breaks. Defendant failed to maintain a policy and practice that provides its
7 employees with rest periods as required by California law.

8 23. Meal Breaks. Defendant failed to maintain a policy and practice that provides its
9 employees with compliant meal breaks as required by California law.

10 24. Inaccurate Wage Statements. Defendant failed to consistently provide timely, accurate,
11 itemized wage statements to employees, as well as maintain accurate records, in accordance with
12 Labor Code §§ 226 and 1174.

13 25. Unfair Business Practices. Based upon the above allegations, Defendant from time to
14 time engaged in unfair competition.

15 26. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,
16 to recover from Defendant for failure to comply with California wage and hour laws, and for claims
17 under Business and Professions Code § 17200.

18 27. This action has been brought and may properly be maintained as a class action
19 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
20 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100
21 employees who have been similarly injured by Defendant's unlawful employment policies and
22 practices.

23 28. The "Relevant Time Period" or proposed "Class Period" as defined herein commences
24 four years prior to the date of filing this Complaint.

25 29. The "PAGA Period" is defined herein commences one year prior to the date of filing
26 the PAGA Notice letter with the LWDA.

27 30. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
28 former hourly, non-exempt employees of Defendant in California, at any time from one year prior

1 to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter.”
2 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect
3 to the issues or in any other way.

4 31. Plaintiff brings this action on his behalf and as a class action under Cal. Code of Civil
5 Procedure §382 on behalf of the following defined groups:

6 32. Proposed Class: “All persons who are employed or have been employed by Defendant
7 in the State of California as hourly, non-exempt workers during the period of the relevant statute
8 of limitations.”

9 33. Proposed Sub-classes are defined as follows:

- 10 A. All persons who are employed or have been employed by Defendant in the State
11 of California as hourly, non-exempt workers during the period of the relevant
12 statute of limitations, who worked one or more shift in excess of five (5) hours.
- 13 B. All persons who are employed or have been employed by Defendant in the State
14 of California as hourly, non-exempt workers during the period of the relevant
15 statute of limitations, who worked one or more shifts in excess of six (6) hours.
- 16 C. All persons who are employed or have been employed by Defendant in the State
17 of California as hourly, non-exempt workers during the period of the relevant
18 statute of limitations, who worked one or more shifts in excess of eight (8)
19 hours.
- 20 D. All persons who are employed or have been employed by Defendant in the State
21 of California as hourly, non-exempt workers during the period of the relevant
22 statute of limitations, who worked one or more shifts in excess of three and one-
23 half hours (3 ½), but less than or equal to six (6) hours.
- 24 E. All persons who are employed or have been employed by Defendant in the State
25 of California as hourly, non-exempt workers during the period of the relevant
26 statute of limitations, who worked one or more shifts in excess of six (6) hours,
27 but less than or equal to ten (10) hours.
28

1 F. All persons who are employed or have been employed by Defendant in the State
2 of California as hourly, non-exempt workers during the period of the relevant
3 statute of limitations, who were paid sick pay.

4 G. All persons who are employed or have been employed by Defendant in the State
5 of California as hourly, non-exempt workers during the period of the relevant
6 statute of limitations, who separated their employment from Defendant.

7 H. All persons who are employed or have been employed by Defendant in the State
8 of California as hourly, non-exempt workers during the period of the relevant
9 statute of limitations, who received pay for one or more pay periods.

10 34. This action is brought, and may properly be maintained, as a class action under CCP
11 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and Labor
12 Code §2699 because there is a well-defined community of interest in the litigation, and the
13 proposed Class, PAGA Class, and Subclasses (collectively “Class”) are easily ascertainable.

14 35. Numerosity: The Proposed Class is so numerous that joinder of all members is
15 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
16 time period, Defendant employed over 100 putative Class Members who are geographically
17 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
18 available method for the fair and efficient adjudication of this controversy. Membership in the
19 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll
20 records, among other records within Defendant’s possession and control.

21 36. Typicality: Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff,
22 like others similarly situated, was subjected to Defendant’s common, unlawful policies, practices,
23 and procedures described above. The Plaintiff’s positions at the company was typical of those of
24 other Class Members. Plaintiff’s claims are typical of the claims of each Class Member because
25 each have sustained damages arising out of and caused by Defendant’s common course of conduct,
26 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the
27 Class.
28

1 37. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
2 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and
3 California labor and employment litigation.

4 38. Commonality: Common questions of law and fact exist, including but not limited to
5 the following:

- 6 i. Whether Defendant violated wage and hour laws by failing to pay overtime
7 wages;
- 8 ii. Whether Defendant violated wage and hour laws by failing to pay all wages
9 owed twice per month;
- 10 iii. Whether Defendant violated wage and hour laws by failing to pay minimum
11 wage;
- 12 iv. Whether Defendant violated wage and hour laws by failing to pay all wages
13 due upon termination;
- 14 v. Whether Defendant violated wage and hour laws by failing to provide rest
15 breaks;
- 16 vi. Whether Defendant's policy and practice concerning rest breaks was
17 unlawful;
- 18 vii. Whether Defendant violated wage and hour laws by failing to provide timely
19 meal breaks;
- 20 viii. Whether Defendant's policy and practice concerning meal breaks was
21 unlawful;
- 22 ix. Whether Defendant unlawfully failed to keep and furnish Class Members
23 with accurate, itemized records of hours worked, in violation of Labor Code
24 §§ 226 and 1174;
- 25 x. The proper measure of damages sustained and the proper measure of
26 restitution recoverable by Plaintiff, the Class Members, and Subclass
27 Members;
- 28

- 1 xi. Whether the Class Members are entitled to injunctive relief to enjoin any
2 further violations of wage and labor laws;
3 xii. Whether Defendant, and each of them, are/were participants in the alleged
4 unlawful and/or tortious conduct;
5 xiii. Whether Defendant's conduct was willful and reckless;
6 xiv. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff
7 Class and the appropriate amount of reimbursement, restitution, damages, or
8 other compensation; and
9 xv. What is the extent of liability of each Defendant, including DOE defendants,
10 to each Class and Subclass member?

11 39. Superiority: A class action is superior to other available methods of the fair and
12 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
13 where the damage suffered by individual plaintiffs, while not inconsequential, makes individual
14 actions impracticable given the expenses and burdens associated with seeking individual relief.
15 Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity
16 and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning
17 employees who rely on their wages and requiring that each individual take time away from work
18 to prosecute individual actions would be inequitable and result in undue hardship for the individual
19 Class members and their families. Public policy favors efficient resolution of their claims and
20 uniform enforcement of California Labor laws against entities skirting their legal obligations at the
21 expense of a vulnerable working population.

22 40. Manageability: Plaintiff is informed and believes that all allegations in this Complaint
23 are capable of being determined on the same evidence and based primarily on review of corporate
24 records and key testimony of Defendant's corporate representatives. To the extent statistical
25 analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ
26 competent experts and consultants in the field to determine and review evidence for both issues of
27 liability and damages in a scientifically reliable manner.
28

1 41. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules
2 of Court, that the absent Class and Subclass Members be notified by the best notice practicable
3 under the circumstances, including individual notice to all members who can be identified through
4 reasonable effort. The names and address of the Class and Subclass Members are available from
5 Defendant.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS**
8 **WORKED**

9 Cal. Labor Code §§ 200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558,
10 1194, 1197, 1197.1, 1198, IWC Wage Orders

11 **(Plaintiff Against All Defendants)**

12 42. Plaintiff incorporates by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 43. Defendant's conduct described in this complaint from time to time violates the
15 provisions of Labor Code §§ 200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510,
16 558, 1194, 1197, 1197.1, 1198, IWC Wage Orders.

17 44. The Wage Orders define "hours worked" as "the time during which an employee is
18 subject to the control of an employer, and including all the time the employee is suffered or
19 permitted to work, whether or not required to do so." Defendant has been engaged in many
20 unlawful employment practices which resulted in underpayment for hours worked each pay period,
21 including overtime hours worked, as more fully set forth below.

22 45. Off-the-Clock Hours Worked. Plaintiff, Class Members and aggrieved employees
23 frequently worked off the clock and were routinely subjected to periods wherein they were under
24 the Defendant's control but not compensated for their time.

25 46. Plaintiff, Class Members and aggrieved employees worked in an office building and
26 were required to undertake various tasks prior to clocking in. Instead of using a timeclock or other
27 traditional method, Plaintiff and his coworkers were required to park, enter the building, wait for
28 one of two elevators to use a key fob to enter the floor, go to their locked desks, unlock their desk

1 to remove their assigned laptop computers, boot up the computer, open numerous programs, and
2 then email the IT department to clock in. After their shifts, employees had to email IT to clock out,
3 and then shut down all programs on the computer, place it back into the drawer, lock it, and then
4 leave the facility. All this start up and shut down time was off the clock.

5 47. Additionally, employees were discouraged from claiming overtime and were not
6 permitted to claim overtime when it was worked. However, employees were often tasked with so
7 much work that they were required to continue working beyond their scheduled shift end time.
8 Plaintiff was required to continue working after his shift ended off the clock approximately once
9 per week and he observed many other coworkers continuing to work off the clock on a regular
10 basis.

11 48. Plaintiff also alleges that he was not paid all wages and commission owed to him,
12 specifically Plaintiff earned commission for signing up dealerships for which he was not paid.
13 Instead of commission, Plaintiff was given a bonus. However, he was not paid overtime, sick pay,
14 and meal/rest premium wages at the correct regular rate of pay when receiving this bonus.

15 49. Plaintiff, Class Members and aggrieved employees have been employed under
16 conditions prohibited by the wage order, and thus Defendant has also violated §§1198 and 1199.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES OWED TWICE PER MONTH**

19 Cal. Lab. Code §§204, 210

20 **(Plaintiff Against All Defendants)**

21 50. Plaintiff incorporates by reference in this cause of action each allegation of the
22 preceding paragraphs as though fully set forth herein.

23 51. Defendant's conduct described in this complaint violates the provisions of Labor Code
24 §§ 204, 210.

25 52. Defendant was required to pay Plaintiff, Class Members and aggrieved employees all
26 wages earned twice during each calendar month pursuant to Labor Code §204(a).

27 53. Defendant failed to pay all wages earned to employees as a result of the unlawful
28 employment policies and practices discussed herein. As a result of these practices, employees were

1 underpaid for hours worked, including overtime and penalty wages, and this underpayment
2 resulted in a failure to pay all wages owed twice per month.

3 54. Due to these failures, Defendant is liable under Labor Code §204, 210 for failure to
4 pay wages as required by law.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGE**

7 Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199

8 (Plaintiff Against All Defendants)

9 55. Plaintiff incorporates by reference in this cause of action each allegation of the
10 preceding paragraphs as though fully set forth herein.

11 56. Defendant's conduct described in this complaint violates the provisions of Labor Code
12 §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199.

13 57. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer
14 to suffer or permit a California employee to work without paying wages at the proper minimum
15 wage for all time worked as required by the applicable IWC Wage Order.

16 58. Defendant failed to pay Plaintiff, Class Members and aggrieved employees for all hours
17 worked as a result of Defendant's practices described above. Based on Defendant's unlawful
18 conduct described herein, and because Plaintiff, aggrieved employees and the class members were
19 paid zero wages for time spent working off the clock, Defendant paid less than the minimum wage
20 for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES DUE UPON TERMINATION**

23 Cal. Lab. Code §§201, 202, 203, 227.3, 256

24 (Plaintiff Against All Defendants)

25 59. Plaintiff incorporates by reference in this cause of action each allegation of the
26 preceding paragraphs as though fully set forth herein.

27 60. Defendant's conduct described in this complaint violates the provisions of Labor Code
28 §§ 201, 202, 203, 227.3, 256.

1 61. An employee who is discharged must be paid all of his or her wages, including accrued
2 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
3 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
4 Plaintiff, including underpaid wages, overtime at the regular rate of pay, and commission, at the
5 time employment terminated.

6 62. Defendant willfully failed to pay employees who are no longer employed by it all
7 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
8 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
9 waiting time under the terms of §203.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PERMIT COMPLIANT MEAL BREAKS**

12 Cal. Labor Code §§ 226 (a), 226.7, 512, 558, 1198, Wage Order

13 (Plaintiff Against All Defendants)

14 63. Plaintiff incorporates by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 64. Defendant's conduct described in this complaint from time to time violates the
17 provisions of Labor Code §§ 226 (a), 226.7, 512, 558, 1198, Wage Order.

18 65. Labor Code §512 provides, "[a]n employer may not employ an employee for a work
19 period of more than five hours per day without providing the employee with a meal period of not
20 less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee
21 to work during any meal... period mandated by an applicable order of the Industrial Welfare
22 Commission." Paragraph 11 of the Wage Order provides, in pertinent part, "[u]nless an employee
23 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
24 duty' meal period and counted as time worked."

25 66. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
26 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
27 §§226.7 and 512. Defendant failed to pay all penalty pay to Plaintiff, aggrieved employees or class
28 members for noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay

1 statements were inaccurate, failing to include required meal period penalties, thus failing the
2 requirements of Labor Code §226(a).

3 67. Defendant auto-deducted 30-minute meal periods from Plaintiff, Class Members and
4 aggrieved employees time cards. Plaintiff, Class Members and aggrieved employees did not
5 actually clock in and out for meal periods, so accurate records of meal periods were not kept.
6 Plaintiff and his coworkers were sometimes too busy to take full, compliant 30-minute meal
7 periods but were not paid meal premiums for these noncompliant meal periods.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REST BREAKS**

10 Cal. Labor Code §§ 226, 226.7, 512, 558, 1198, Wage Orders

11 (Plaintiff Against All Defendants)

12 68. Plaintiff incorporates by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 69. Defendant's conduct described in this complaint from time to time violates the
15 provisions of Labor Code §§ 226, 226.7, 512, 558, 1198, Wage Orders.

16 70. Defendant failed to maintain a compliant rest period policy and practice that provides
17 its employees with off-duty rest periods as required by California law.

18 71. Plaintiff, Class Members and aggrieved employees were not consistently permitted to
19 take timely rest breaks due to the press of work.

20 72. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
21 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
22 prescribed by California law because Defendant: (1) did not account for all hours worked that were
23 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
24 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
25 inform and train employees about when, where and how to take timely and uninterrupted ten-
26 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
27 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
28

1 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
2 break policy.

3 73. The rest period requirement obligates employers to permit and authorize employees to
4 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
5 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
6 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's
7 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
8 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
9 Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance
10 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
11 pay at the employee's regular rate of compensation for each work day that the rest period is not
12 provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable
13 rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein
14 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
15 rest area and cannot include time it takes to get to and from the rest area). The employer must show
16 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
17 what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest
18 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also, Bufil v.*
19 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to
20 clearly communicate the authorization and permission [to take rest periods] to their employees.").

21 74. Defendant did not authorize or permit all of its hourly employees to take at least a ten
22 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
23 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks
24 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
25 the Wage Order, Defendant is liable under Labor Code §1198.

26 ///

27 ///

28 ///

PAYSTUB AND RECORD KEEPING VIOLATIONS

(Plaintiff Against All Defendants)

A. An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and only the last four digits of his or her social security number or an
2 employee identification number other than a social security number, (8) the
3 name and address of the legal entity that is the employer and, if the employer is
4 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
5 and address of the legal entity that secured the services of the employer, and (9)
6 all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee...

8 80. Such failures caused injury to Plaintiff and others, by, among other things, impeding
9 them from knowing the true legal name of their employer, the total hours worked, and the amount
10 of wages to which they are and were entitled. Defendant knowingly and intentionally failed to
11 accurately itemize the gross wages earned, net wages earned, and total hours worked.

12 **EIGHTH CAUSE OF ACTION**

13 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

14 California Business and Professions Code section 17200, et seq.

15 **(Plaintiff Against All Defendants)**

16 81. Plaintiff incorporates by reference in this cause of action each allegation of the
17 preceding paragraphs as though fully set forth herein.

18 82. Defendant from time to time knowingly committed, and upon information and belief
19 continue to commit, ongoing unlawful business practices within the meaning of the UCL,
20 including, but not limited to unlawful practices as described in the causes of action articulated
21 above, and hereby incorporated herein.

22 83. Plaintiff lost money and property as a result of Defendant's unlawful business practices
23 described above.

24 84. Pursuant to the UCL, Plaintiff, Class Members and aggrieved employees are entitled
25 to restitution of money or property acquired by Defendant by means of such unlawful business
26 practices, in amounts not yet known, but to be ascertained at trial.

27 85. Pursuant to the UCL, Plaintiff, Class Members and aggrieved employees are entitled
28 to injunctive relief against Defendant's ongoing unlawful business practices. If an injunction does

1 not issue enjoining Defendant from engaging in the unlawful business practices described above,
2 Plaintiff and the general public will be irreparably injured.

3 86. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
4 by this Court, will continue to engage in the unlawful business practices described above in
5 violation of the UCL, in derogation of the rights of Plaintiff, Class Members and aggrieved
6 employees and of the general public.

7 87. Plaintiff's success in this action will result in the enforcement of important rights
8 affecting the public interest by conferring a significant benefit upon the general public.

9 88. Defendant's numerous violations of local and California law, as well as the other
10 statutory and regulatory violations alleged herein, constitute unlawful business actions and
11 practices in violation of Business and Professions Code § 17200, et seq.

12 89. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff, Class Members
13 and aggrieved employees are entitled to restitution of unpaid wages, including overtime, sick pay,
14 and premium wages, among other relief alleged herein, that were withheld and retained by
15 Defendant during a period that commences four years prior to the filing of this action. Plaintiff is
16 further entitled to a permanent injunction requiring Defendant to comply with all provisions of
17 California labor law, including properly paying the lawful rate of pay for all hours worked,
18 properly paying sick pay, providing rest periods to all workers as defined herein, timely paying
19 due wages upon termination, maintaining accurate wages statements and payroll records, in
20 addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and
21 other applicable law, and costs.

22 **NINTH CAUSE OF ACTION**

23 STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT, 24 LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

25 81. Plaintiff incorporates by reference in this cause of action each allegation of the
26 preceding paragraphs as though fully set forth herein.

27 82. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
28 aggrieved employee, on behalf of themselves and other current or former employees, may recover

1 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
2 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
3 employee under PAGA.

4 83. As set forth above, Defendant has committed numerous violations for which the
5 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
6 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
7 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met before
8 a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural requirements
9 specified in §2699.3 by providing written notice to the Defendant and the Labor & Workforce
10 Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and correct copy
11 of the Notice correspondence showing compliance with §2699.3. No notice of intent to investigate
12 the alleged violations was provided within the statutory period. Consequently, Plaintiff has
13 exhausted administrative remedies, and on behalf of themselves and all other aggrieved current
14 and former employees of Defendant. Plaintiff, therefore, now pursues this cause of action as
15 permitted by §2698, et seq.

16 84. Enforcement of statutory provisions enacted to protect workers and to ensure proper
17 and prompt payment of wages due to employees is a fundamental public interest in California.
18 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
19 affecting the public interest and will confer a significant benefit upon the general public. Private
20 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
21 enforcement. Plaintiff has incurred a financial burden in pursuing this action and it would be against
22 the interests of justice to require payment of attorneys' fees and costs from any recover that might
23 be obtained herein, pursuant to, inter alia, Labor Code §§2698, et seq., and Code of Civil Procedure
24 §1021.5

25 85. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
26 interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of
27 Civil Procedure §1021.5 and other applicable law in part, because:
28

1 86. A successful outcome in this action will result in the enforcement of important
2 rights affecting the public interest by requiring Defendant to comply with the wage and hour laws
3 and California's unfair business practice law;

4 87. This action will result in a significant benefit to Plaintiff, the Class, and the general
5 public by bringing to a halt unlawful and/or unfair activity;

6 88. Unless this action is prosecuted, members of the Class and general public will not
7 recover those moneys, and many of Defendant's employees would not be aware that the acts and
8 practices they were subjected to by Defendant were wrongful;

9 89. Unless this action is prosecuted, Defendant will continue to mislead their
10 employees about the true nature of their rights and remedies under the wage and hour laws; and

11 90. An award of attorneys' fees and costs is necessary for the prosecution of this action
12 and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in
13 general, by preventing Defendant from continuing to circumvent the wage and hour statutes and
14 frustrate the long-standing recognition by the California legislature and the courts that such
15 statutes, as pled herein, are not merely a matter of private concern between employer and employee
16 to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and
17 private agreements. Rather, the wage and hour statutes have been described as a matter of public
18 concern, were designed to provide minimum substantive guarantees to individual workers and are
19 essential to public welfare.

20 REQUEST FOR RELIEF

21 WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request judgment
22 and the following specific relief against Defendant as follows:

23 A. That the Court determine that this action may be maintained as a class action
24 under Code of Civil Procedure § 382;

25 B. That the Court determine that this action may be maintained as a PAGA
26 representative action under Cal. Labor Code. §2698 *et seq.*

27 C. Provision of class notice to all members of the Class;
28

- 1 D. That Defendant is found to have violated the above-referenced provisions of the
2 Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members and
3 relevant aggrieved employees;
- 4 E. For compensatory damages, in an amount according to proof at trial, with
5 interest thereon;
- 6 F. For compensation for not being paid overtime;
- 7 G. For compensation for not being paid all wages owed twice per month;
- 8 H. For compensation for not being paid minimum wage;
- 9 I. For compensation for not being paid all wages due upon termination;
- 10 J. For compensation for not being provided rest breaks;
- 11 K. For compensation for not being provided compliant meal breaks;
- 12 L. For compensation for not being paid premium and penalty wages;
- 13 M. That Defendant's actions are found to be willful and/or in bad faith to the extent
14 necessary under §§ 201, 202, 203, and 558 of the California Labor Code for
15 willful failure to pay all compensation owed at the time of separation to
16 Plaintiff, Class Members and aggrieved employees no longer employed by
17 Defendant;
- 18 N. That Plaintiff, Class Members and aggrieved employees receive penalties for
19 Defendant's violation of §226 and 1174 of the California Labor Code for willful
20 failure to provide and maintain the required accurate and itemized wage
21 statements;
- 22 O. That Plaintiff, Class Members and aggrieved employees receive an award in the
23 amount of unpaid wages owed, including interest thereon, and penalties as
24 provided in the Labor Code, CCR and Wage Order, including under Labor Code
25 §§ 203, 510, and 558, subject to proof at trial;
- 26 P. That Defendant be ordered to pay restitution to Plaintiff, Class Members and
27 aggrieved employees for amounts acquired through Defendant's unlawful
28 activities pursuant to Business and Professions Code §§ 17200-05 and enjoined

1 to cease and desist from unlawful and unfair activities in violation of California
2 Business and Professions Code § 17200 et. seq.;

3 Q. That Plaintiff, Class Members and aggrieved employees receive an award of
4 reasonable attorneys' fees and costs pursuant to Code of Civil Procedure
5 §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable laws;

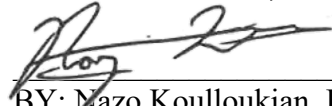
6 R. That the Court award penalties pursuant to Labor Code §2698 *et seq.*;

7 S. That the Court issue declaratory relief that Defendant's challenged policies are
8 unlawful; and

9 T. That the Court order further relief, in law and equity, as it deems appropriate
10 and just.

11
12 DATED: March 17, 2025

KOUL LAW FIRM, APC

13 

14 BY: Mazo Koulloukian, Esq.

15 Attorneys for Plaintiff DAVID THOMAS
16 AVANTS and putative class members
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28

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

217 SOUTH KENWOOD
STREET

GLENDALE, CA 91205

www.koullaw.com

January 10, 2025

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Affinity Development Group, Inc.
10590 West Ocean Air Drive
Suite 300
San Diego, CA 92130

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: David Thomas Avants
Employer: Affinity Development Group, Inc.

Dear Sir or Madam:

David Thomas Avants (“Claimant”) has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent Claimant, and all other aggrieved employees, for conditions of employment and wage and hour claims against former employer, Affinity Development Group, Inc. (hereafter “Employer”).

Affinity Development Group, founded in 1996 and based in San Diego, California, specializes in developing affinity marketing and Customer Relationship Management (CRM) programs for companies with established brands and customer bases. Claimant worked for Employer as a Pricing Analyst from November 2020 until January 18, 2024.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This

letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time.

Claimant and aggrieved employees worked in an office building and were required to undertake various tasks prior to clocking in. Instead of using a timeclock or other traditional method, Claimant and his coworkers were required to park, enter the building, wait for one of two elevators to use a key fob to enter the floor, go to their locked desks, unlock their desk to remove their assigned laptop computers, boot up the computer, open numerous programs, and then email the IT department to clock in. After their shifts, employees had to email IT to clock out, and then shut down all programs on the computer, place it back into the drawer, lock it, and then leave the facility. All this start up and shut down time was off the clock.

Additionally, employees were discouraged from claiming overtime and were not permitted to claim overtime when it was worked. However, employees were often tasked with so much work that they were required to continue working beyond their scheduled shift end time. Claimant was required to continue working after his shift ended off the clock approximately once per week and he observed many other coworkers continuing to work off the clock on a regular basis.

Claimant also alleges that he was not paid all wages and commission owed to him, specifically Claimant earned commission for signing up dealerships for which he was not paid. Instead of commission, Claimant was given a bonus. However, he was not paid overtime, sick pay, and meal/rest premium wages at the correct regular rate of pay when receiving this bonus.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid zero wages for time spent working off the clock, Employer paid less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant, including underpaid wages, overtime at the regular rate of pay, and commission, at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Permit Compliant Meal Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

Labor Code §512 provides, “[a]n employer may 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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Employer auto-deducted 30-minute meal periods from Claimant and aggrieved employee time cards. Employees did not actually clock in and out for meal periods, so accurate records of meal periods were not kept. Claimant and his coworkers were sometimes too busy to take full, compliant 30-minute meal periods but were not paid meal premiums for these noncompliant meal periods.

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Orders)

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant and aggrieved employees were not consistently permitted to take timely rest breaks due to the press of work.

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty,” or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish

control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest 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 work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements **(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)**

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages. Wage statements and records maintained failed to reflect actual start and end times for meal periods due to Employer's auto-deduct policy.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages

earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the true legal name of their employer, the total hours worked, and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked.

Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant

PROOF OF SERVICE

Case No. 25CU002344N
Avants v. Affinity Development Group, Inc.

I, NADIA CHAVEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 217 South Kenwood Street, Glendale, California 91205.

On March 17, 2025, I served the foregoing document described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

 X **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail nadia@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Brandon S. Saxon
John E. Solis
GORDON REES SCULLY MANSUKHANI LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101
bsaxon@grsm.com
jsolis@grsm.com

Attorney for Defendant Affinity Development Group, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this March 17, 2025, in Glendale, California.



NADIA CHAVEZ