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 on behalf of himself and current and former aggrieved employees

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

KENNETH TEEMS, on behalf of himself and
 other aggrieved employees,

Plaintiff,

vs.

WHELAN SECURITY OF CALIFORNIA,
 INC.; GARDAWORLD SECURITY
 CORPORATION; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: **22STCV34844**

PAGA ACTION

**PLAINTIFF KENNETH TEEMS'
 COMPLAINT FOR:**

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

COMES NOW Plaintiff KENNETH TEEMS ("Plaintiff"), who alleges and complains
 against Defendants WHELAN SECURITY OF CALIFORNIA, INC.; GARDAWORLD
 SECURITY CORPORATION; 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

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

14 **II. JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
16 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
17 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
18 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
19 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
20 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
21 aggrieved California-based hourly non-exempt employees occurred in locations throughout
22 California, including but not limited to Los Angeles County at 5650 Grace Pl., Commerce, CA
23 90022.

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

28 **III. PARTIES**

1 4. Plaintiff brings this action as a representative of the Labor and Workforce
2 Development Agency on behalf of himself and other current and former employees subject to
3 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
4 filed include current, former and/or future employees of Defendants who work, worked, or will
5 work for Defendants as direct employees as well as temporary employees employed through temp
6 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
7 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
8 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
9 around September 2021, until on or about April 6, 2022.

10 5. Plaintiff is informed and believes and thereon alleges that Defendant WHELAN
11 SECURITY OF CALIFORNIA, INC. is authorized to do business within the State of California
12 and is doing business in the State of California and/or that Defendants DOES 1-25 are, and at all
13 times relevant hereto were persons acting on behalf of Defendant WHELAN SECURITY OF
14 CALIFORNIA, INC. in the establishment of, or ratification of, the aforementioned illegal wage
15 and hour practices or policies. Defendant WHELAN SECURITY OF CALIFORNIA, INC.
16 operates in Los Angeles County and employed Plaintiff and putative class members in Los
17 Angeles County, including but not limited to, at 5650 Grace Pl., Commerce, CA 90022.

18 6. Plaintiff is informed and believes and thereon alleges that Defendant
19 GARDAWORLD SECURITY CORPORATION is authorized to do business within the State of
20 California and is doing business in the State of California and/or that Defendants DOES 26-50 are,
21 and at all times relevant hereto were persons acting on behalf of Defendant GARDAWORLD
22 SECURITY CORPORATION in the establishment of, or ratification of, the aforementioned
23 illegal wage and hour practices or policies. Defendant GARDAWORLD SECURITY
24 CORPORATION operates in Los Angeles County and employed Plaintiff and putative class
25 members in Los Angeles County, including but not limited to, at 5650 Grace Pl., Commerce, CA
26 90022.

27 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
28 through 50 are corporations, or are other business entities or organizations of a nature unknown to

1 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
2 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
3 working conditions of employment of Plaintiff and aggrieved employees.

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

10 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
11 sues said defendants by said fictitious names, and will amend this complaint when the true names
12 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
13 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
14 named defendants is in some manner responsible for the events and allegations set forth in this
15 complaint.

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

19 **FIRST CAUSE OF ACTION**

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

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

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

23 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

24 12. During the period beginning one (1) year preceding Plaintiff sending the initial
25 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
26 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, 2802, and Sections 14 and 15 of the
27 applicable Wage Orders.

28 13. Specifically, Defendants have committed the following violations of California

1 Labor Code:

2 14. **Failure to pay wages for all hours worked at the legal minimum wage:**

3 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
4 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
5 which includes all time that an employee is under control of the employer and all time the
6 employee is suffered and permitted to work. This includes the time an employee spends, either
7 directly or indirectly, performing services which inure to the benefit of the employer.

8 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
9 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
10 Wage Orders.

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

17 (a) “Rounding down” or “shaving down” Plaintiff and other current and former
18 aggrieved California-based hourly non-exempt employees punches, including punches for meal
19 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
20 other current and former aggrieved California-based hourly non-exempt employees for this time;

21 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees who worked as security guards assigned to a single-guard posts and to
23 remain on-duty during off-the-clock meal breaks; and

24 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees who worked as security guards to carry, keep on, and monitor their
26 personal cellphones to during off-the-clock meal breaks.

27 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
28 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’

1 control without paying wages for that time. This resulted in Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees working time for which they were not
3 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
4 Wage Order.

5 **18. Failure to pay wages for overtime hours worked at the overtime rate of pay:**
6 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
7 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
8 which includes all time that an employee is under control of the employer and all time the
9 employee is suffered and permitted to work. This includes the time an employee spends, either
10 directly or indirectly, performing services that inure to the benefit of the employer.’

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

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

22 Labor Code section 510.

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

26 (a) “Rounding down” or “shaving down” Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees punches, including punches for meal
28 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
other current and former aggrieved California-based hourly non-exempt employees for this time;

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly
non-exempt employees who worked as security guards assigned to a single-guard posts and to

1 remain on-duty during off-the-clock meal breaks; and

2 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees who worked as security guards to carry, keep on, and monitor their
4 personal cellphones to during off-the-clock meal breaks.

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

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

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

28 24. If an employer fails to provide an employee a meal period in accordance with the

1 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
2 for each workday that a legally required and compliant meal period was not provided. Labor Code
3 section 226.7; Wage Order 4 at §11.

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

8 (a) "Rounding down" or "shaving down" Plaintiff and other current and former
9 aggrieved California-based hourly non-exempt employees meal break punches to the nearest
10 quarter of an hour resulting in meal periods less than 30 minutes;

11 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employees who worked as security guards assigned to single guard posts to remain on
13 duty during off-the-clock meal breaks; and

14 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
15 non-exempt employees who worked as security guards to carry, keep on, and monitor their
16 personal cellphones to during off-the-clock meal breaks.

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

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

27 28. **Failure to pay wages to hourly non-exempt employees for workdays that**
28 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees regularly worked
2 shifts of more than three-and-a-half (3.5) hours.

3 29. California law requires every employer to authorize and permit an employee a rest
4 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
5 Code section 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10
6 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
7 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
8 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
9 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
10 each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates
11 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
12 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
13 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

14 30. If the employer fails to authorize or permit a required rest period, the employer
15 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
16 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
17 Wage Order 4 at § 12.

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

22 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees who worked as security guards assigned to single guard posts to remain on
24 duty during rest breaks; and

25 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
26 non-exempt employees who worked as security guards to carry, keep on, and monitor their
27 personal cellphones to during rest breaks.

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

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

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

9 34. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
10 **Employment:** California law requires that every employer must indemnify its employees for all
11 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
12 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
13 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
14 2802.)

15 35. Defendants have violated Labor Code Section 2802 by failing to indemnify
16 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
17 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
18 employed policies, practices, and/or procedures included, but were not limited to, requiring
19 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to
20 use or purchase their own tools and/or resources in order to work for Defendants, including but not
21 limited to cell phone (including both telephone use and cellular data use) for work-related
22 purposes - without reimbursing Plaintiff and other current and former aggrieved California-based
23 hourly non-exempt employees for such use.

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

28 37. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their

1 employment related expenses, including but not limited to costs related to use of their personal
2 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

3 **38. Failure to pay wages for accrued paid sick days at the regular rate of pay:**
4 Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved
5 California-based hourly non-exempt employees accrued paid sick time.

6 39. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
7 who...works in California for the same employer for 30 or more days within a year from the
8 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
9 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
10 beginning at the commencement of employment. Labor Code section 246(b).

11 40. Here, Plaintiff and other current and former aggrieved California-based hourly non-
12 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
13 sick days. Also, Plaintiff and similarly situated employees began accruing paid sick days since the
14 beginning of each of their respective employment with Defendants.

15 41. Labor Code section 246, subdivision (l), provides that an employer shall calculate
16 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
17 workweek in which the employee elected to use paid sick time. “The regular rate at which an
18 employee is employed shall be deemed to include all remuneration for employment paid to, or on
19 behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies
20 and Interpretations Manual, Section 49.1.2.

21 42. In this case, Plaintiff alleges that when he and other current and former aggrieved
22 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
23 pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include
24 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
25 policy, practice, and/or procedure of failing to include all remuneration such as bonus pay, for
26 example, when calculating Plaintiff and other current and former aggrieved California-based
27 hourly non-exempt employees regular rate of pay for the purpose of paying sick time.

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

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

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

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

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

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

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

16 49. Defendants' violations of Wage Order 4 constituted violations of Labor Code
17 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

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

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

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

4 53. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
5 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 246
6 510, 512, 1194, 1197, 1198, and 2802, beginning one (1) year preceding Plaintiff sending the
7 initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

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

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

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

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

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

26 **PRAYER FOR RELIEF**

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

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

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

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

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

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

11
12 Dated: November 1, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

13
14 By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Danielle E. Montero, Esq.
Attorneys for Plaintiff
KENNETH TEEMS,
on behalf of himself and current and former
aggrieved employees