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Attorneys for PLAINTIFF **EDDY BAPTISTE**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDDY BAPTISTE,

Plaintiff,

v.

UNIFIED PROTECTIVE SERVICES, INC.;

and

DOES 1 THROUGH 100, inclusive,

Defendants.

) Case No.: 22STCV31216

) **COMPLAINT FOR DAMAGES:**

) **(1) FAILURE TO PAY WAGES FOR**
) **ALL HOURS WORKED IN**
) **VIOLATION OF CAL. LABOR CODE**
) **§ 1182.12;**

) **(2) FAILURE TO PROVIDE MEAL &**
) **REST PERIODS, VIOLATION OF**
) **CAL. LABOR CODE § 201, 226.7, 512**
) **& IWC WAGE ORDER NO. 9;**

) **(3) FAILURE TO PAY WAGES IN**
) **VIOLATION OF CAL. LABOR CODE**
) **§ 201;**

) **(4) FAILURE TO PAY OVERTIME**
) **WAGES, VIOLATION OF CAL.**
) **LABOR CODE § 510 & IWC WAGE**
) **ORDER NO. 4;**

) **(5) FAILURE TO FURNISH COMPLIANT**
) **WAGE STATEMENTS AND**
) **MAINTAIN ACCURATE PAY**
) **RECORDS, VIOLATION OF CAL.**
) **LABOR CODE § 226, 1174 (D), AND**
) **1198;**

- 1) (6) **VIOLATION OF CAL. BUS. & PROF.**
2) **CODE §§ 17200 ET SEQ. FOR**
3) **UNFAIR BUSINESS PRACTICES;**
4) (7) **FAILURE TO PROVIDE EMPLOYEE**
5) **PERSONNEL FILES, VIOLATION OF**
6) **CAL. LABOR CODE §§ 432, 1198.5;**
7) (8) **CIVIL PENALTIES UNDER PAGA**
8) **JURY TRIAL DEMANDED**
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COMES NOW PLAINTIFF EDDY BAPTISTE hereinafter referred to as “BAPTISTE” or “Plaintiff”) on behalf of himself and acting for the interests of other current and former employees (cumulatively “Plaintiffs” or “Aggrieved Employees”) and complains against the above-named Defendants and for causes of action against the Defendants, and each of them, as follows:

I.

FIRST CAUSE OF ACTION

Failure To Pay Wages For All Hours Worked

[Cal. Labor Code § 1182.12]

Against All Defendants & DOES 1 Through 100, Inclusive

1. At all times mentioned herein, Plaintiff was, and now is, an individual domiciled in the County of San Diego, State of California.
2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein, Defendant UNIFIED PROTECTIVE SERVICES, INC. (hereinafter “Unified” or “Defendants”) was, and now is, a corporation organized and existing under the laws of the State of California, having their principal places of business in the city of Hawthorne, State of California.
3. Plaintiff is ignorant of the true names and capacities, whether corporate, associate, individual, or otherwise, of Defendants sued herein as DOES 1 - 100, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this Complaint to assert the true names and capacities of the fictitiously named Defendants when the same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated as “DOES” herein is legally responsible for the events, happenings, acts,

1 occurrences, indebtedness, damages and liabilities hereinafter alleged and caused injuries and
2 damages proximately thereby to the Plaintiff, as hereinafter alleged.

3 4. Plaintiff is informed, believes, and herein alleges that at all times relevant herein, a unity
4 of interest and ownership existed between Defendants and DOES 1 through 100, such that
5 individuality and separateness between these entities had ceased and that they were actually the
6 alter ego of one another.

7 5. Plaintiff is informed, believes, and herein also alleges that at all times relevant herein,
8 Defendants and DOES 1 through 100, were used merely as shells, instrumentalities, and/or
9 conduits of one another and by which the others were doing business.

10 6. Plaintiff is further informed and herein alleges that despite the formation of purported
11 corporate existence, Defendants and DOES 1 through 100, are in reality, one and the same thing.

12 7. Plaintiff is informed and believes, and herein further alleges, that the business affairs of
13 Defendants and DOES 1 through 100, are, and at all times relevant hereto, were, so mixed and
14 intermingled that the same cannot reasonable be segregated, and the same are in inextricable
15 confusion.

16 8. Accordingly, Defendants and DOES 1 through 100, constitute the alter egos for each
17 other and the fiction of their separate existence must be disregarded in the interest of justice.

18 9. At all times relevant herein, Plaintiff performed services for each and all of Defendants,
19 and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an
20 employee, either directly or indirectly, and the manner in which Defendants' business was and is
21 conducted.

22 10. Plaintiff is informed and believes and thereon alleges that each of the Defendants named
23 herein and DOES, has at all times relevant to this action, been the officer, agent, employee
24 and/or representative of the remaining Defendants and has acted within the course and scope of
25 such agency and employment, and with the permission and consent of the co-defendants.

26 11. Plaintiff has suffered unpaid minimum wages, as Defendants has failed to pay Plaintiff
27 for all hours worked, which Plaintiff suffered and Defendant permitted. Plaintiff worked during
28 his employment without payment of at least minimum wages for all hours worked.

12. California Labor Code §1197 provides that "[t]he minimum wage for employees fixed by the Commission is the minimum wage to be paid to employees, and payment of less than the minimum so fixed is unlawful."

13. The applicable minimum wage fixed by the commission for employees such as Plaintiff is found in section 4(A) of applicable Industrial Welfare Commission Wage Order and Labor Code §1182.12.

14. The minimum wage provisions of the California Labor Code are enforceable by private action pursuant to Labor Code § 1194(a), which states:

a) "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

15. As described in California Labor Code §§1185 and 1194.2, any such action incorporates the applicable Wage Order of the Industrial Welfare Commission.

16. California Labor Code §1194.2 also provides for the following remedies:

a) "In any action ... under Section . . . 1194 ... to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated" damages in an amount equal to the wages unlawfully unpaid and interest thereon."

17. Plaintiff therefore is entitled to recover his unpaid minimum wages and liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

18. As a result of Defendant's unlawful actions, Plaintiff has been required to retain an attorney and to incur attorney's fees and costs in pursuit of this cause of action. Plaintiff is entitled to recover his reasonable attorney's fees and costs incurred herein pursuant to Labor Code section 1194.

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Failure to Provide Meal and Rest Periods

Against All Defendants & DOES 1 Through 100, Only

20. Plaintiff was employed by Defendants in or around September 2021 where he is currently employed as a Security Guard.

a) On an almost daily basis, Defendants denied Plaintiff his lawfully provided proper uninterrupted 10-minute rest break.

22. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by IWC Wage Order No. 4, Section 11(A) also declares unless the employee is relieved of all duty during his/her thirty-minute meal period, the meal period shall be considered an "on duty" meal period and counted as hours worked, which must be compensated at the employee's regular rate of pay. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to.

23. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by IWC Wage Order No. 4, Section 12(a) requires that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction

thereof. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

24. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by Labor Code § 226.7(a) declares that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

25. Section § 226.7(b), IWC Wage Order No. 4, §§ 11(B), 12(B) declare that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

26. As such, Plaintiff is entitled to one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period was not provided.

27. As a result of the acts of Defendants and DOES 1 through 100, and each of them, Plaintiff is also entitled to compensation for each meal period where Plaintiff was "on duty."

28. Plaintiff is also entitled to any and all relief as provided for by Cal. Labor Code § 203.

29. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, offers its employees meal and rest periods, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

30. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to California Civil Code § 3294(a) and (b).

31. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.7, may be held liable as the employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Reyna.

32. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

III.

THIRD CAUSE OF ACTION

Failure to Pay Wages

[California Labor Code § 201]

Against All Defendants & DOES 1 Through 100, Only

33. Plaintiff incorporates herein by reference each and every paragraph in this Complaint as though duly set forth in full herein.

34. Plaintiff was employed by Defendants in or around September 2021 where he is currently employed as a Security Guard.

35. Defendants failed to provide Plaintiff with his earned wages within the statutorily prescribed time period required for employers to do so during and/or after terminating an employee.

36. To date, Defendants have not paid Plaintiff all of his earned by unpaid wages, including meal periods, rest periods, and unpaid overtime compensation.

37. At all times herein mentioned, the public policy of the State of California, as codified, expressed, and mandated in California Labor Code § 201 declares that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

38. Additionally, at all times herein mentioned, the public policy of the State of California, as codified, expressed, and mandated in California Labor Code § 203 declares that if an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of

the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

39. Defendant's violation of this Labor Code was intentional.

40. As a direct result of the conduct, act and omissions of Defendants and DOES 1 through 100, and each of them, Plaintiff has been harmed and damaged in an amount to be shown at the time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

41. Plaintiff is entitled to all penalties provided by California Labor Code § 203, among others.

42. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to California Civil Code § 3294(a) and (b).

43. As a result of the unlawful acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in Cal. C.C.P. § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants refrain from failing to properly compensate their employees, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

44. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

IV.

FOURTH CAUSE OF ACTION

For Failure to Pay Overtime Wages

[California Labor Code § 510 and IWC Wage Order No. 4]

Against All Defendants & DOES 1 Through 100, Inclusive

45. Plaintiff incorporates herein by reference each and every paragraph in this Complaint as though duly set forth in full herein.

46. Defendant failed to compensate Plaintiff with the true and/or correct and/or full amount of his earned overtime pay.

47. Plaintiff routinely worked in excess of eight (8) hours per day and/or five (5) days per work week, but was not compensated with his earned overtime wages.

48. However, as alleged herein, Defendants failed to compensate Plaintiff with the true and/or correct and/or full amount of his earned overtime wages.

49. Defendants violated or caused to be violated this section of the California Labor Code.

50. At all times herein mentioned, the public policy of the State of California, as codified, expressed, and mandated in Cal. Labor Code § 510 et seq. and IWC Wage Order No. 4, § 3(A), declares eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.'

51. As a result of Defendants conduct, Plaintiff is entitled to recover in a civil action the unpaid balance of the overtime compensation, including interest, reasonable attorney's fees, and costs of suit pursuant to California Labor Code § 1194, which declares:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest, reasonable attorney's fees, and costs of suit.

52. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

V.

FIFTH CAUSE OF ACTION

For Failure to Furnish Complaint Wage Statements and Maintain Accurate Pay Records

[California Labor Code § 226, 1174 (D), and 1198]

Against All Defendants & DOES 1 Through 100, Only

53. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

54. Plaintiff has been harmed as described herein.

55. An employer must give detailed information, including gross and net wages earned, total hours worked, all deductions, employer name/address, hourly rate. (Cal. Lab. Code § 226.)

56. As a pattern and practice, Defendants failed to furnish Plaintiff, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing pick pay, gross wages earned, all deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff worked.

57. Defendants willfully and intentionally failed to provide Plaintiff with accurate, itemized statements, to show on such itemized statements to Plaintiff in that it required or suffered his to work and failed to pay compensation for his work performed during for the specified pay period. Defendants willfully and intentionally failed to show the sick pay, gross pay, deductions, and net pay to Plaintiff, and all applicable pay earnings for Plaintiff for each specified pay period.

58. Defendants violated Labor Code section 226(a) by failing to furnish Plaintiff with pay stubs that contain all pieces of information required by the statute by including to accurately state the gross pay, deductions, and net pay to Plaintiff.

59. An employer's knowing and intentional failure to comply with subdivision (a) subjects it to a \$50 penalty for the initial violation and \$100 for each subsequent violation, up to a maximum of \$4,000 per employee. (Cal. Lab. Code § 226(e)).

60. As such, Plaintiff is entitled to payment from Defendant of the greater of actual damages or \$50 for the initial pay period in which the violation occurred and \$100 for each subsequent violation, up to a maximum of \$4,000, pursuant to Labor Code section 226, as well as reasonable attorney's fees and costs of suit.

VI.

SIXTH CAUSE OF ACTION

[For Violation of California Business & Professions Code §§ 17200 et seq.]

Against All Defendants & DOES 1 Through 100, Only

61. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

62. Defendants engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices through the following, among others:

a) Defendants failed to lawfully provide overtime wages to Plaintiff, in violation of California Labor Code § 510.

b) Defendants failed to lawfully pay Plaintiff wages owed for all hours worked in violation of California Labor Code §1182.12 and California Labor Code §201

c) Defendants failed to lawfully provide meal and rest periods to Plaintiff, in violation of California Labor Code § 226.7.

d) Defendants failed to lawfully provide meal and rest periods to Plaintiff, in violation of California Labor Code § 512.

e) Defendants failed to lawfully provide meal and rest periods to Plaintiff, in violation of California Labor Code § IWC Wage Order No. 4.

63. Through the aforementioned acts, Defendant's engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices in direct violation of California Bus. & Prof. Code § 17200, which prohibits conducting such business.

64. Defendant's willful and/or reckless conduct constituted unfair business practices and acts because the harm to the general public outweighed any utility that its conduct may have produced.

65. As a direct result of the conduct, act and omissions of Defendant's and DOES 1 through 100, and each of them, Plaintiff has been harmed and damaged in an amount to be shown at the time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

66. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code § 17206.

67. Additionally, Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

68. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, does not engage in unfair business practices, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

69. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to California Civil Code § 3294(a) and (b).

70. Plaintiff is entitled to both declaratory and injunctive relief as a result of Defendants' unlawful conduct.

71. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

VII.

SEVENTH CAUSE OF ACTION

For Failure to Provide Employee Personnel Files

[California Labor Code §§ 432 and 1198.5]

Against All Defendants & DOES 1 through 100, Only

72. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

73. Through his counsel, via a letter dated July 21, 2022, Plaintiff sent a written request to receive copies of his employee personnel file and any instrument he signed during his employment with Defendants.

74. California Labor Code § 432 declares that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he/she shall be given a copy of the instrument upon request.

75. Further, California Labor Code § 1198.5(a) declares that every employee has the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

76. Beginning on or about July 21, 2022, and continuing at least through September 19, 2022, Defendants failed to abide by § 1198.5(a) as it failed to provide Plaintiff with the opportunity to inspect his personnel records after he made a request.

77. Defendants also failed to abide by § 432 and timely provide Plaintiff with copies of any instruments he signed.

78. Plaintiff's letter dated July 21, 2021, specifically stated: "...pursuant to Cal. Labor Code § 432, Mr. Baptiste requests copies of all documents he signed relating to obtaining and retaining employment with you. Mr. Baptiste also requests copies of documents in his personnel file related to his performance and any grievances concerning his pursuant to Cal. Labor Code § 1198.5(a). Section 1198.5(a) authorizes Mr. Baptiste's representatives to receive copies of said documents."

79. However, at least through September 19, 2022, Defendants failed to provide said files or an inspection of said files.

80. As such, Plaintiff is entitled to the remedies and penalties provided by Cal. Labor Code § 1198.5(k), which declares:

If an employer fails to permit a current or former employee, or his or his representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

81. Plaintiff is also entitled to costs and attorney's fees for instituting this action pursuant to Cal. Labor Code § 1198.5(l).

82. Plaintiff also prays for damages and remedies as this Court deems appropriate.

VIII.

EIGHTH CAUSE OF ACTION

For Civil Penalties Under PAGA

[California Labor Code §§ 2698, 2699; Private Attorneys General Act (“PAGA”)]

Against All Defendants & DOES 1 Through 100, Only

83. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

84. Plaintiff is an "aggrieved employee" under the Labor Code Private Attorneys General Act (“PAGA”), as Plaintiff is or was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of Plaintiff and all other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

85. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, Arias v. Superior Court (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

86. Labor Code section 2699, subdivisions (a) and (g), as well as Labor Code sections 210, 226.3, 558, 1174.5 and 1197.1 authorizes aggrieved employees such as Plaintiff, on behalf of himself and other current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

87. Plaintiff complied with the procedures for bringing suit specified in Labor Code section 2699.3. Specifically, on or about July 11, 2022, Plaintiff gave written notice to the LWDA and to Defendants of the specified provisions of the Labor Code alleged to have been violated and those included below ("PAGA Notice"). Plaintiff is informed and believes that, to date, the LWDA has still not elected to investigate, pursuant to Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157.

88. During the period beginning one (1) year preceding the filing of the Complaint in this Action (the "Civil Penalty Period"), Defendants violated, *inter alia*, Labor Code sections 200,

201, 203, 204, 226, 226.7, 227.3, 510, 512, 2810.5 and the applicable Wage Order(s), among other things. In connection with the violations of Labor Code sections 200, 201, 203, 204, 226, 226.7, 227.3, 510, 512, 2810.5, Plaintiff seeks to represent only non-exempt current and former employees of Defendants working in California from one (1) year prior to filing the PAGA Notice with the LWDA through the present. In connection with the violation of Labor Code sections 227 et seq., and 2810.5, Plaintiff seeks to represent all current and former employees of Defendants working in California from one (1) year prior to filing the PAGA Notice with the LWDA through the present. Collectively, the employees that Plaintiff plans to represent shall be referred to as "Aggrieved Employees".

89. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to, at times, accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Aggrieved Employees including, without limitation, due to failure to account for skill differential pay.

90. For at least three (3) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to provide Plaintiff and Aggrieved Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day, and failing to, at times, provide compensation for such unprovided meal periods as required by California wage and hour laws due to, without limitation, assigning tasks to employees during what should be an uninterrupted meal period.

91. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay Plaintiff and Aggrieved Employees, or some of them, the

1 full amount of their wages owed to them upon termination and/or resignation as required by
2 Labor Code sections 201 and 202, including for, without limitation, Defendants' occasional
3 failing to pay overtime wages and premium wages.

4 92. For at least one (1) year prior to the filing of this Action and continuing to the present,
5 Defendants have, at times, failed to furnish Plaintiff and Aggrieved Employees, or some of them,
6 with itemized wage statements that accurately reflect gross wages earned; total hours worked;
7 net wages earned; all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate; and other such information as
9 required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have
10 occasionally failed to furnish employees with an accurate calculation of gross and gross wages
11 earned, as well as gross and net wages paid.

12 93. Plaintiff, on Plaintiff's own behalf and on behalf of Aggrieved Employees, pursuant to
13 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
14 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
15 appropriate and effective means to prevent further violations, as well as all monies owed but
16 withheld and retained by Defendants to which Plaintiff and Aggrieved Employees are entitled, as
17 well as restitution of amounts owed.

18 94. Labor Code section 204, requires and required that: "[l]abor performed between the 1st
19 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day
20 of the month during which the labor was performed, and labor performed between the 16th and
21 the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of
22 the following month."

23 95. Labor Code section 210, subdivision (a) states that "[i]n addition to, and entirely
24 independent and apart from, any other penalty provided in this article, every person who fails to
25 pay the wages of each employee as provided in Sections 204, 204(b), and 204.2 shall be subject
26 to a civil penalty as follows: (1) "For any initial violation, one hundred dollars (\$100) for each
27 failure to pay each employee" and (2) "For each subsequent violation, or any willful or
28 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
percent of the amount unlawfully withheld."

1 96. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
2 that Defendants had and have a consistent policy or practice of failing to pay Plaintiff and during
3 their employment on a timely basis as per Labor Code section 204.

4 97. As a direct and proximate result of the herein-described Labor Code violations, and
5 pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of
7 one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee,
8 and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in
9 connection with each payment that was made in violation of Labor Code section 204.

10 98. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a) of
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
13 for each violation in a subsequent citation, for which the employer fails to provide the employee
14 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
15 226."

16 99. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in this
17 section are in addition to any other penalty provided by law."

18 100. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
19 that Defendants, and each of them, had and have a policy or practice of failing to comply with
20 Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
21 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
22 total hours worked; net wages earned; the name and address of each employer with whom they
23 have been placed to work; all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate; the legal name of the employer
25 and/or the name and address of the legal entity securing the employer's services if the employer
26 is a farm labor contractor and other such information as required by Labor Code section 226,
27 subdivision (a).

28 101. As a direct and proximate result of the herein-described Labor Code violations, and
pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the
2 amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the
3 initial violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period
4 for each subsequent violation.

5 102. Labor Code section 558, subdivision (a) states: "Any employer or other person acting on
6 behalf of an employer who violates, or causes to be violated ... any provision regulating hours
7 and days of work in any of the Industrial Welfare Commission" shall be subject to a civil penalty
8 as follows:

9 a) For any initial violation, fifty dollars (\$50) for each underpaid employee and for
10 each pay period for which the employee was underpaid in addition to an amount
11 sufficient to recover underpaid wages;

12 b) For each subsequent violation, one hundred dollars (\$100) for each underpaid
13 employee for each pay period for which the employee was underpaid in addition to an
14 amount sufficient to recover underpaid wages;

15 c) Wages recovered pursuant to this section shall be paid to the affected employee."

16 103. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
17 that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections
18 described herein, including causing Plaintiff and other Aggrieved Employees not to: be paid
19 overtime wages; receive meal and rest periods or compensation in lieu thereof; be paid timely
20 wages during their employment and after their employment separation; receive accurate,
21 itemized wage statements.

22 104. As a direct and proximate result of the herein-described Labor Code violations, and
23 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to
24 recover civil penalties for Defendants' herein-described Labor Code violations in the amount
25 fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one
26 hundred dollars.

27 105. Labor Code section 1174, subdivision (b) states that every person employing labor in
28 California is required to "[a]llow any member of the commission or the employees of the
Division of Labor Standards Enforcement free access to the place of business or employment of

1 the person to secure any information or make any investigation that they are authorized by this
2 chapter to ascertain or make. The commission may inspect or make excerpts, relating to the
3 employment of employees, from the books, reports, contracts, payrolls, documents, or papers of
4 the person."

5 106. Labor Code section 1174, subdivision (c) has required every person employing labor in
6 California to "[k]eep a record showing the names and addresses of all employees employed and
7 the ages of all minors."

8 107. Labor Code section 1174, subdivision (d) has required every person employing labor in
9 California to "[k]eep, at a central location in the state or at the plants or establishments at which
10 employees are employed, payroll records showing the hours worked daily by and the wages paid
11 to, and the number of piece-rate units earned by and applicable piece rate paid to, employees
12 employed at the respective plants or establishments. These records shall be kept in accordance
13 with rules established for this purpose by the commission, but in any case, shall be kept on file
14 for not less than three years. An employer shall not prohibit an employee from maintaining a
15 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

16 108. Labor Code section 1174.5 states that, "[a]ny person employing labor who willfully fails
17 to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and
18 complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
19 member of the commission or employees of the division to inspect records pursuant to
20 subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred
21 dollars (\$500).

22 109. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
23 that Defendants, and each of them, have willfully failed to maintain the records required by
24 Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor
25 Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code
26 subdivision (b).

27 110. As a direct and proximate result of the herein-described Labor Code violations, and
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of
2 five hundred dollars (\$500) per violation per Aggrieved Employee.

3 111. Labor Code section 2699, subdivision (f), provides that for all provisions of the Labor
4 Code except those for which a civil penalty is specifically provided, the established civil penalty
5 for a violation of those provisions is as follows: if, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
8 each aggrieved employee per pay period for each subsequent violation.

9 112. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
10 that Defendants, and each of them, violated the Labor Code sections described herein, including,
11 without limitation, for the failure to: pay overtime wages; provide meal and rest periods or
12 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
13 during employment and after the cessation of the employment relationship; reimburse
14 Aggrieved Employees for costs incurred in furtherance of their work duties as required under
15 Labor Code section 2802; provide notice as required under Labor Code section 2810.5; paying
16 employees all owed paid time off and vacation time owed by separation at the proper rate of pay;
17 placing restraints on competition, whistleblowing and freedom of speech; entitling Plaintiff and
18 other Aggrieved Employees to civil penalties for each of these Labor Code violations in the
19 amounts set forth in Labor Code section 2699, subdivision (f).

20 113. As a direct and proximate result of the herein-described Labor Code violations, and
21 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiff and
22 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations
23 of the herein and therein described Labor Code violations during the Civil Penalty Period in the
24 amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
25 violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
26 subsequent violation.

27 114. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of reasonable
28 attorneys' fees and costs in connection with their herein-described claims for civil penalties.

1 WHEREFORE, PLAINTIFF EDDY BAPTISTE prays for judgment against the Defendants, and
2 each of them, as follows:

- 3 1. For general damages in an amount within the jurisdictional limits of this Court;
- 4 2. For special damages in an amount within the jurisdictional limits of this Court;
- 5 3. For medical expenses and related items of expense, according to proof;
- 6 4. For loss of earnings, according to proof;
- 7 5. For consequential and incidental damages according to proof;
- 8 6. For prejudgment interest according to proof;
- 9 7. For declaratory relief;
- 10 8. For injunctive relief;
- 11 9. For damages, penalties, cost of suit, and attorney fees against Defendants provided for by
12 Cal. Labor Code §§ 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1197.1, 1199, 2699, and IWC
13 Wage Order No. 4;
- 14 10. For civil penalties and attorneys' fees for each violation of Cal. Lab. Code § 1102.5.
- 15 11. For punitive and exemplary damages as provided for by Cal. Civil Code § 3294;
- 16 12. For damages, penalties and costs of suit as provided for by California Civil Code § 3333;
- 17 13. For damages, penalties and reasonable attorneys' fees and costs of suit against
18 Defendants as provided for by California Code of Civil Procedure § 1021.5, according to proof;
- 19 14. For such other and further relief as the Court may deem just and proper.

20
21 Dated: September 24, 2022

AKHAVAN & ASSOCIATES

22
23 By: 

24 BARDIA AARON AKHAVAN, ESQ.
25 Attorney for PLAINTIFF
26 EDDY BAPTISTE
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