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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DIANE ALVAREZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

LOS ANGELES PHILHARMONIC
ASSOCIATION, a California corporation; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 22STCV21979

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Diane Alvarez (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Los Angeles Philharmonic
6 Association, and Does 1 through 10 (collectively referred to as “Defendants”) for California
7 Labor Code violations and unfair business practices stemming from Defendants’ failure to pay
8 minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to maintain accurate records of hours worked and meal
10 periods, failure to timely pay all wages to terminated employees, failure to indemnify necessary
11 business expenses, and failure to furnish accurate wage statements.

12 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
13 class action on behalf of himself and certain current and former employees of Defendants
14 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully
15 below). The Class consists of Plaintiff and all other persons who have been employed by any
16 Defendants in California as an hourly-paid, non-exempt employee during the statute of limitations
17 period applicable to the claims pleaded here.

18 3. Plaintiff brings the Ninth Cause of Action as a representative action under the
19 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
20 Plaintiff, the State of California, and past and present employees of Defendants employed at any
21 time within the applicable statutory period (hereinafter referred to as the “Aggrieved
22 Employees”).

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including Los Angeles County. As such, and based
25 upon all the facts and circumstances incident to Defendants’ business in California, Defendants
26 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
27 Commission (“IWC”), and the California Business & Professions Code.

1 5. Despite these requirements, throughout the statutory period Defendants
2 maintained a systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum
4 wages, and overtime wages in compliance with the California Labor Code
5 and IWC Wage Orders;
- 6 (b) Failing to provide employees with timely and duty-free meal periods in
7 compliance with the California Labor Code and IWC Wage Orders, failing
8 to maintain accurate records of all meal periods taken or missed, and
9 failing to pay an additional hour's pay for each workday a meal period
10 violation occurred;
- 11 (c) Failing to authorize and permit employees to take timely and duty-free rest
12 periods in compliance with the California Labor Code and IWC Wage
13 Orders, and failing to pay an additional hour's pay for each workday a rest
14 period violation occurred;
- 15 (d) Failing to indemnify employees for necessary business expenses incurred;
- 16 (e) Willfully failing to pay employees all minimum wages, overtime wages,
17 meal period premium wages, and rest period premium wages due within
18 the time period specified by California law when employment terminates;
19 and
- 20 (f) Failing to maintain accurate records of the hours that employees worked.
- 21 (g) Failing to provide employees with accurate, itemized wage statements
22 containing all the information required by the California Labor Code and
23 IWC Wage Orders.

24 6. On information and belief, Defendants, and each of them were on actual and
25 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
26 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
27 willful and deliberate.

28

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident that worked for Defendants in the County of Los Angeles, State of California, as a parking ride ticket taker, primarily in Los Angeles County, from approximately August 2021 to October 2021.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Los Angeles Philharmonic Association is:

- (a) A California non-profit corporation with its principal places of business in Los Angeles, California;
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Los Angeles County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Defendants suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set

1 forth the true names and capacities of these Defendants when they have been ascertained,
2 together with appropriate charging allegations, as may be necessary.

3 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
4 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
5 and/or injured a significant number of the Plaintiff and the Class in the State of California.

6 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
7 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
8 the other employees described in the class definitions below, and exercised control over their
9 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
10 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
11 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
12 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
13 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
14 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
15 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
16 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
17 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
18 abetted the conduct of all other Defendants.

19 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 14. Plaintiff is a California resident who worked for Defendants in the County of Los
21 Angeles, State of California, as a parking ride ticket taker from approximately August 2021 to
22 October 2021. During the statutory period, Defendants classified Plaintiff as non-exempt from
23 California's overtime requirements, and paid Plaintiff an hourly wage.

24 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
25 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
26 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
27 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all
28 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish

1 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
2 Defendants was typical and illustrative.

3 16. Throughout the statutory period, Defendants maintained a policy and practice of
4 not paying Plaintiff and the Class for all hours worked, including all overtime wages. Defendants
5 regularly use a system of time rounding in a manner that resulted, over a period of time, in failing
6 to compensate Plaintiff and the Class properly for all the time they have actually worked, even
7 though the realities of Defendants' operations are such that it is possible, practical, and feasible
8 to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff
9 and the Class less than all their work time, some of which should have been paid at the overtime
10 rate. Also throughout the statutory period, Defendants shaved time from Plaintiff and the Class,
11 not paying them for all time worked. Also throughout the statutory period, Defendants failed to
12 pay Plaintiff and the Class the correct amounts for both regular rate pay and overtime pay,
13 leading to underpayment of wages. In maintaining a practice of not paying all wages owed,
14 Defendants failed to maintain accurate records of the hours Plaintiff and the Class worked.

15 17. Throughout the statutory period, Defendants have wrongfully failed to provide
16 Plaintiff and the Class with legally compliant meal periods. Defendants sometimes, but not
17 always, required Plaintiff and the Class to work in excess of five consecutive hours a day without
18 providing 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of
19 work, or without compensating Plaintiff and the Class for meal periods that were not provided by
20 the end of the fifth hour of work or tenth hour of work. Defendants also did not adequately
21 inform Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of
22 work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Plaintiff and the
23 Class were also not permitted to leave the premises during meal and rest breaks. Defendants also
24 failed to accurately record meal periods. Accordingly, Defendants' policy and practice was to not
25 provide meal periods to Plaintiff and the Class in compliance with California law.

26 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
27 and permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants
28 sometimes, but not always, required Plaintiff and the Class to work in excess of four consecutive

1 hours a day without Defendants authorizing and permitting them to take a 10-minute, continuous
2 and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
3 without compensating Plaintiff and the Class for rest periods that were not authorized or
4 permitted. Defendants also did not adequately inform Plaintiff and the Class of their right to take
5 a rest period. Moreover, Defendants did not have adequate policies or practices permitting or
6 authorizing rest periods for Plaintiff and the Class, nor did Defendants have adequate policies or
7 practices regarding the timing of rest periods. Defendants also did not have adequate policies or
8 practices to verify whether Plaintiff and the Class were taking their required rest periods.
9 Further, Defendants did not maintain accurate records of employee work periods, and therefore
10 Defendants cannot demonstrate that Plaintiff and the Class took rest periods during the middle of
11 each work period. Accordingly, Defendants' policy and practice was to not authorize and permit
12 Plaintiff and the Class to take rest periods in compliance with California law.

13 19. Throughout the statutory period, Defendants failed to provide adequate and
14 suitable seating to its employees, despite the fact that seating was possible for its employees
15 throughout the workday.

16 20. Throughout the statutory period, Defendants failed to provide its employees with
17 one day's rest therefrom in seven in violation of Labor Code §§ 551 and 552. Further, during the
18 statutory period, Defendants failed to comply with the COVID-19 procedures that employers
19 were required to implement as set forth in Labor Code § 6409.6. Moreover, California Labor
20 Code section § 6432 establishes a rebuttable presumption of "serious violation" to exist in a place
21 of employment if there is a realistic possibility of death or serious physical harm to result from
22 the actual hazard created by the violation.

23 21. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
24 Class to pay expenses that they incurred in direct discharge of their duties for Defendants without
25 reimbursement, including the purchase of company shirts, reflective vests, and the maintenance
26 of uniforms, without reimbursement. Plaintiff and the Class were also required to use their own
27 personal vehicles for work purposes, without reimbursement of vehicle expenses and mileage.
28

1 22. Throughout the statutory period, Defendants willfully failed and refused to timely
2 pay Plaintiff and the Class at the conclusion of their employment all wages for all minimum
3 wages, overtime wages, meal period premium wages, and rest period premium wages.

4 23. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
5 Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
6 and net wages earned (including correct hours worked, correct wages earned for hours worked,
7 correct overtime hours worked, correct wages for meal periods that were not provided in
8 accordance with California law, correct wages for rest periods that were not authorized and
9 permitted to take in accordance with California law, and Defendant's address). Further, the wage
10 statements do not show Defendant's address as required by California law. As a result of these
11 violations of California Labor Code § 226(a), the Plaintiff and the Class suffered injury because,
12 among other things:

- 13 (a) the violations led them to believe that they were not entitled to be paid
14 minimum wages, overtime wages, meal period premium wages, and rest
15 period premium wages to which they were entitled, even though they were
16 entitled;
- 17 (b) the violations led them to believe that they had been paid the minimum,
18 overtime, meal period premium, and rest period premium wages, even
19 though they had not been;
- 20 (c) the violations led them to believe they were not entitled to be paid
21 minimum, overtime, meal period premium, and rest period premium wages
22 at the correct California rate even though they were;
- 23 (d) the violations led them to believe they had been paid minimum, overtime,
24 meal period premium, and rest period premium wages at the correct
25 California rate even though they had not been;
- 26 (e) the violations hindered them from determining the amounts of minimum,
27 overtime, meal period premium, and rest period premium owed to them;
- 28

- 1 (f) in connection with their employment before and during this action, and in
2 connection with prosecuting this action, the violations caused them to have
3 to perform mathematical computations to determine the amounts of wages
4 owed to them, computations they would not have to make if the wage
5 statements contained the required accurate information;
- 6 (g) by understating the wages truly due them, the violations caused them to
7 lose entitlement and/or accrual of the full amount of Social Security,
8 disability, unemployment, and other governmental benefits;
- 9 (h) the wage statements inaccurately understated the wages, hours, and wages
10 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
11 Class were paid less than the wages and wage rates to which they were
12 entitled.

13 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
14 226(e), including actual damages.

15 **CLASS ACTION ALLEGATIONS**

16 24. Plaintiff brings certain claims individually, as well as on behalf of each and all
17 other persons similarly situated, and thus, seek class certification under California Code of Civil
18 Procedure § 382.

19 25. All claims alleged herein arise under California law for which Plaintiff seeks relief
20 authorized by California law.

21 26. The proposed Class consists of and is defined as:

22 All persons who worked for any Defendant in California as an hourly, non-
23 exempt employee at any time during the period beginning four years before the
24 filing of the initial complaint in this action and ending when notice to the Class
is sent.

25 27. At all material times, Plaintiff was a member of the Class.

26 28. Plaintiff undertakes this concerted activity to improve the wages and working
27 conditions of all Class Members.
28

1 29. There is a well-defined community of interest in the litigation and the Class is
2 readily ascertainable:

3 (a) Numerosity: The members of the Class (and each subclass, if any) are so
4 numerous that joinder of all members would be unfeasible and impractical.
5 The membership of the entire Class is unknown to Plaintiff at this time,
6 however, the Class is estimated to be greater than 100 individuals and the
7 identity of such membership is readily ascertainable by inspection of
8 Defendants' records.

9 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
10 the interests of each Class Member with whom there is a shared, well-
11 defined community of interest, and Plaintiff's claims (or defenses, if any)
12 are typical of all Class Members' claims as demonstrated herein.

13 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
14 the interests of each Class Member with whom there is a shared, well-
15 defined community of interest and typicality of claims, as demonstrated
16 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
17 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
18 the rules governing class action discovery, certification, and settlement.
19 Plaintiff has incurred, and throughout the duration of this action, will
20 continue to incur costs and attorneys' fees that have been, are, and will be
21 necessarily expended for the prosecution of this action for the substantial
22 benefit of each class member.

23 (d) Superiority: A Class Action is superior to other available methods for the
24 fair and efficient adjudication of the controversy, including consideration
25 of:

- 26 1) The interests of the members of the Class in individually
27 controlling the prosecution or defense of separate actions;
28 2) The extent and nature of any litigation concerning the controversy

1 already commenced by or against members of the Class;

2 3) The desirability or undesirability of concentrating the litigation of
3 the claims in the particular forum; and

4 4) The difficulties likely to be encountered in the management of a
5 class action.

6 (e) Public Policy Considerations: The public policy of the State of California
7 is to resolve the California Labor Code claims of many employees through
8 a class action. Indeed, current employees are often afraid to assert their
9 rights out of fear of direct or indirect retaliation. Former employees are
10 also fearful of bringing actions because they believe their former
11 employers might damage their future endeavors through negative
12 references and/or other means. Class actions provide the class members
13 who are not named in the complaint with a type of anonymity that allows
14 for the vindication of their rights at the same time as their privacy is
15 protected.

16 30. There are common questions of law and fact as to the Class (and each subclass, if
17 any) that predominate over questions affecting only individual members, including without
18 limitation, whether, as alleged herein, Defendants have:

19 (a) Failed to pay Class Members for all hours worked, including minimum
20 wages, and overtime wages;

21 (b) Failed to provide meal periods and pay meal period premium wages to
22 Class Members;

23 (c) Failed to authorize and permit rest periods and pay rest period premium
24 wages to Class Members;

25 (d) Failed to promptly pay all wages due to Class Members upon their
26 discharge or resignation;

27 (e) Failed to maintain accurate records of all hours Class Members worked,
28 and all meal periods Class Members took or missed;

- 1 (f) Failed to reimburse Class Members for all necessary business expenses;
2 and
3 (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
4 result of their illegal conduct as described above.

5 31. This Court should permit this action to be maintained as a class action pursuant to
6 California Code of Civil Procedure § 382 because:

- 7 (a) The questions of law and fact common to the Class predominate over any
8 question affecting only individual members;
9 (b) A class action is superior to any other available method for the fair and
10 efficient adjudication of the claims of the members of the Class;
11 (c) The members of the Class are so numerous that it is impractical to bring all
12 members of the class before the Court;
13 (d) Plaintiff, and the other members of the Class, will not be able to obtain
14 effective and economic legal redress unless the action is maintained as a
15 class action;
16 (e) There is a community of interest in obtaining appropriate legal and
17 equitable relief for the statutory violations, and in obtaining adequate
18 compensation for the damages and injuries for which Defendants are
19 responsible in an amount sufficient to adequately compensate the members
20 of the Class for the injuries sustained;
21 (f) Without class certification, the prosecution of separate actions by
22 individual members of the class would create a risk of:
23 1) Inconsistent or varying adjudications with respect to individual
24 members of the Class which would establish incompatible standards
25 of conduct for Defendants; and/or
26 2) Adjudications with respect to the individual members which would,
27 as a practical matter, be dispositive of the interests of other
28 members not parties to the adjudications, or would substantially

impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

32. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)

33. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

34. Pursuant to California Labor Code § 200(a), “Wages” is defined to include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

35. Pursuant to California Labor Code § 200(b), “Labor” is defined to include labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid is performed personally by the person demanding payment.

36. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

1 37. California Labor Code § 1197.5 forbids employers from paying employees at
2 wage rates less than the rates paid to employees of the opposite sex, and/or of another race or
3 ethnicity for substantially similar work.

4 38. At all relevant times herein mentioned, Defendants knowingly failed to pay to
5 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
6 compensation for each hour worked as alleged above, Defendants willfully violated the
7 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
8 Orders, which require such compensation to non-exempt employees.

9 39. California Labor Code § 558.1 further provides that if an employer violates any
10 provision regulating minimum wages or hours and days of work in any order of the Industrial
11 Welfare Commission, or violates section 1194, may be held liable as the employer for such
12 violation.

13 40. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
14 non-overtime hours worked for Defendants.

15 41. By and through the conduct described above, Plaintiff and the Class have been
16 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

17 42. By virtue of the Defendants' unlawful failure to pay additional compensation to
18 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
19 suffered, and will continue to suffer, damages in amounts which are presently unknown to
20 Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which
21 will be ascertained according to proof at trial.

22 43. By failing to keep adequate time records required by California Labor Code §
23 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
24 compensation due Plaintiff and the Class.

25 44. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
26 entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum
27 wages.
28

45. Pursuant to California Labor Code section 96, the Labor Commissioner or the deputies and representatives authorized by the commissioner may take assignments of claims for penalties for nonpayment of wages. Further, Labor Code sections 98.6 and 1102.5 make it unlawful for employers to discriminate or retaliate against an employee for engaging in protected activity under the Labor Code and disclosing information reasonably believed to be a violation of state or federal law, including asserting wage claims.

46. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum wages. Moreover, pursuant to California Labor Code § 212, the check for payment of wages must be payable in cash, on demand, without discount, and the name and address must appear on the instrument. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

47. California Labor Code section 225.5 further provides that in addition to, and entirely independent and apart from any other penalties provided in the article, if an employer violates section 212 by unlawfully withholding wage due any employee, shall be subject to penalty of one hundred dollars (\$100) for each failure to pay each employee, and two hundred dollars (\$200) for each subsequent , or any willful or intentional violation, plus twenty five percent (25%) of the amount unlawfully withheld.

48. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

49. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

50. California Labor Code § 510 provides that employees in California shall not be

1 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
2 they receive additional compensation beyond their regular wages in amounts specified by law.

3 51. California Labor Code §§ 1194 and 1198 provide that employees in California
4 shall not be employed more than eight hours in any workday unless they receive additional
5 compensation beyond their regular wages in amounts specified by law. Additionally, California
6 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
7 by the Industrial Welfare Commission is unlawful.

8 52. At all times relevant hereto, Plaintiff and the Class have worked more than eight
9 hours in a workday, as employees of Defendants.

10 53. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
11 overtime compensation for the hours they have worked in excess of the maximum hours
12 permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class
13 are regularly required to work overtime hours.

14 54. By virtue of Defendants' unlawful failure to pay additional premium rate
15 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
16 Class have suffered, and will continue to suffer, damages in amounts which are presently
17 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
18 ascertained according to proof at trial.

19 55. By failing to keep adequate time records required by Labor Code § 1174(d),
20 Defendants have made it difficult to calculate the full extent of overtime compensation due to
21 Plaintiff and the Class.

22 56. Plaintiff and the Class also request recovery of overtime compensation according
23 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
24 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
25 California Labor Code and/or other statutes.

26 57. California Labor Code § 204 requires employers to provide employees with all
27 wages due and payable twice a month. The Wage Orders also provide that every employer shall
28 pay to each employee, on the established payday for the period involved, overtime wages for all

overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

58. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

59. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff and the Class's sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. Section 512 of the California Labor Code, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee to work during any meal period mandated under any Wage Order.

60. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the Class with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

61. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s), plus interest thereon.

FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Authorize and Permit Rest Periods)

62. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

63. Defendants are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee to work during any rest period mandated under any Wage Order.

64. California Labor Code § 558.1 further provides that if an employer violates any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates section 226.7, may be held liable as the employer for such violation.

65. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class to take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

66. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Indemnify Necessary Business Expenses)

67. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

68. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by failing to pay and indemnify the Plaintiff and the Class for their necessary expenditures and

1 losses incurred in direct consequence of the discharge of their duties or of their obedience to
2 directions of Defendants. Further, Defendants violated Labor Code section 2800, which requires
3 employers to indemnify employees for losses caused by the employer's lack of ordinary care.

4 69. As a result, Plaintiff and the Class were damaged at least in the amounts of the
5 expenses they paid, or which were deducted by Defendants from their wages.

6 70. Plaintiff and the class they represent are entitled to attorney's fees, expenses, and
7 costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code section
8 2802(b).

9 **SIXTH CAUSE OF ACTION**

10 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time** 11 **Penalties)**

12 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein
13 paragraphs 1 through 23 in this Second Amended Complaint.

14 72. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
15 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
16 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
17 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
18 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
19 quit, in which case the employee is entitled to his or her wages at the time of quitting.

20 73. California Labor Code § 227.3 further provides that, employer shall pay the
21 employee for all vested vacation to the employee as wages at the employee's final rate, if an
22 employee is terminated without having taken off their vested vacation time in accordance with an
23 employment contract or employer policy, unless a collective-bargaining agreement provides
24 otherwise.

25 74. Within the applicable statute of limitations, the employment of Plaintiff and many
26 other members of the Class ended, i.e. was terminated by quitting or discharge, and the
27 employment of others will be. However, during the relevant time period, Defendants failed, and
28 continue to fail to pay terminated Class Members, without abatement, all wages required to be

1 paid by California Labor Code sections 201 and 202 either at the time of discharge, or within
2 seventy-two (72) hours of their leaving Defendants' employ.

3 75. Defendants' failure to pay Plaintiff and those Class members who are no longer
4 employed by Defendants their wages earned and unpaid at the time of discharge, or within
5 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
6 Code §§ 201 and 202.

7 76. California Labor Code § 203 provides that if an employer willfully fails to pay
8 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
9 continue as a penalty wage from the due date, and at the same rate until paid or until an action is
10 commenced; but the wages shall not continue for more than thirty (30) days. Moreover,
11 California Labor Code § 216 makes it a crime for an employer, having the ability to pay,
12 knowingly and intentionally refuse to pay wages which the employer knows are due.

13 77. California Labor Code § 558.1 further provides that if an employer violates any
14 provision regulating minimum wages or hours and days of work in any order of the Industrial
15 Welfare Commission, or violates section 203, may be held liable as the employer for such
16 violation.

17 78. California Labor Code section 225.5 further provides that in addition to, and
18 entirely independent and apart from any other penalties provided in the article, if an employer
19 violates section 216 by unlawfully withholding wage due any employee, shall be subject to
20 penalty of one hundred dollars (\$100) for each failure to pay each employee, and two hundred
21 dollars (\$200) for each subsequent , or any willful or intentional violation, plus twenty five
22 percent (25%) of the amount unlawfully withheld.

23 79. Plaintiff and the Class are entitled to recover from Defendants their additionally
24 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
25 maximum pursuant to California Labor Code § 203.

26 80. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the
27 Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs
28 incurred in this action.

1 **SEVENTH CAUSE OF ACTION**

2 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
3 **Compliant Wage Records)**

4 81. Plaintiff incorporates by reference and re-alleges as if fully stated herein
5 paragraphs 1 through 23 in this Second Amended Complaint.

6 82. At all material times set forth herein, California Labor Code § 226(a) provides that
7 every employer shall furnish each of his or her employees an accurate itemized wage statement
8 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
9 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
10 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
11 on written orders of the employee may be aggregated and shown as one item, (5) net wages
12 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
13 employee and the last four digits of his or her social security number or an employee
14 identification number other than a social security number, (8) the name and address of the legal
15 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
16 the corresponding number of hours worked at each hourly rate by the employee.

17 83. Defendants have intentionally and willfully failed to provide employees with
18 complete and accurate wage statements. The deficiencies include, among other things, the
19 failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list
20 the true “total hours worked by the employee,” and the failure to list the true net wages earned.

21 84. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff
22 and the Class have suffered injury and damage to their statutorily-protected rights.

23 85. Specifically, Plaintiff and the members of the Class have been injured by
24 Defendants’ intentional violation of California Labor Code § 226(a) because they were denied
25 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
26 statements under California Labor Code § 226(a).

27 86. Further, California Labor Code § 2810.5 requires employers to provide notice to
28 employees of any changes to their rates of pay, accrued paid sick leave, and other employment-

related information, if these changes were not reflected on a timely wage statement in accordance with California Labor Code § 226.

87. California Labor Code § 558.1 further provides that if an employer violates any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates section 226, may be held liable as the employer for such violation.

88. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information and inspect their personnel records pursuant to Labor Code section 1198.5, following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

89. Plaintiff and the Class are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a).

90. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

EIGHTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

91. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 23 in this Second Amended Complaint.

92. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

93. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

94. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business & Professions
2 Code §§ 17200, *et seq.*

3 95. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code, are unlawful and in violation of
6 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
7 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
8 California Business & Professions Code §§ 17200, *et seq.*

9 **Failure to Pay Minimum Wages**

10 96. Defendants' failure to pay minimum wages, and other benefits in violation of the
11 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
12 Business & Professions Code §§ 17200, *et seq.*

13 **Failure to Pay Overtime Wages**

14 97. Defendants' failure to pay overtime compensation and other benefits in violation
15 of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
16 prohibited by California Business & Professions Code §§ 17200, *et seq.*

17 **Failure to Provide One Day of Rest**

18 98. Defendants' failure to provide one day of rest therefrom in seven in violation of
19 California Labor Code §§ 551 and 552 constitutes unlawful and/or unfair activity prohibited by
20 California Business & Professions Code §§ 17200, *et seq.*

21 **Failure to Comply with COVID-19 Notice and Workplace Requirements**

22 99. Defendants' failure to implement the required COVID-19 procedures and practices
23 in compliance with California Labor Code § 6409.6 constitutes unlawful and/or unfair activity
24 prohibited by California Business & Professions Code §§ 17200, *et seq.*

25 **Failure to Maintain Accurate Records of All Hours Worked**

26 100. Defendants' failure to maintain accurate records of all hours worked in accordance
27 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
28 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

1 **Failure to Provide Meal Periods**

2 101. Defendants' failure to provide meal periods in accordance with California Labor
3 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
4 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

5 **Failure to Authorize and Permit Rest Periods**

6 102. Defendants' failure to authorize and permit rest periods in accordance with
7 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
8 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

9 **Failure to Indemnify Necessary Business Expenses**

10 103. Defendants' failure to indemnify employees for necessary business expenses and
11 other losses in accordance with California Labor Code §§ 2800 and 2802 and the IWC Wage
12 Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and
13 Professions Code §§ 17200, *et seq.*

14 **Failure to Provide Accurate Itemized Wage Statements**

15 104. Defendants' failure to provide accurate itemized wage statements in accordance
16 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
17 prohibited by California Business & Professions Code §§ 17200, *et seq.*

18 105. By and through their unfair, unlawful and/or fraudulent business practices
19 described herein, the Defendants, have obtained valuable property, money and services from
20 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly
21 situated, of valuable rights and benefits guaranteed by law, all to their detriment.

22 106. Plaintiff and the Class Members suffered monetary injury as a direct result of
23 Defendants' wrongful conduct.

24 107. Plaintiff, individually, and on behalf of members of the putative Class, is entitled
25 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
26 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
27 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
28 the Class are not obligated to establish individual knowledge of the wrongful practices of

1 Defendants in order to recover restitution.

2 108. Plaintiff, individually, and on behalf of members of the putative class, are further
3 entitled to and do seek a declaration that the above described business practices are unfair,
4 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
5 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
6 practices in the future.

7 109. Plaintiff, individually, and on behalf of members of the putative class, have no
8 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
9 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
10 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
11 above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and
12 will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained
13 from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

14 110. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
15 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
16 withholdings.

17 111. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
18 and putative Class Members are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of this complaint; a
20 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
21 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
22 1021.5 and other applicable laws; and an award of costs.

23 **NINTH CAUSE OF ACTION**

24 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act**
25 **of 2004, Cal. Lab. Code § 2698 et seq.)**

26 112. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs
27 1 through 22 in this First Amended Complaint.

1 113. At all times herein mentioned, Defendants were subject to the Labor Code of the
2 State of California and the applicable Industrial Welfare Commission Orders.

3 114. California Labor Code § 2699(a) specifically provides for a private right of action
4 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
5 law, any provision of this code that provides for a civil penalty to be assessed and collected by
6 the Labor and Workforce Development Agency or any of its departments, divisions,
7 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
8 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
9 herself and other current or former employees pursuant to the procedures specified in Section
10 2699.3.”

11 115. Plaintiff has exhausted his administrative remedies pursuant to California Labor
12 Code § 2699.3. On July 2, 2022, Plaintiff gave written notice by online filing to the Labor and
13 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
14 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
15 former aggrieved employees, including the facts and theories to support the violations (See
16 attached as **Exhibit A**). On August 21, 2024, Plaintiff provided the LWDA and Defendants with
17 an amended notice of Defendants’ Labor Code violations. (See attached as **Exhibit B**). Plaintiff’s
18 PAGA case number is No. LWDA-CM-892672-22. At the time of this filing, 65 days has elapsed
19 since Plaintiff provided his initial notice, but the Labor and Workforce Development Agency has
20 not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the
21 notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code
22 § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.
23 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,
24 226.3, 558, 1197.1, and 2699(f)(2).

25 116. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
26 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
27 employing labor who willfully fails to maintain accurate and complete records required by
28 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable

1 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
2 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
3 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
4 hours worked in the payroll period and applicable rates of pay.

5 117. During the time period of employment for Plaintiff and the Aggrieved Employees,
6 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
7 maintain accurate records showing meal periods, and accurate records showing when employees
8 begin and end each work period. Defendants' failure to provide and maintain records required by
9 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
10 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
11 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
12 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
13 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
14 Employees have suffered and continue to suffer, substantial losses related to the use and
15 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
16 to compel Defendants to fully perform its obligation under state law, all to their respective
17 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
18 comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved
19 Employees have also suffered an injury in that they were prevented from knowing,
20 understanding, and disputing the wage payments paid to them.

21 118. Based on the conduct described in this First Amended Complaint, Plaintiff is
22 entitled to an award of civil penalties on behalf of themselves, the State of California, and
23 similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in
24 all, is in an amount to be shown according to proof at trial. These penalties are in addition to all
25 other remedies permitted by law.

26 106. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs
27 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
28 any action shall be entitled to an award of reasonable attorney's fees and costs."

1
2 **PRAYER FOR RELIEF**

3 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
4 the class claims, prays for relief and judgment against Defendants, jointly and severally, as
5 follows:

6 **Class Certification**

- 7 1. That this action be certified as a class action with respect to the First, Second,
8 Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
9 2. That Plaintiff be appointed as the representative of the Class; and
10 3. That counsel for Plaintiff be appointed as Class Counsel.

11 **As to the First Cause of Action**

- 12 4. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
14 minimum wages due;
15 5. For general unpaid wages as may be appropriate;
16 6. For pre-judgment interest on any unpaid compensation commencing from the date
17 such amounts were due;
18 7. For liquidated damages;
19 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code § 1194(a); and,
21 9. For such other and further relief as the Court may deem equitable and appropriate.

22 **As to the Second Cause of Action**

- 23 10. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
25 overtime wages due;
26 11. For general unpaid wages at overtime wage rates as may be appropriate;
27 12. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due;

1 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code § 1194(a); and,

3 14. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Third Cause of Action

5 15. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

7 16. For unpaid meal period premium wages as may be appropriate;

8 17. For pre-judgment interest on any unpaid compensation commencing from the date
9 such amounts were due;

10 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
11 and for costs of suit incurred herein; and

12 19. For such other and further relief as the Court may deem equitable and appropriate.

13 As to the Fourth Cause of Action

14 20. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16 21. For unpaid rest period premium wages as may be appropriate;

17 22. For pre-judgment interest on any unpaid compensation commencing from the date
18 such amounts were due;

19 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
20 and for costs of suit incurred herein; and

21 24. For such other and further relief as the Court may deem equitable and appropriate.

22 As to the Fifth Cause of Action

23 25. That the Court declare, adjudge and decree that Defendants violated Labor Code §
24 2802 and the IWC Wage Orders;

25 26. For general unpaid wages and reimbursement of business expenses as may be
26 appropriate;

27 27. For pre-judgment interest on any unpaid compensation commencing from the date
28 such amounts were due;

1 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

2 29. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Sixth Cause of Action

4 30. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
6 termination of the employment;

7 31. For statutory wage penalties pursuant to California Labor Code § 203 for former
8 employees who have left Defendants' employ;

9 32. For pre-judgment interest on any unpaid wages from the date such amounts were
10 due;

11 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

12 34. For such other and further relief as the Court may deem equitable and appropriate.

13 As to the Seventh Cause of Action

14 35. That the Court declare, adjudge and decree that Defendants violated the record
15 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
16 willfully failed to provide accurate itemized wage statements thereto;

17 36. For penalties and actual damages pursuant to California Labor Code § 226(e);

18 37. For injunctive relief to ensure compliance with this section, pursuant to California
19 Labor Code § 226(h);

20 38. For reasonable attorneys' fees and for costs of suit incurred herein; and

21 39. For such other and further relief as the Court may deem equitable and appropriate.

22 As to the Eighth Cause of Action

23 40. That the Court declare, adjudge and decree that Defendants violated California
24 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
25 (including minimum and overtime wages), failing to provide one day of rest, failing to comply
26 with COVID-19 workplace requirements, failing to provide meal periods, failing to maintain
27 accurate records of meal periods, failing to authorize and permit rest periods, and failing to
28

maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage statements, and failing to indemnify necessary business expenses;

41. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

42. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

44. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

45. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

46. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate records of hours worked and meal periods, failure to timely pay all wages to terminated employees, failure to indemnify necessary business expenses, and failure to furnish accurate wage statements;

47. For all actual, consequential and incidental losses and damages, according to proof;

48. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all other applicable Labor Code provisions;

49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

50. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

51. For any additional relief that the Court deems just and proper.

1 Dated: September 25, 2024

Respectfully submitted,

2 MOON LAW GROUP, PC

3
4 By: 

Kane Moon
Allen Feghali
Julie Sohyun Oh

6 Attorneys for Plaintiff

7
8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury as to all causes of action triable by jury.

11
12 Dated: September 25, 2024

MOON LAW GROUP, PC

13
14 By: 

Kane Moon
Allen Feghali
Julie Sohyun Oh

16 Attorneys for Plaintiff

EXHIBIT A

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Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

July 2, 2022

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Los Angeles Philharmonic Association
151 S. Grand Avenue
Los Angeles, CA 90012

Notice of Labor Code Violations and PAGA Penalties

Re: ***Diane Alvarez v. Los Angeles Philharmonic Association***

To Whom It May Concern:

Please be advised that my office has been retained by Diane Alvarez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Los Angeles Philharmonic Association (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a Parking Ride Ticket Taker from approximately August 2021 to October 2021, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked at least 4 days per week, and typically in excess of 10 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of which should have been paid at the overtime rate. Also throughout the statutory period, Defendants shaved time from Plaintiff and the Aggrieved Employees, not paying them for all time worked. Also throughout the statutory period, Defendants failed to pay Plaintiff and the Aggrieved Employees the correct amounts for both regular rate pay and overtime pay, leading to underpayment of wages. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiff and the Aggrieved Employees were not permitted to leave the premises during their meal and rest breaks Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Plaintiff and the Aggrieved Employees were not permitted to leave the premises during their meal and rest breaks. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of uniforms and reflective vests, and the maintenance of those uniforms. Further, Plaintiff and the Aggrieved Employees were sometimes required to use their own personal vehicles for work purposes, without reimbursement. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Provide Suitable Seating

Labor Code § 1198 and 2698, et seq. requires suitable seating for employees. Defendants failed to make suitable seats available within reasonable proximity to Plaintiffs and the Aggrieved Employees' respective work areas. Plaintiffs and the Aggrieved Employees' shifts lasted over 5 hours, and often in excess of 8 hours, and they were not permitted any reprieve or ability to comfortably sit and rest other than meal and rest breaks, for which those were also lacking.

On information and belief, Plaintiff alleges that Defendants' policy of failing to provide Plaintiff and the Aggrieved Employees with suitable seating violated California law pursuant to California Industrial Welfare Commission Order No. 7-2001 ("IWC Wage Order 7-2001"), specifically, Section 14, which provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Defendants' policy of not providing suitable and adequate seating for standing positions was intentional and willful. Defendants unlawfully violated the provisions of Section 14 of the applicable IWC Wage Order because the seating provision would not in any way interfere with the performance of the respective duties of Plaintiff and the Aggrieved Employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 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 (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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by

Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 1198, IWC Wage Order 7-2001 by failing to provide suitable seats;
9. Labor Code § 226 by failing to provide accurate itemized wage statements; and
10. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

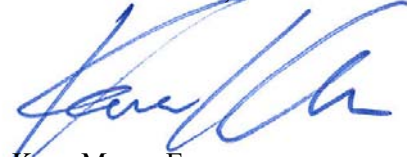
Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

LWDA
Notice of Labor Code Violations and PAGA
July 2, 2022
Page 10 of 10

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', with a stylized flourish at the end.

Kane Moon, Esq.
Attorney at Law

EXHIBIT B

MOON LAW GROUP, PC

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Kane Moon, Esq.
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August 20, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Los Angeles Philharmonic Association
151 S. Grand Avenue
Los Angeles, CA 90012

Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Diane Alvarez v. Los Angeles Philharmonic Association***
Case Number: LWDA-CM-892672-22

To Whom It May Concern:

Please be advised that my office has been retained by Diane Alvarez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Los Angeles Philharmonic Association (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a Parking Ride Ticket Taker from approximately August 2021 to October 2021, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked at least 4 days per week, and typically in excess of 10 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

California's laws regulating wages, hours, and working conditions reflect the state's strong commitment to safeguard workers and they are remedial in nature for the protection and benefit of employees. (Lab. Code § 200 et seq.) Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Further, Labor Code § 96 provides for the assignment of rights by an employee to the Labor Commissioner for claims for wages and penalties for nonpayment of wages. Moreover, Labor Code § 98.6 makes it unlawful to discriminate, retaliate, or discharge an employee for engaging in conduct protected under the Labor Code, including asserting wage claims. Similarly, Labor Code section 1102.5 prohibits employers from retaliating against an employee for disclosing information reasonably believed to be a violation of state or federal law either internally or to government or law enforcement agencies.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of which should have been paid at the overtime rate. Also throughout the statutory period, Defendants shaved time from Plaintiff and the Aggrieved Employees, not paying them for all time worked. Also throughout the statutory period, Defendants failed to pay Plaintiff and the Aggrieved Employees the correct amounts for both regular rate pay and overtime pay, leading to underpayment of wages. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiff and the Aggrieved Employees were not permitted to leave the premises during their meal and rest breaks Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees

were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Plaintiff and the Aggrieved Employees were not permitted to leave the premises during their meal and rest breaks. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded. Further, under Labor Code § 1198.5, every current and former employee has a right to inspect and receive a copy of his or her personnel records.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Provide a Day of Rest

Under California law, every person employed in any occupation of labor is entitled to one day's rest therefrom in seven. (Lab. Code § 551.) Labor Code § 552 prohibits employers from causing employees to work more than six days in seven. Defendant, however, failed to apprise employees of their entitlement to a day of rest and failed to provide employees with the statutorily guaranteed day of rest.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 558 for failing to provide the required day of rest.

Failure to Implement Procedures Relating to COVID-19

During the applicable statutory period, Labor Code § 6409.6 required employers to notify employees of potential COVID-19 exposure in the workplace within one business day and prohibited employers from retaliating against employees who disclosed a positive COVID-19 test, diagnosis, or order to isolate. Employers who fail to comply with this section could be subject to civil penalties, and under Labor Code § 6432, citations.

Despite these health and safety regulations in place during the COVID-19 pandemic, Defendant failed to implement proper procedures and practices in compliance with the law. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 6409.6.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer. Labor Code § 2800 further requires employers to indemnify employees for losses caused by the employer's lack of ordinary care.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of uniforms and reflective vests, and the maintenance of those uniforms. Further, Plaintiff and the Aggrieved Employees were sometimes required to use their own personal vehicles for work purposes, without reimbursement. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination. In addition, Labor Code § 216 makes it a crime for an employer having the ability to pay, knowingly and intentionally to refuse to pay wages which he knows are due.

Failure to Provide Suitable Seating

Labor Code § 1198 and 2698, et seq. requires suitable seating for employees. Defendants failed to make suitable seats available within reasonable proximity to Plaintiffs and the Aggrieved Employees' respective work areas. Plaintiffs and the Aggrieved Employees' shifts lasted over 5 hours, and often in excess of 8 hours, and they were not permitted any reprieve or ability to comfortably sit and rest other than meal and rest breaks, for which those were also lacking.

On information and belief, Plaintiff alleges that Defendants' policy of failing to provide Plaintiff and the Aggrieved Employees with suitable seating violated California law pursuant to California Industrial Welfare Commission Order No. 7-2001 ("IWC Wage Order 7-2001"), specifically, Section 14, which provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Defendants' policy of not providing suitable and adequate seating for standing positions was intentional and willful. Defendants unlawfully violated the provisions of Section 14 of the applicable IWC Wage Order because the seating provision would not in any way interfere with the performance of the respective duties of Plaintiff and the Aggrieved Employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 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 (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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).) Moreover, the check for payment of wages must be “payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument.” (Lab. Code, § 212.)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements. In addition, Defendant may be liable for violation of Labor Code §2810.5 by failing to provide notice to employees of any changes to their rates of pay, accrued paid sick leave, and other employment-related information, if these changes were not reflected on a timely wage statement furnished in accordance with § 226.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 551 and 552 by failing to provide one day's rest in seven;
6. Labor Code § 6409.6 by failing to comply with California's COVID-19 notice and workplace requirements;
7. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;

8. Labor Code § 227.3 by failing to pay all vacation wages at termination;
9. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
10. Labor Code § 1198, IWC Wage Order 7-2001 by failing to provide suitable seats;
11. Labor Code § 226 by failing to provide accurate itemized wage statements; and
12. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2). Defendant or other person acting on behalf of Defendant may be held liable under Labor Code § 558.1.

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON LAW GROUP, PC



Kane Moon, Esq.
Attorney at Law

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 725 S. Figueroa St., 31st Floor, Los
7 Angeles, California 90017. On September 25, 2024, I served the foregoing document described
8 as:

9 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**
10 X by E-mailing ___ the original X a true copy to the following:

11 **Paul Hastings LLP**
12 Felicia Davis, Esq. (feliciadavis@paulhastings.com)
13 Ankush Dhupar, Esq. (ankushdhupar@paulhastings.com)
14 515 South Flower Street, 25th Floor
15 Los Angeles, CA 90071
16 Phone: (213) 683-6000
17 Fax: (213) 627-0705

18 *Attorneys for Defendant Los Angeles Philharmonic Association*

19 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
20 accept electronic service, I caused the documents to be sent to the persons at the
21 electronic service addresses listed above via third-party cloud service
22 **CASEANYWHERE.**

23 X (State) I declare under penalty of perjury under the laws of the State of California
24 that the above is true and correct.

25 Executed on September 25, 2024, at Los Angeles, California.

26 Jessica Partida

27 /S/ Jessica Partida

28 _____
Name

Signature