

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement” or “Settlement”) is made by and between Plaintiff Julis Gray individually, on behalf of other allegedly aggrieved employees, and as a private attorney general on behalf of the state of California, the Labor Workforce Development Agency (“LWDA”), (collectively “Plaintiff”) and Defendant Moz Designs, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1.DEFINITIONS.

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Julis Gray v. Moz Designs Inc. et al.*, Case no. 22CV023297 initiated on December 7, 2022 and pending in Superior Court of the State of California, County of Alameda.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the LWDA PAGA Payment to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid to the Court in connection with approval of this Settlement.

1.4. “Address Search” means the Administrator’s search for current mailing addresses using the National Change of Address database.

1.5. “Court” means the Superior Court of California, County of Alameda.

1.6. “Defense Counsel” means Vorys, Sater, Seymour and Pease, LLP, including Cory D. Catignani.

1.7. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief.

1.8. “First Amended Complaint” means the amended complaint, attached hereto as **Exhibit A**, that will be filed in the Action to include the new facts and claims asserted in the Amended PAGA Notice in order to effectuate this Settlement.

1.9. “Gross Settlement Amount” means \$124,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s Enhancement Award, and the Administrator’s Expenses Payment.

1.10. “Individual PAGA Payment” means the PAGA Group Member’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the PAGA Group Member worked during the PAGA Period.

1.11. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.12. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.13. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i) less PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s Enhancement Award, and Administration Expenses Payment

1.14. “PAGA Counsel” means Graham Hollis, APC, including, but not limited to, Hali Anderson and Nora Steinhagen, the attorneys representing the Plaintiff in the Action.

1.15. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.16. “PAGA Group Member” means all current and former non-exempt employees of Defendant who worked for Defendant in California during the PAGA Period and includes Plaintiff, individually and as a private attorney general on behalf of the state of California, the Labor Workforce Development Agency (“LWDA”).

1.17. “PAGA Group Member Data” means the confidential document that will be provided to the Administrator only if the Settlement is approved identifying all PAGA Group Members by name, last-known mailing address, Social Security number, and number of PAGA Pay Periods worked during the PAGA Period.

1.18. “PAGA Pay Period” means any one of Defendant’s payroll periods encompassed by the PAGA Period during which a PAGA Group Member recorded hours worked for Defendant for at least one day.

1.19. “PAGA Period” means the period from October 3, 2021 through the earlier date of June 21, 2023 or the date upon which the Court approves the Settlement.

1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. “PAGA Letter” means the letter, attached hereto as **Exhibit B**, that will be sent to PAGA Group Members accompanying the Individual PAGA Payments.

1.22 “PAGA Notices” means Plaintiff’s August 18, 2022 letter (“Original PAGA Letter”) and December 15, 2022 amended letter (“Amended PAGA Letter”) to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.23 “PAGA Releasors” means Plaintiff, PAGA Group Members, the state of California, the LWDA, and all persons purporting to act on the PAGA Releasors’ behalf or purporting to assert a claim under or through them.

1.24. “Total PAGA Payment” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Group Members (\$31,000.00) and the 75% to LWDA (\$93,000.00 less PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff’s Enhancement Award, and the Administration Expenses Payment) in settlement of all PAGA Claims.

1.25. "Plaintiff" means Julis Gray, the named plaintiff in the Action, individually, on behalf of other allegedly aggrieved employees, and as a private attorney general on behalf of the state of California, the Labor Workforce Development Agency ("LWDA").

1.26. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.27. "Released PAGA Claims" means the claims being released by PAGA Releasers, Plaintiff, PAGA Group Members and PAGA Counsel and as described in Paragraph 5 below.

1.28. "Released Parties" means: Moz Designs, Inc., its parent company Armstrong World Industries, Inc., and each of their former and present directors, officers, partners, shareholders, owners, members, principles, agents, representatives, employees, administrators, auditors, attorneys, insurers, predecessors, successors, assigns, parent corporations, subsidiaries, divisions, sister companies, and affiliates.

1.29. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.30. Defendant means named Defendant Moz Designs, Inc.

1.31. "Plaintiff's Enhancement Award" means the sum of money to be deducted from the LWDA PAGA Payment that Plaintiff will request in recognition of his effort in obtaining the benefits of the Settlement. The Enhancement Award shall not exceed \$5,000. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

2. RECITALS.

2.1. On August 18, 2022, Julis Gray submitted the Original PAGA Letter to the LWDA alleging the following violations on behalf of himself and other allegedly aggrieved employees: (1) failure to provide legally compliant meal and/or rest periods and/or timely pay premium wages; (2) failure to timely pay all minimum, regular, overtime and/or double time wages; (3) failure to provide accurate itemized wage statements; (4) failure to maintain accurate employment records; and (5) failure to reimburse necessary business expenses.

2.2. On December 7, 2022, Plaintiff commenced this Action by filing a Complaint alleging individual claims on behalf of Julis Gray for alleged violations of the Fair Employment and Housing Act and California Labor Code, as well as a representative cause of action under the Labor Code Private Attorneys General Act (PAGA) on behalf of himself, the state of California, LWDA, and other current and former non-exempt employees of Defendant in California.

2.3. On December 15, 2022, Plaintiff submitted an Amended PAGA Letter to the LWDA alleging violations of Labor Code Sections 201-203 for alleged failure to timely pay all wages due and owing upon separation of employment and/or the applicable penalties.

2.3. Defendant denies the allegations in the PAGA Notices, the Complaint and the to-be-filed First Amended Complaint, denies any failure to comply with the laws identified therein, and denies any and all liability for the causes of action alleged.

2.5. From approximately January of 2023 until May of 2023, the Parties engaged in settlement discussions over the phone and via email, which led to this Agreement to settle the Action.

2.6. Prior to negotiating the Settlement, Plaintiff obtained, through informal discovery, Plaintiff's wage statements and time records, Plaintiff's personnel file, and aggregate data including the total number of current and former PAGA Group Members and pay periods worked.

2.7. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant agrees to pay \$124,000.00 as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Group Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. Of the Gross Settlement Amount, 25% (\$31,000.00) shall be allocated to the Individual PAGA Payments, and 75% (\$93,000.00 less deductions discussed in section 3.2) shall be allocated to the LWDA PAGA Payment.

3.2. Payments from the LWDA PAGA Payment. The Administrator will make and deduct the following payments from the LWDA PAGA Payment, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount which is currently estimated to be \$41,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$2,000. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the LWDA PAGA Payment. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and both Plaintiff and PAGA Counsel hold Defendant harmless, and agrees to indemnify Defendant, from any taxes, interest or penalties the IRS or any equivalent state agency claims are owed, and any dispute or controversy regarding any division or sharing of any of these Payments, including any attorneys' fees and expenses incurred by Defendant in defending against the same. Plaintiff and PAGA Counsel represent and warrant that there is no lien on any settlement proceeds by any other attorney who performed any services on Plaintiff's behalf in any way related to his employment or separation of employment from Defendant, including the PAGA Notices and this Action.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$1,854.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$1,854.00, the Administrator will retain the remainder in the LWDA PAGA Payment.

3.2.3. To Plaintiff Gray: An enhancement award not to exceed \$5,000.00, subject to Court approval. To the extent the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the LWDA PAGA Payment.

3.3. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Group Members' 25% share of the Total PAGA Payment (\$31,000) by the total number of PAGA Period Pay

Periods worked by all PAGA Group Members during the PAGA Period and (b) multiplying the result by each PAGA Group Member's PAGA Period Pay Periods. PAGA Group Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.4. If the Court approves a Total PAGA Payment of less than the amount requested, the Administrator will allocate the remainder to the LWDA PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.5. Tax Treatment of Settlement Amounts. With regard to settlement payments to PAGA Group Members reflecting each PAGA Group Members' share of PAGA penalties, IRS Form 1099s will be issued if required. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any PAGA Group Members' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel fees and costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. PAGA Group Member Pay Periods. Based on a review of its records to date, Defendant estimates there are 33 PAGA Group Members who worked a total of 1,156 PAGA Pay Periods.

4.2. PAGA Group Member Data. Within 14 calendar days of the Effective date, Defendant will deliver the PAGA Group Member Data to the Administrator in the form of a Microsoft Excel spreadsheet via a secure link. To protect PAGA Group Members' privacy rights, the Administrator must maintain the PAGA Group Member Data in strict confidence, use the PAGA Group Member Data only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA Group Member Data to Administrator employees who need access to it in order to perform its duties under this Agreement. Under no circumstances shall the Administrator provide any PAGA Group Member Data to Plaintiff, PAGA Counsel or any of PAGA Counsel's agents, employees, independent contractors or anyone else acting on their behalf. Defendant has a continuing duty to immediately notify the Administrator and PAGA Counsel if they discover that the PAGA Group Member Data omitted applicable employee identifying information and to provide corrected or updated data to the Administrator as soon as reasonably feasible.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Expenses Payment, and the Plaintiff's Enhancement Award. Disbursement of the PAGA Counsel Fees and Litigation Expenses Payments shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the PAGA Group Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 90 days after the date of mailing) when the check will be voided. The Administrator will

cancel all checks not cashed by the void date within 5 business days of the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Address Search for all PAGA Group Members whose checks are returned undelivered without USPS forwarding address. Within 7 calendar days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through use of the National Change of Address Database. The Administrator need not take further steps to deliver checks to PAGA Group Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any PAGA Group Member whose original check was lost or misplaced, requested by the PAGA Group Member prior to the void date.

4.4.3. For any PAGA Group Member whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the LWDA.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the PAGA Group Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Upon the Court's approval of the Settlement, all PAGA Releasers and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Release by PAGA Releasers:

All PAGA Releasers are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and legal claims stated in the PAGA Notices, Complaint and First Amended Complaint, including, but not limited to, claims for PAGA penalties based on violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, and 2802, as well as IWC Wage Order Nos. 1-2001 and 4-2001, and Business and Professions Code §§ 17200, *et seq.*, based upon the facts and circumstances alleged or that reasonably could have been alleged in the August 18, 2022 Original PAGA Letter, the December 7, 2022 Complaint, the December 15, 2022 Amended PAGA Letter, and the to be filed First Amended Complaint attached hereto as **Exhibit A**.

5.2 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, partners, representatives, successors and assigns the Released Parties from any and all claims for PAGA Fees incurred in connection with the Original PAGA Letter, the Complaint, the Amended PAGA Letter, the First Amended Complaint, and any other services or work performed in any way relating to the Action.

5.3. Plaintiff has entered into a separate agreement releasing all individual claims arising from his employment and separation of employment from Defendant.

6. FILING OF FIRST AMENDED COMPLAINT

6.1. Plaintiff shall file a request for dismissal of Armstrong World Industries, Inc., from the Action without prejudice no later than May 25, 2023, or within one court day of his individual settlement agreement and PAGA Settlement Agreement being fully executed, whichever is later.

6.2. Within three (3) court days of the Court's approval of the Settlement, Plaintiff shall file the First Amended Complaint, attached hereto as **Exhibit A**, naming Moz Designs, Inc., as the sole defendant.

6.3. Defendant is not required to submit a responsive pleading to the First Amended Complaint and shall not be considered to be in default or held in default for not responding to the First Amended Complaint. PAGA Releasors will not pursue or file any request for default in the Action or induce anyone to intervene in the Action to do the same.

7. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

7.1 Plaintiff's and PAGA Counsels' Responsibilities. Plaintiff and PAGA Counsel –will prepare and deliver to Defense Counsel prior to filing all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including:

- (i) the application/motion for approval of all aspects of the Settlement, including any related fee motion, all supporting papers, as well as a proposed Order Granting Approval of PAGA Settlement and Judgment;
- (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of PAGA Group Member Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; confirming there are no any actual or potential conflicts of interest with any PAGA Releasor or PAGA Counsel; and the nature and extent of any financial relationship with Plaintiff, the LWDA, PAGA Counsel or Defense Counsel;
- (iii) a signed declaration from PAGA Counsel's firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (Original PAGA Notice and Amended PAGA Notice of alleged violations (Labor Code section 2699.3, subd. (a)), Complaint (Labor Code section 2699, subd. (1)(1)) and First Amended Complaint, this Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with any PAGA Releasor and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

PAGA Counsel shall provide the above papers to Defendant's Counsel no later than one (1) calendar day after the full execution of this Agreement so that Defendant's counsel can review, comment and revise the papers, and at least one (1) court day in advance of any filing deadline in time to meet the currently reserved June 21, 2023 hearing date for approval of this Settlement. The Parties will work in good faith on any disputes regarding the content of Motions, Order and Judgment filed to secure the court's approval of the Settlement. If the application/motion for approval of the settlement are not ready to be filed in time for the June 21, 2023, the Parties will execute a stipulation and order requesting the court shorten the time to hear the matter so that the June 21, 2023 hearing date can be maintained and requesting that if it cannot be maintained, that the Court hold a hearing on the earliest available date that is mutually agreeable to the Parties.

7.2 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to attempt to modify the Agreement in a manner acceptable to both Parties and otherwise satisfy the Court's concerns.

7.3 In the event that the Court does not grant the motion for approval after several attempts and after exhausting all good faith efforts to address any concern raised by the Court, the Parties will be restored to their positions prior to the execution of this Settlement Agreement and the Settlement Agreement shall be null and void and all documents submitted in support thereof shall be deemed inadmissible.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

9. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 33 Aggrieved Employees who worked 1,156 Pay Periods during the PAGA Period. Should the total number of Pay Periods increase by more than twenty percent (20% or 231 Pay Periods), the Gross Settlement Amount shall increase on a pro rata basis in accordance with the increase in the number of Pay Periods above 1,387 Pay Periods. Alternatively, Defendant may elect to end the PAGA Period on the date the number of pay periods exceeds 1,387.

10. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction solely for purposes of enforcing the Settlement.

11. WAIVER OF RIGHT TO APPEAL. If this Agreement is approved in its totality, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, extraordinary writs, and appeals in the Action. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the PAGA Notices, Complaint or First Amended Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, including the right to contest jurisdiction, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.0 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.1 Confidentiality. To the extent permitted by law, all negotiations and agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

13.2 Use and Return of Information provided to PAGA Counsel for Settlement Discussions and PAGA Group Member Data Provided to the Administrator. Information Defendant's Counsel provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries, in connection with settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any settlement privilege, existing contractual agreement, statute, or rule of court. Not later than 30 days after the Administrator discharges its obligation to pay out of all Settlement funds, the Administrator shall destroy all paper and electronic versions of PAGA Group Member Data received from Defendant and shall execute a certification confirming such destruction and that no PAGA Group Member Data remains in its possession.

13.3 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.4 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.5 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

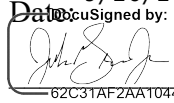
Graham**Hollis**, APC
Hali M. Anderson and Nora J. Steinhagen
3555 Fifth Avenue, Suite 200
San Diego, CA 92103
619-692-0800

To Defendant:

Vorys, Sater, Seymour and Pease, LLP
Cory D. Catignani
4675 MacArthur Court, Suite 700
Newport Beach, CA 92660
949-526-7904

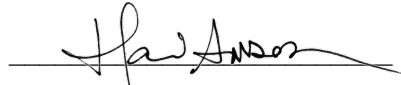
13.6 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.7 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that should the Court not approve the Settlement, the period of time from January 1, 2023 to the Court's Order denying the Settlement, shall not count towards the deadline for Plaintiff to bring the Action to trial under CCP section 583.310.

5/26/2023
Date:  Signed by:
 62C31AF2AA10443...

Julis Gray, For Plaintiff

Date: 5/26/2023



GRAHAMHOLLIS, APC, Counsel For Plaintiff

Date:

For Moz Designs, Inc.

Date:

Vorys, Sater, Seymour and Pease, LLP, Counsel for
Defendant Moz Designs, Inc.

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Date:

Julis Gray, For Plaintiff

Date:

GRAHAMHOLLIS, APC, Counsel For Plaintiff

Date:

05/26/2023

For Moz Designs, Inc. ERNEST NAO, G.M.

Date:

5/26/2023

Vorys, Sater, Seymour and Pease, LLP, Counsel for
Defendant Moz Designs, Inc.

EXHIBIT A

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

10 JULIS GRAY, as an individual, on behalf of
himself and all Aggrieved Employees in the
11 State of California,

12 Plaintiff,

13 v.

14 MOZ DESIGNS, INC. a corporation authorized
to do business in California

15 Defendant.
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Case No.: 22CV023297

*Unlimited Civil-
Amount Demanded Exceeds \$25,000.00*

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods
3. Failure to Pay All Minimum, Regular,
Overtime, and/or Double Time Wages;
4. Failure to Indemnify Necessary Business
Expenses;
5. Failure to Issue Accurate Itemized Wage
Statements;
6. Failure to Maintain Accurate Records;
7. Failure to Timely Pay All Wages Upon
Termination of Employment; and
8. Violation of California's Unfair Competition
Law (Bus. & Prof. Code §§ 17200 *et seq.*)
9. Discrimination Based on Race;
10. Harassment and Hostile Work Environment
Based on Race; and
11. Failure to Prevent Discrimination and
Harassment; and

**REPRESENTATIVE ACTION
COMPLAINT [LABOR CODE §§2698 et
seq.]**

12. Representative Action for PAGA Penalties
(Labor Code § 2698 *et seq.*)

– JURY TRIAL DEMANDED –

17 Plaintiff Julis Gray ("Plaintiff"), individually and on behalf of other allegedly aggrieved employees
28 employees of MOZ DESIGNS, INC., alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this individual action for discrimination on the basis of race, harassment on the basis of race, and failure to prevent and failure to take reasonable steps to prevent discrimination and harassment under the Fair Employment and Housing Act (“FEHA”), codified in California Government Code (“Government Code”) §§ 12940, *et seq.* This action arises out of events that occurred during Plaintiff’s employment with Defendant.

2. Plaintiff further brings this individual action against Defendant for failing to provide legally compliant meal and rest breaks, failing to pay all wages owed, failing to indemnify all necessary business expenses, failing to issue accurate wage statements, failing to maintain accurate records, failing to timely pay all wages upon termination of employment, and engaging in unfair business practices.

3. Plaintiff also brings this representative enforcement action under the Private Attorneys General Act of 2004, codified in California Labor Code §§ 2698 *et seq.*, (“PAGA”) on behalf of himself and all other current or former non-exempt employees of Defendant Moz Designs, Inc., in California who suffered at least one of the Labor Code violations alleged herein within the applicable statute of limitations up to the time this action is brought to trial (referred to herein collectively as “Aggrieved Employees”).

4. Plaintiff alleges that Defendant engaged in a systematic pattern of wage and hour violations under California law, including the Labor Code and rules promulgated by the IWC Wage Orders, including, but not limited to:

- a. Failing to provide the opportunity to take legally compliant meal periods and/or timely pay premium wages in lieu thereof;
- b. Failing to authorize and permit legally compliant rest periods and/or timely pay premium wages in lieu thereof;
- c. Failing to timely compensate for all hours actually worked, including minimum, regular, overtime, and/or double time wages;
- d. Failing to reimburse for necessary business expenses;
- e. Failing to furnish accurate itemized wage statements;
- f. Failing to maintain accurate records;
- g. Failure to timely pay all wages due upon separation of employment;

h. Engaging in unlawful, unfair and/or fraudulent business practices; and

i. Violating the Private Attorneys General Act of 2004 (“PAGA”).

5. By and through this action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, statutory penalties, civil penalties, and injunctive relief, as well as attorneys’ fees and litigation costs, as provided under California law.

II. PARTIES

A. PLAINTIFF

6. Plaintiff Julis Gray is a natural person who is a resident of the County of Contra Costa, California.

7. Plaintiff engaged in work for Defendant in Alameda County, California.

8. Plaintiff was classified by Defendant as non-exempt for purposes of the Labor Code and the IWC Wage Orders.

B. DEFENDANT

9. Defendant Moz Designs, Inc. is a corporation authorized to do business, and actually doing business, in the state of California. Moz Designs, Inc. designs and fabricates architectural metal sheets, columns, ceilings, walks, and room dividers.

10. At all relevant times, Defendant Moz Designs, Inc. was covered by and subject to suit under the FEHA. On information and belief, Defendant Moz Designs, Inc. employs in excess of five (5) employees.

III. JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction to hear this case because Plaintiff is informed and believes that the monetary damages and restitution sought herein for Defendant’s conduct exceeds the minimum jurisdictional limits of the Superior Court.

12. This Court has personal jurisdiction over Defendant. Defendant conducts business in the state of California. Plaintiff alleges defendant has caused injuries in the County of Alameda, through their acts, omissions, and violations of the Labor Code, Government Code, and/or California Business and Professions Code (“Business & Professions Code”).

13. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil Procedure

§§ 395(a) and 395.5. Defendant transacts business in Alameda County and is otherwise within the Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein arose in Alameda County and had a direct effect on Plaintiff within Alameda County.

IV. GENERAL ALLEGATIONS

14. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

15. Plaintiff was employed by Moz Designs, Inc. as a Metal/Welder Fabricator ("Welder") from approximately August 30, 2021 until October 21, 2022, when Plaintiff was forced to resign due to racial discrimination, racial harassment, and failure to prevent racial discrimination and harassment. As a Welder, Plaintiff was responsible for creating and shaping metal products.

16. At all times, Plaintiff was a dutiful and committed employee who worked approximately five to six days per week and in excess of 40 hours per week. At the time of his hiring, Plaintiff was paid an hourly rate of \$20.00, which was increased to \$21.00 on approximately May 30, 2022. Plaintiff was paid on a bi-weekly basis.

17. Plaintiff is of Black race, a protected class under FEHA. During his employment, Plaintiff suffered violations of discrimination and harassment on the basis of his race. As alleged herein, Defendant were fully aware of the unlawful acts of discrimination and harassment taken against Plaintiff and failed to take any reasonable steps to prevent the discrimination and harassment from occurring, thereby causing substantial harm to Plaintiff.

18. Throughout his employment, Plaintiff was regarded as a hardworking, dedicated, and effective Welder. He consistently met Defendant's performance standards.

19. At all material times, Defendant was predominantly comprised of non-Black employees. Upon information and belief, Plaintiff's managers and coworkers were all non-Black.

20. Plaintiff alleges that Defendant engaged in a pattern and practice of discrimination and harassment on the basis of race by making racially motivated comments about Plaintiff during work-related discussions. For instance, the majority non-Black workforce frequently laughed at and mocked Plaintiff, and on one occasion Plaintiff entered the break room and employees of Defendant began making monkey noises at him. Plaintiff felt humiliated and demeaned by this. On another occasion, Plaintiff's

1 team was eating pizza for lunch and a co-worker told him “you only get fried chicken.” Furthermore,
2 employees of Defendant have referred to Plaintiff as “killer” and “gangster.” Defendant’s officers,
3 directors, and/or managing agents were aware of these discriminatory and harassing comments, as Plaintiff
4 filed complaints to his supervisor. However, the unlawful behavior continued unabated, perpetuating a
5 culture of racial discrimination and harassment at Plaintiff’s workplace.

6 21. Plaintiff alleges that Defendant failed to take all reasonable steps necessary to stop and
7 prevent unlawful discrimination and harassment from occurring in the workplace. Specifically, Defendant
8 failed to maintain anti-discrimination and anti-harassment policies, did not train employees on
9 discrimination and harassment laws, and did not have a procedure in place for employees to report
10 instances of discrimination or harassment. Though Plaintiff reported the discrimination and harassment to
11 his supervisor, nothing was done to remedy the situation. Thus, Defendant provided Plaintiff with no
12 means to obtain immediate corrective action for the racial discrimination and harassment he suffered.

13 22. Moreover, Defendant were fully aware of the discriminatory and harassing acts taken
14 against Plaintiff and nonetheless failed to take any remedial measures to end and/or deter future unlawful
15 behavior from occurring. Specifically, Plaintiff reported the discrimination and harassment to his
16 supervisor. However, Defendant failed to take any action to remediate the discriminatory and hostile
17 working conditions, leaving Plaintiff with no reasonable alternative but to resign.

18 23. As a result of Defendant’ discriminatory treatment and the hostile, offensive, and
19 oppressive work environment created by Defendant, Plaintiff suffered, and continues to suffer, harm to
20 his emotional and physical health. Plaintiff experienced stress and anxiety as a result of being harassed
21 and disrespected by employees of Defendant.

22 24. Plaintiff filed his individual claim of (1) discrimination (race and color); and (2) harassment
23 (race and color) against Defendant with the California Department of Fair Employment and Housing
24 (“DFEH”) on December 6, 2022 and received from the DFEH a “Right to Sue” letter that same day, which
25 is attached hereto as **Exhibit A**. Accordingly, Plaintiff has exhausted his administrative remedies with
26 DFEH, allowing him to bring the instant action.

27 25. Plaintiff further alleges that Defendant denied Plaintiff, and on information and belief,
28 other Aggrieved Employees certain rights afforded to them under the Labor Code and the applicable IWC

1 Wage Order. Specifically, Defendant failed to provide compliant meal and rest periods and/or timely pay
2 premium wages in lieu thereof, failed to properly compensate Plaintiff for all minimum, regular, overtime
3 and/or double time hours, failed to reimburse all necessary business expenses, failure to timely pay all
4 wages due upon separation of employment, and failed to furnish accurate itemized wage statements, and
5 failed to keep accurate records.

6 26. Defendant failed to provide Plaintiff and, on information and belief, other Aggrieved
7 Employees with compliant meal periods because Defendant had a practice of scheduling meal breaks up
8 to seven hours after the beginning of his scheduled shifts. Furthermore, Defendant had an unlawful
9 rounding policy that made it appear as though all of Plaintiff's meal breaks were at least thirty minutes
10 even when time punch records show the meal break was less than thirty minutes. In addition, on days
11 where Plaintiff worked approximately five and a half to six hours, he did not receive a meal break at all
12 despite not having signed a meal period waiver. Finally, on days where Plaintiff worked in excess of ten
13 hours in a workday, he did not receive a second meal period.

14 27. Defendant failed to authorize and permit Plaintiff and, on information and belief, other
15 Aggrieved Employees to take off-duty, uninterrupted rest periods of at least 10 minutes for every four
16 hours worked or major fraction thereof. Defendant did not provide Plaintiff with rest periods in compliance
17 with California law because Defendant had a policy of failing to schedule a second rest break on shifts
18 where Plaintiff worked eight hours or more.

19 28. Despite not receiving legally compliant meal and rest periods, Plaintiff asserts that he and
20 other Aggrieved Employees did not receive premium wages equivalent to an additional hour of pay at his
21 regular rate of pay for each day he was not provided with compliant meal and rest periods, in violation of
22 California labor laws, regulations, and the applicable IWC Wage Order.

23 29. Plaintiff alleges Defendant failed to timely pay Plaintiff and, on information and belief,
24 other Aggrieved Employees all minimum, regular, premium, overtime and/or double time wages for all
25 hours engaged in work or spent under the control of Defendant because Defendant has an illegal rounding
26 policy which systemically undercompensates Plaintiff. Defendant's rounding policy results in the
27 rounding of Plaintiff's meal breaks to seem compliant even when the time punch records show the meal
28 break was less than thirty minutes. Furthermore, Defendant has failed to pay Plaintiff and, upon

1 information and belief, other Aggrieved Employees premium wages owed for uncompliant meal and rest
2 periods.

3 30. Defendant failed to reimburse Plaintiff and, on information and belief, other Aggrieved
4 Employees for all necessary expenses incurred in the discharge of their job duties, as required by Labor
5 Code § 2802. For example, Plaintiff and, on information and belief, other Aggrieved Employees were
6 regularly required to use their personal equipment such as welding tools, to complete their employment
7 duties. Plaintiff and, on information and belief, other Aggrieved Employees did not receive any
8 reimbursement for use of their personal equipment as required by California law.

9 31. Defendant also failed to timely pay Plaintiff all wages due and owing at the time of
10 separation of employment within the time specified by Labor Code §§ 201 and 202 because Defendant
11 failed to compensate Plaintiff and, upon information and belief, other Aggrieved Employees with premium
12 wages for all noncompliant meal and rest periods, and failed to pay Plaintiff for all wages during
13 employment due to their illegal rounding policy.

14 32. Defendant also failed to furnish Plaintiff and, on information and belief, other Aggrieved
15 Employees with accurate itemized wage statements because the wage statements issued by Defendant did
16 not include the correct name of the legal entity that is the employer, the accurate amount of wages earned,
17 the actual total hours worked, the gross wages actually earned, and the net wages actually earned. Due to
18 Defendant's failure to furnish accurate itemized wage statements, Plaintiff was unable to promptly and
19 easily determine the total number of hours actually worked or the correct amount of wages due and owing
20 to him, among other things, without reference to other documents and information.

21 33. Furthermore, Defendant failed to maintain accurate employment records as required by
22 California law. Specifically, Defendant did not keep accurate records reflecting when Plaintiff and other
23 Aggrieved Employees started and ended each work period, meal periods, total daily hours actually
24 worked, total hours worked in each payroll period, and actual wages earned and paid, among other things,
25 in violation of California law.

26 34. Plaintiff alleges that Defendant has a policy, practice, procedure, guideline, and/or culture
27 of willfully failing to timely pay former Aggrieved Employees, such as himself, with all wages due and
28 owing upon separation of employment and/or the mandated waiting time penalties for the late payment of

1 such wages. For instance, Defendant failed to timely pay Plaintiff and other former Aggrieved Employees
2 all minimum, regular, and/or overtime wages, and reimburse them for all business expenses, in part due
3 to the aforementioned Labor Code violations.

4 35. As a result of All Defendant's policies and practices described herein, including their
5 failure to provide compliant meal and rest periods, failure to timely pay all earned wages, failure to
6 reimburse all necessary business expenses, failure to furnish accurate itemized wage statements, failure to
7 maintain accurate records, and failure to timely pay all wages due upon separation of employment,
8 Defendant has engaged in unlawful, unfair, and fraudulent business practices in violation of Business &
9 Professions Code §§ 17200 *et seq.*

10 36. On August 18, 2022, Plaintiff submitted written notice to the California Labor and
11 Workforce Development Agency ("LWDA") and Defendant as required by PAGA, informing them of
12 Defendant's alleged violations of the Labor Code. A true and correct copy of the August 18, 2022 written
13 notice is attached hereto as "**Exhibit B**" and incorporated herein by reference.

14 37. According to Labor Code §2699.3 the LWDA had sixty-five days from the date of
15 submission to notify the parties whether it intends to investigate the alleged violations. To date, the LWDA
16 has not informed Plaintiff that it intends to investigate the alleged violations. Thus, pursuant to PAGA,
17 Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative capacity on
18 behalf of himself, all other Aggrieved Employees, the general public and the state of California as
19 permitted by Labor Code section 2699.3.

20 38. On December 15, 2022, Plaintiff submitted his second written notice to the California
21 Labor and Workforce Development Agency ("LWDA") and Defendant as required by PAGA, informing
22 them of Defendant's alleged violations of the Labor Code. A true and correct copy of the December 15,
23 2022 written notice is attached hereto as "**Exhibit C**" and incorporated herein by reference.

24 39. According to Labor Code §2699.3 the LWDA had sixty-five days from the date of
25 submission to notify the parties whether it intends to investigate the alleged violations. To date, the LWDA
26 has not informed Plaintiff that it intends to investigate the alleged violations. Thus, pursuant to PAGA,
27 Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative capacity on
28 behalf of himself, all other Aggrieved Employees, the general public and the state of California as

permitted by Labor Code section 2699.3.

40. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

DEFINITION OF PAGA GROUP

41. By and through this representative action, Plaintiff intends to represent the following group of allegedly aggrieved employees (“Aggrieved Employees”) which is defined as:

“All current and former non-exempt employees of Defendant Moz Designs, Inc., that worked in California at any time between October 3, 2021 through and including June 21, 2023 (hereinafter the “PAGA Period”).

42. The Aggrieved Employees are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

43. A more precise definition of the Aggrieved Employees may be determined after further investigation and discovery.

PAGA DESIGNATION

44. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

45. The Twelfth Cause of Action alleged herein is appropriately suited for a PAGA action.

46. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to § 2699(i).

47. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed the Complaint, Defendant were Plaintiff’s and all other Aggrieved Employees’ employer or person acting on

1 behalf of Aggrieved Employees' employer, either individually or as an officer, agent, or employee of
2 another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid
3 to any employee a wage less than the minimum fixed by California state law, and as such, is subject to
4 civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code §
5 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

6 48. Plaintiff alleges he is an "Aggrieved Employee" under the PAGA because he was
7 employed by the alleged violator, Defendant, and had one or more of the alleged violations committed
8 against him, and therefore is properly suited to represent the interests of other Non-Exempt Employees.
9 (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v.*
10 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

11 49. Plaintiff alleges that all other Aggrieved Employees are also "Aggrieved Employees" under
12 the PAGA as Defendant employed them and all Aggrieved Employees experienced one or more of the
13 alleged violations outlined herein.

14 50. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies
15 because he complied with the notice requirements outlined in Labor Code § 2699.3. On August 18, 2022,
16 Plaintiff submitted notice to the LWDA and Defendant informing them of the Defendant' alleged Labor
17 Code violations pursuant to the PAGA. (See **Exhibit B**) Pursuant to the PAGA, the LWDA had 65 days
18 to provide notice of whether they intended to investigate the alleged violations. To date, the LWDA has
19 not provided notice of whether they intend to investigate the alleged violations. Plaintiff thus has the right
20 to pursue, and does pursue, his claims under the PAGA in a representative capacity pursuant to Labor
21 Code § 2699.

22 51. As set forth herein, Plaintiff alleges Defendant has committed, and continue to commit,
23 numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his
24 representative capacity, to recover, on behalf of himself, all other Aggrieved Employees, the state of
25 California, and the general public, civil penalties as well as attorneys' fees and costs from Defendant for
26 the alleged violations, described herein.

27 52. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the
28 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code

provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198. Plaintiff and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR TIMELY

PAY PREMIUM WAGES IN LIEU THEREOF

(Violation of Labor Code §§ 204, 226.7, 512, 558, and the “Meal Periods” Section of the

Applicable IWC Wage Order)

(Alleged by Plaintiff Individually Against Defendant)

53. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

54. Labor Code § 512(a) mandates:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

55. In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

56. A meal period generally complies with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duties and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040 [internal citations omitted].)

57. Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

58. Labor Code § 226.7(c) further provides:

If an employer fails to provide an employee a meal ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal ... period is not provided.

59. Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1 (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

60. Premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-114.)

61. Defendant failed to provide Plaintiff with the opportunity to take uninterrupted, timely, off-duty meal periods of at least 30 minutes. Plaintiff regularly worked in excess of five hours a day without

1 being provided a meal period before the end of his fifth hour of work, and regularly worked in excess of
2 ten hours a day without being provided a second meal period before the end of his tenth hour of work.
3 Defendant had a practice of scheduling meal periods at the start of the seventh hour of work. Moreover,
4 Plaintiff's meal periods were often less than thirty minutes. Furthermore, on days where Plaintiff worked
5 in excess of ten hours in a workday, he did not receive a second meal period.

6 62. Defendant knew or should have known that Plaintiff was not provided with the opportunity
7 to take lawful meal periods because they scheduled meal periods to occur at the beginning of the seventh
8 hour of work.

9 63. Despite not being provided with legally compliant meal periods, Plaintiff did not receive
10 premium wages equivalent to one additional hour of pay at his regular rate of pay for each workday he
11 was not provided with lawful meal periods.

12 64. Defendant's unlawful conduct caused Plaintiff to suffer damages in an amount which is
13 presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained
14 according to proof at trial.

15 65. Plaintiff seeks all available remedies for Defendant's violations, including but not limited
16 to, all wages due, monies, and interest to the extent permitted by law.

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR TIMELY PAY**
20 **COMPENSATION IN LIEU THEREOF**

21 **(Violation of Labor Code §§ 204, 226.7, and the "Rest Periods" Section of**
22 **the Applicable IWC Wage Order)**

23 **(Alleged by Plaintiff Individually Against Defendant)**

24 66. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all
25 paragraphs of this Complaint.

26 67. The "Rest Periods" section of the applicable IWC Wage Order provides:

27 (A) Every employer shall authorize and permit all employees to take rest
28 periods, which insofar as practicable shall be in the middle of each work
period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes of net rest time per four (4)

hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

68. An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

69. In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a ... rest ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission

(c) If an employer fails to provide an employee a ... rest ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the ... rest ... period is not provided.

70. Rest period premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

71. Plaintiff was not authorized or permitted to take an off-duty, uninterrupted, 10-minute rest period for every four hours worked or major fraction thereof because Defendant did not schedule a second rest break for shifts where Plaintiff worked over six hours. Consequently, Plaintiff did not receive legally compliant rest periods.

72. Defendant knew or should have known that Plaintiff was not authorized or permitted to take lawful rest periods because Defendant improperly failed to schedule a rest period for every four hours of work, or major fraction thereof, that Plaintiff worked.

73. Despite not being provided with legally compliant rest periods, Plaintiff did not receive one additional hour of pay at his regular rate of pay for each workday a legally compliant rest period was

1 not provided.

2 74. Defendant's unlawful conduct caused Plaintiff to suffer damages in an amount which is
3 presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained
4 according to proof at trial.

5 75. Plaintiff seeks all available remedies for Defendant's violations, including but not limited
6 to, any and all wages due, monies, and interest to the extent permitted by law.

7 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, OVERTIME, AND/OR**

10 **DOUBLETIME WAGES**

11 **(Violation of Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum**
12 **Wages" and "Hours and Days of Work" Sections of the**
13 **Applicable IWC Wage Order)**

14 **(Alleged by Plaintiff Individually Against Defendant)**

15 76. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all
16 paragraphs of this Complaint.

17 77. Labor Code § 204 establishes an employee's fundamental right in the state of California to
18 be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages
19 earned are due and payable twice during each calendar month on days designated in advance by the
20 employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular
21 payroll period. (Labor Code § 204(b)(1).)

22 78. Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission
23 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum wage
24 so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44
25 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in
26 the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].)

27 79. The "Minimum Wages" section of the applicable IWC Wage Order provides that "[e]very
28 employer shall pay to each employee, on the established payday for the period involved, not less than the

1 applicable minimum wage for all hours worked in the payroll period, whether the remuneration is
2 measured by time, piece, commission, or otherwise.”

3 80. The applicable IWC Wage Order defines “hours worked” as “the time during which an
4 employee is subject to the control of an employer, and includes all the time the employee is suffered or
5 permitted to work, whether or not required to do so.”

6 81. Labor Code § 1197.1 states:

7 Any employer or other person acting either individually or as an officer,
8 agent, or employee of another person, who pays or causes to be paid to any
9 employee a wage less than the minimum fixed by an applicable state or local
10 law, or by an order of the commission, shall be subject to a civil penalty,
restitution of wages, liquidated damages payable to the employee, and any
applicable penalties imposed pursuant to Section 203...

11 82. Labor Code § 1198 provides:

12 The maximum hours of work and the standard conditions of labor fixed by
13 the commission shall be the maximum hours of work and the standard
14 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

15 83. Labor Code §510(a), which codifies an employee’s right to overtime compensation,
16 provides:

17 Eight hours of labor constitutes a day's work. Any work in excess of eight
18 hours in one workday and any work in excess of 40 hours in any one
19 workweek and the first eight hours worked on the seventh day of work in
20 any one workweek shall be compensated at the rate of no less than one and
21 one-half times the regular rate of pay for an employee. Any work in excess
22 of 12 hours in one day shall be compensated at the rate of no less than twice
the regular rate of pay for an employee. In addition, any work in excess of
eight hours on any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an employee.

23 84. The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC
24 Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee
25 may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th
26 1420, 1430.)

27 85. Labor Code § 1194(a) mandates:

28 Notwithstanding any agreement to work for a lesser wage, any employee
receiving less than the legal minimum wage or the legal overtime

1 compensation applicable to the employee is entitled to recover in a civil
2 action the unpaid balance of the full amount of his minimum wage or
3 overtime compensation, including interest thereon, reasonable attorney's
4 fees and costs of suit.

5 86. Labor Code § 1194.2 further provides:

6 In any action under § 98, 1193.6, 1194, or 1197.1 to recover wages because
7 of the payment of a wage less than the minimum wage fixed by an order of
8 the commission or by statute, an employee shall be entitled to recover
9 liquidated damages in an amount equal to the wages unlawfully unpaid and
10 interest thereon.

11 87. Throughout the applicable statutory period, Defendant had a policy and practice of not
12 timely paying Plaintiff all minimum, regular, overtime and/or double time wages for all time engaged in
13 work on behalf of Defendant. For example, Defendant have an illegal rounding policy which
14 systematically undercompensated Plaintiff. Defendant rounded each time punch, which results in the
15 rounding of Plaintiff's meal breaks to seem compliant even when the time punch records show the meal
16 break was less than thirty minutes. Because of the unlawful rounding, when Plaintiff worked in excess of
17 eight and/or 12 hours in a day and/or 40 hours in a week, he was not timely paid all overtime and/or double
18 time wages. Furthermore, despite failing to provide compliant meal and rest periods, Defendant did not
19 pay Plaintiff premium wages for noncompliant meal and rest periods.

20 88. As a direct result of Defendant's unlawful failure to timely compensate Plaintiff minimum,
21 regular, overtime, and/or double time wages for all of his time worked, Plaintiff has suffered substantial
22 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
23 and attorneys' fees in seeking to compel Defendant to fully perform their obligations under state law, in
24 amounts according to proof at trial and within the jurisdictional limitations of this Court.

25 89. Plaintiff seeks all available remedies for Defendant's violations, including, but not limited
26 to any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent
27 permitted by law.

28 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

**(Violation of Labor Code § 2802 and the “Uniforms and Equipment” section of the
Applicable IWC Wage Order)**

(Alleged by Plaintiff Individually Against Defendant)

90. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

91. Labor Code § 2802(a) provides, in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

92. Labor Code § 2802(b) states, “[a]ll awards made by a court ... for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure including, but not limited to, reasonable costs and attorney’s fees incurred by the employee in enforcing their rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

93. Furthermore, Labor Code § 2802(c) states, “[f]or the purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section to be proven at time of trial.

94. The “Uniforms and Equipment” section of the applicable Wage Order provides that “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

95. Plaintiff incurred business expenses in direct consequence of their job duties through the use of his personal equipment, including welding tools. On information and belief, Plaintiff was required to use his personal welding tools to perform his job duties. Despite Defendant’s knowledge that Plaintiff was using his personal welding tools for work related purposes, Defendant failed to provide appropriate reimbursement for these expenses, in violation of Labor Code § 2802.

1 96. Plaintiff seeks all available remedies for Defendant's violations, including but not limited
2 to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

3 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(Violation of Labor Code §§ 226, 226.3, and the "Records" Section of the**

7 **Applicable IWC Wage Order)**

8 **(Alleged by Plaintiff Individually Against Defendant)**

9 97. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all
10 paragraphs of this Complaint.

11 98. Labor Code § 226(a) states in pertinent part:

12 Every employer shall, semimonthly or at the time of each payment of
13 wages, furnish each of his or her employees, either as detachable part of the
14 check, draft, or voucher paying the employee's wages, or separately when
15 wages are paid by personal check or cash, an accurate itemized statement in
16 writing showing (1) gross wages earned, (2) total hours worked by the
17 employee... (3) the number of piece-rate units earned and any applicable
18 piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
19 provided that all deductions made on written orders of the employee may
20 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
21 dates of the period for which the employee is paid, (7) the name of the
22 employee and only the last four digits of his or her social security number
23 or an employee identification number, (8) the name and address of the legal
24 entity that is the employer, ... and (9) all applicable hourly rates in effect
25 during each period and the corresponding number of hours worked at each
26 hourly rate by the employee....

27 99. The "Records" section of the applicable IWC Wage Order states

28 Every employer shall semi-monthly or at the time of each payment of wages
furnish each employee, either as a detachable part of the check, draft, or
voucher paying the employee's wages, or separately, an itemized statement
in writing showing: (1) all deductions; (2) the inclusive dates of the period
for which the employee is paid; (3) the name of the employee or the
employee's social security number; and (4) the name of the employer,
provided all deductions made on written orders of the employee may be
aggregated and shown as one item.

100. Meal and rest period premiums must be included on an employee's itemized wage
statement. (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 13 Cal.5th at p. 93.)

101. Labor Code § 226(e)(1) 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 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

102. An employee suffers injury where the employer fails to provide accurate information and the employee cannot “promptly and easily determine” the total number of hours worked or the “applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.” (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

103. Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily determine” means that “a reasonable person would be able to readily ascertain the information without reference to documents or information.”

104. According to Labor Code § 226(h), “an employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

105. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent violation.

///

106. Defendant failed to furnish Plaintiff with itemized wage statements that reflect the information required by California law, including, but not limited to, the correct amount of gross and net wages earned, the total hours worked, the correct applicable hourly rates of pay and the corresponding number of hours worked at each hourly rate, and the legal entity that is the employer. For instance, Plaintiff's wage statements failed to accurately reflect the correct amount of gross and net wages earned due to Defendant's failure to appropriately pay minimum, regular, overtime, and/or double time wages, as well as meal and/or rest period premium wages.

107. Due to the incorrect information on the furnished wage statements, Plaintiff was unable to

promptly and easily determine the total number of hours worked, the applicable hourly rates in effect during the pay period, and/or the corresponding number of hours worked at each hourly rate, among other things. Plaintiff also suffered injury from Defendant's failure to record the correct name of the legal entity that was his employer on Plaintiff's wage statements.

108. Plaintiff is entitled to, and seeks to recover, civil penalties pursuant to Labor Code § 226.3 for violations of Labor Code § 226(a).

109. Plaintiff is also entitled to, and seeks to recover, liquidated damages as provided by Labor Code § 226(e).

110. Furthermore, pursuant to Labor Code § 226(h), Plaintiff is entitled to and therefore seeks injunctive relief in order to ensure that Defendant complies with Labor Code § 226.

111. Plaintiff is further entitled to, and seeks to recover, reasonable attorneys' fees and costs as provided under Labor Code §§ 226(e)(1) and (h).

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SIXTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(Violation of Labor Code §§ 226, 1174, 1174.5, and the "Records" Section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually Against Defendant)

112. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

113. Labor Code § 1174(c) requires every employer to "keep a recording showing the names and addresses of all employees employed..."

114. Labor Code § 1174(d) further requires every employer to:

Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years.

115. The "Records" section of the applicable IWC Wage Order imposes more stringent

1 requirements and obligates employers to keep accurate information with respect to each employee
2 including time records showing when the employee begins and ends each work period, meal periods, total
3 daily hours worked, total wages paid each payroll period, total hours worked in the payroll period, and the
4 applicable rates of pay.

5 116. Pursuant to Labor Code § 226(b), an employer must keep the information required by
6 Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining
7 to their employment.

8 117. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain
9 accurate and complete records. This civil penalty is in addition to any other penalty.

10 118. Labor Code § 226(e)(1) further provides:

11 An employee suffering injury as a result of a knowing and intentional failure
12 by an employer to comply with subdivision (a) [of Labor Code § 226] is
13 entitled to recover the greater of all actual damages or fifty dollars (\$50) for
14 the initial pay period in which a violation occurs and one hundred dollars
15 (\$100) per employee for each violation in a subsequent pay period, not to
16 exceed an aggregate penalty of four thousand dollars (\$4,000), and is
17 entitled to an award of costs and reasonable attorney's fees.

18 119. As a direct result of Defendant's alleged illegal policies and practices described herein,
19 Defendant intentionally and willfully failed to maintain accurate payroll and employee records that
20 properly show, among other things, the total number of hours actually worked by Plaintiff, the proper
21 beginning and end of each work period, the actual beginning and end of each meal period, all earned
22 wages, and all wages paid. For instance, Defendant violated their recordkeeping requirements by failing
23 to keep on file accurate itemized wage statements.

24 120. Plaintiff has suffered injuries and damages as a consequence of Defendant's deliberate
25 failure to maintain accurate records as required by the Labor Code. Specifically, Plaintiff was denied his
26 legal right and protected interest in having accurate and complete employment records available to him.

27 121. Plaintiff is entitled to, and seeks to recover, damages and penalties, as outlined in Labor
28 Code §§ 226(e)(1) and 1174.5.

122. Plaintiff is entitled to, and seeks to recover, reasonable attorneys' fees and costs as provided
by Labor Code § 226(e)(1).

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING

UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201-203)

(Alleged by Plaintiff Individually Against Defendant)

123. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

124. Labor Code § 201(a) states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

125. Labor Code § 202(a) provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.

126. Labor Code § 203(a) further states

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

127. Meal and rest premiums constitute wages due and owing and thus must be factored into potential waiting time penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93.)

128. Defendant willfully failed to pay Plaintiff all wages due and owing at the time of separation and/or the required waiting time penalties for the late payment of such wages. For instance, Plaintiff ended his employment relationship with Defendant on October 21, 2022. However, Plaintiff was not paid all of his wages due and owing, including unpaid minimum, regular, overtime, double time, and/or premium wages, within 72 hours of his resignation. Plaintiff also contends that, to date, he has not received all wages or waiting time penalties owed to him.

129. As a consequence of Defendant’s willful and deliberate refusal to render all wages due and owing upon separation of employment, Plaintiff is entitled to and thus seeks a maximum of 30 days’ wages

1 at Plaintiff's daily rate of pay as a waiting time penalty, pursuant to Labor Code § 203.

2 130. As a direct result of Defendant's violations alleged herein, Plaintiff has suffered and
3 continues to suffer substantial losses related to the use and enjoyment of wages due and owing to him,
4 including lost interest on such monies, all to his respective detriment in an amount to be shown according
5 to proof at trial and within the jurisdictional limitations of this Court.

6 131. Plaintiff is also entitled to, and seeks to, recover reasonable attorneys' fees and costs as
7 permitted by Labor Code § 218.5.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **EIGHTH CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

11 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

12 **(Alleged by Plaintiff Individually Against Defendant)**

13 132. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 133. California Business & Professions Code section 17200, *et seq.*, prohibits acts of unfair
16 competition, which includes any "unlawful, unfair or fraudulent business act or practice."

17 134. A cause of action may be brought under the UCL if a practice violates some other law. The
18 "unlawful" prong of the UCL effectively deems a violation of the underlying law a per se violation of
19 Business & Professions Code sections 17200, *et seq.* (*Cel-Tech Commc'ns, Inc v. Los Angeles Cellular*
20 *Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or
21 common law – can serve as a predicate for a section 17200 "unlawful" violation. (*Farmers Ins. Exch. v.*
22 *Superior Court* (1992) 2 Cal.4th 377, 383.)

23 135. The "unfair" prong of the UCL does not require a practice to be specifically proscribed by
24 any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143.) Pursuant to the
25 California Supreme Court, the "unfair standard" is intentionally broad to give maximum discretion to
26 courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc., supra*, 20 Cal.4th at 180-81.)

27 136. Under the UCL, a "fraudulent" business act or practice is one where "members of the public
28 are likely to be deceived." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of

1 actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be
2 used to attack the deceptive manner in which otherwise lawful contract terms are presented to an
3 individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true
4 statement may be unlawful under section 17200 if it is “couched in such a manner that is likely to mislead
5 or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

6 137. As discussed herein, Defendant’s business practices violate all three prongs of California’s
7 UCL.

8 Unlawful Business Practices

9 138. As described herein, Defendant violated the Labor Code by, among other things, refusing
10 to properly and timely compensate Plaintiff for all time worked, including overtime wages. Failing to
11 compensate Plaintiff for all time worked is a clear violation of California law, and thus a per se violation
12 of the UCL. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180.) Defendant further violated California
13 law by failing to provide legally compliant meal and rest periods and/or by failing to pay premium wages
14 in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the
15 required waiting time penalties; failing to furnish accurate itemized wage statements; and failing to
16 maintain accurate records. Therefore, Defendant has clearly engaged in unlawful business practices.

17 Unfair Business Practices

18 139. Defendant intentionally avoided paying Plaintiff all wages, including overtime and
19 premium wages, in order to artificially lower the cost of doing business. Defendant’s conduct unfairly
20 deprived Plaintiff of all earned wages. Defendant also unfairly denied Plaintiff his right to meal and rest
21 periods by failing to inform him of his rights or provide him with the legally required meal and rest periods.
22 Further, Defendant unfairly denied Plaintiff access to accurate wage statements and employee records in
23 order to readily ascertain whether he was properly compensated.

24 Fraudulent Business Practices

25 140. Defendant acted fraudulently when they failed to timely pay Plaintiff all earned wages,
26 including overtime and premium wages. Additionally, Defendant regularly provided Plaintiff with wage
27 statements containing false information, particularly because Defendant did not record hours worked or
28 when meal periods were taken.

141. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent business practices, Plaintiff has suffered injury-in-fact and has lost wages rightfully owed to him.

142. Through their unlawful, unfair, and fraudulent conduct, Defendant have been unjustly enriched by receiving benefits and profits at the expense of Plaintiff. Therefore, pursuant to Business & Professions Code sections 17200, *et seq.*, Defendant should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff the wages wrongfully withheld from him.

143. Plaintiff is entitled to, and seeks, any and all available remedies including restitution and recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure section 1021.5, Business and Professions Code sections 17200 *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

NINTH CAUSE OF ACTION

DISCRIMINATION BASED ON RACE

(Violation of Cal. Gov. Code § 12940(a))

(Alleged by Plaintiff Individually Against Defendant)

144. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

145. The FEHA broadly prohibits discrimination against employees who belong to a "protected class," such as race. (Cal. Gov. Code §§ 12940, *et seq.*) Specifically, the FEHA prohibits employers from discriminating against an employee "in compensation or in terms, conditions, or privileges of employment" because of the race of that employee. (Cal. Gov. Code § 12940(a).)

146. To establish a *prima facie* claim of discrimination on the basis of race, a plaintiff must show that "he or she was a member of a protected class; was qualified for the position he sought; suffered an adverse employment action, and there were circumstances suggesting that the employer acted with a discriminatory motive." (*Jones v. Department of Corrections* (2007) 152 Cal.App.4th 1367, 1379.) As determined by the California Supreme Court, an adverse employment action constitutes any employment action that is "reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028,

1 1053-1054.)

2 147. Plaintiff is a member of a class protected by FEHA because he is of Black race.

3 148. Plaintiff was a dedicated, hardworking, and successful Welder who performed his duties
4 in an exemplary manner at all times.

5 149. Defendant, through their supervisors, agents, and/or employees, engaged in a pattern and
6 practice of unlawful discrimination on the basis of race in connection with their disparate treatment of
7 Plaintiff. For instance, Plaintiff was subjected to racist and abusive comments at work, deprived of a work
8 environment free of discrimination and harassment, and ultimately forced to resign from his position.

9 150. Defendant's officers, directors, and/or managing agents were aware of acts of
10 discrimination and harassment but did not take reasonable steps to stop and prevent any further acts.
11 Rather, Defendant ratified the discriminatory and harassing behavior by failing to take appropriate steps
12 to stop the discrimination after Plaintiff reported it to his supervisor.

13 151. Plaintiff suffered adverse employment actions from Defendant when he was subjected to
14 racist language and forced to endure a hostile and discriminatory work environment, and thereafter
15 constructively discharged.

16 152. Based on information and belief, Defendant's employees of non-Black race that were
17 similarly situated to Plaintiff did not suffer the aforementioned adverse employment actions. Specifically,
18 other Welders of non-Black race were not subject to demeaning and racially charged language or forced
19 to resign from their positions.

20 ///

21 153. As set forth above, Defendant and their supervisors, agents, and/or employees engaged in
22 and/or ratified, by their actions and/or inaction, through their employees and/or supervisors, acts of
23 discrimination against Plaintiff based upon his protected class.

24 154. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
25 has sustained and continues to sustain substantial losses in earnings, related employment benefits, and
26 employment opportunities. Plaintiff has suffered and continues to suffer other economic losses in an
27 amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

28 155. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff

1 has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and
2 physical pain and anguish, all to his damage in a sum to be established according to proof.

3 156. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
4 has incurred and will continue to incur psychological and medical expenses all to his damage in a sum to
5 be determined at trial.

6 157. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors
7 and/or managing agents of Defendant, who were acting at all times relevant to this Complaint within the
8 scope and course of their employment. Defendant is therefore liable for the conduct of said agents and
9 employees pursuant to Government Code Section § 12926(d).

10 158. Defendant committed the acts alleged herein maliciously, fraudulently, and oppressively
11 in conscious disregard for Plaintiff's rights and such acts were committed by and/or ratified by, and/or
12 were committed with the knowledge of employees' lack of fitness in the workplace but were allowed to
13 proceed, by officers, directors, and/or managing agents of Defendant. Plaintiff is, therefore, entitled to
14 recover punitive damages from Defendant in an amount commensurate with their wrongful acts and
15 sufficient to punish and deter future similar reprehensible conduct.

16 159. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled
17 to, and therefore seeks to, recover prevailing party attorney's fees and costs pursuant to Government Code
18 § 12965(b).

19 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

20
21 **TENTH CAUSE OF ACTION**

22 **HARASSMENT BASED ON RACE**

23 **(Violation of Cal. Gov. Code § 12940(j))**

24 **(Alleged by Plaintiff Individually Against Defendant)**

25 160. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 161. The FEHA prohibits "an employer, ... or any other person," from harassing employees on
28 the basis of race, and further imposes a duty on employers to prevent harassment on the basis of race from

1 occurring. (Cal. Gov't Code § 12940(j)(1).)

2 162. In Government Code § 12923, the California Legislature declared the following:

3 [H]arassment creates a hostile, offensive, oppressive, or intimidating work
4 environment and deprives victims of their statutory right to work in a place
5 free of discrimination when the harassing conduct sufficiently offends,
6 humiliates, distresses, or intrudes upon its victim, so as to disrupt the
7 victim's emotional tranquility in the workplace, affect the victim's ability
8 to perform the job as usual, or otherwise interfere with and undermine the
9 victim's personal sense of well-being.

10 163. The California Supreme Court has further held that one's right to be free from
11 discrimination and harassment in the workplace is "fundamental." (See *Brown v. Superior Court* (1984)
12 37 Cal.3d 477.) Accordingly, the FEHA's protections are extensive, as supervisors or other co-employees
13 can be held personally liable for any type of prohibited harassment under the FEHA. (Cal. Gov. Code §
14 12940(j)(3); see also *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1524.)

15 164. To state a *prima facie* claim of "hostile work environment" racial harassment under the
16 FEHA, a plaintiff must allege: "(1) she was 'subjected to verbal or physical conduct' because of her race,
17 (2) 'the conduct was unwelcome,' and (3) 'the conduct was sufficiently severe or pervasive to alter the
18 conditions of [her] employment and create an abusive work environment.'" (*Manatt v. Bank of America*,
19 *NA* (9th Cir.2003) 339 F.3d 792, 798 [quoting *Kang v. U. Lim Am., Inc.* (9th Cir.2002) 296 F.3d 810,
20 817]; *Etter v. Veriflo Corp.* (1998) 67 Cal.App.4th 457,464-465.) Moreover, "allegations of a racially
21 hostile work-place must be assessed from the perspective of a reasonable person belonging to the racial
22 or ethnic group of the plaintiff." (*McGinest v. GTE Serv. Corp.* (9th Cir. 2004) 360 F.3d 1103, 1115.)

23 165. Plaintiff is a member of a class protected by FEHA because he is of Black race.

24 166. During Plaintiff's employment, Defendant subjected him to a pattern of severe, pervasive,
25 and persistent racially harassing actions and conduct in violation of the FEHA. Defendant's employees
26 created and maintained a hostile work environment based on race by frequently laughing at and mocking
27 Plaintiff, making racially motivated jokes, referring to Plaintiff as "gangster" and "killer"; by making
28 other humiliating and demeaning comments about Plaintiff in the breakroom, among other improper and
harassing conduct.

167. The harassment Plaintiff was subjected to was based on his race and was so severe and
pervasive as to alter the conditions of Plaintiff's employment and make it more difficult for Plaintiff to

1 perform his job. Specifically, Plaintiff was humiliated and degraded in front of his peers, subjected to
2 abusive language by his coworkers, and was forced to endure intolerable working conditions.

3 168. Defendant's racial harassment severely offended, humiliated, distressed and/or intruded
4 upon Plaintiff, thereby disrupting Plaintiff's emotional tranquility in the workplace, causing unreasonable
5 interferences with his work performance, and undermining his personal sense of well-being.
6 Consequently, Plaintiff was deprived of his statutory right to work in a place free of discrimination.

7 169. A reasonable person belonging to Plaintiff's race would have considered the work
8 environment created by Defendant to be hostile, intimidating, offensive, oppressive, and/or abusive.

9 170. At all relevant times, Defendant had actual and constructive knowledge of the harassing
10 conduct described and alleged herein, and authorized, ratified, and/or participated in the harassment.
11 Specifically, Defendant engaged in harassing conduct by making demeaning and racist comments to
12 Plaintiff; including making monkey noises at him, making comments about fried chicken, and calling him
13 "gangster" and "killer," for which Defendant is strictly liable.

14 171. Defendant's conduct violated the FEHA's prohibition against harassment, and such
15 violations were a proximate cause in Plaintiff's damages, as stated below.

16 172. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
17 has sustained and continues to sustain substantial losses in earnings, related employment benefits, and
18 employment opportunities. Plaintiff has suffered and continues to suffer other economic losses in an
19 amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

20 ///

21 173. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
22 has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and
23 physical pain and anguish, all to his damage in a sum to be established according to proof.

24 174. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
25 has incurred and will continue to incur psychological and medical expenses all to his damage in a sum to
26 be determined at trial.

27 175. Defendant committed the acts alleged herein with malice, fraud, and oppression and in
28 conscious disregard for Plaintiff's rights, and such acts were committed by and/or ratified by Defendant's

1 officers, directors, and/or managing agents. Therefore, Plaintiff is entitled to recover punitive damages
2 from Defendant in an amount commensurate with Defendant's wrongful acts and sufficient to punish and
3 deter future similar reprehensible conduct.

4 176. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled
5 to, and therefore seeks to, recover prevailing party attorney's fees and costs pursuant to Government Code
6 § 12965(b).

7 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

8 **ELEVENTH CAUSE OF ACTION**

9 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**

10 **(Violation of Cal. Gov. Code § 12940(k))**

11 **(Alleged by Plaintiff Individually Against Defendant)**

12
13 177. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 178. The FEHA imposes an affirmative and mandatory duty on employers "to take all
16 reasonable steps necessary to prevent discrimination and harassment from occurring." (Cal. Gov. Code §
17 12940(k); see also *Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th
18 1021, 1035.) Reasonable steps include, at a minimum, "immediate corrective action that is reasonably
19 calculated to (1) end the current harassment and (2) to deter future harassment." (*M.F. v. Pacific Pearl*
20 *Hotel Management LLC* (2017) 16 Cal.App.5th 693, 701.)

21 179. During his employment, Plaintiff was subjected to discrimination and harassment based on
22 race, as set forth herein.

23 180. Defendant failed to take all reasonable steps necessary to prevent the unlawful
24 discrimination and harassment committed against Plaintiff. For instance, Plaintiff alleges that Defendant
25 did not maintain anti-discrimination and harassment policies and did not have a procedure for
26 investigating complaints of discrimination and/or harassment. Consequently, Plaintiff was provided no
27 means to obtain corrective action from Defendant to stop the discriminatory and harassing behavior. Thus,
28 Plaintiff was forced to endure discriminatory and hostile working conditions and left with no reasonable

1 alternative but to resign.

2 181. Plaintiff further alleges, based on information and belief, that Defendant's executive team
3 received Plaintiff's complaints that Plaintiff's co-workers was engaging in racial discrimination and
4 harassment, including complaints of and racist comments made towards Plaintiff, but took no remedial
5 action. Thus, Defendant failed to take any remedial measures to end and/or deter future unlawful behavior
6 despite being fully aware of the acts of discrimination and harassment taken against Plaintiff.

7 182. Defendant through their agents and/or supervisors, knew or should have known of the
8 discriminatory, harassing, and retaliatory conduct and failed to take immediate and appropriate corrective
9 action to permanently end and further deter unlawful behavior. Defendant's officers, directors, and/or
10 managing agents, including but not limited to Luis Aguilar, were well-aware of the persistent and
11 egregious acts of discrimination and harassment taken against Plaintiff, and/or participated in such
12 unlawful conduct, thereby allowing the acts to persist without taking adequate remedial measures, as
13 described herein.

14 183. Defendant's failure to take all steps reasonably necessary to prevent discrimination and
15 harassment violated the FEHA and allowed Plaintiff to be harassed and discriminated against. Such
16 violations were a proximate cause in Plaintiff's damages, as stated below.

17 184. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
18 has sustained and continues to sustain substantial losses in earnings, related employment benefits, and
19 employment opportunities. Plaintiff has suffered and continues to suffer other economic losses in an
20 amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

21 185. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
22 has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and
23 physical pain and anguish, all to his damage in a sum to be established according to proof.

24 186. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct, Plaintiff
25 has incurred and will continue to incur psychological and medical expenses all to his damage in a sum to
26 be determined at trial.

27 187. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled
28 to, and therefore seeks to, recover prevailing party attorney's fees and costs pursuant to Government Code

1 § 12965(b).

2 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

3 **TWELFTH CAUSE OF ACTION**

4 **REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE PRIVATE**

5 **ATTORNEYS GENERAL ACT (PAGA)**

6 **(Labor Code section 2698 *et seq.*)**

7 **Alleged by Plaintiff on Behalf of All Aggrieved Employees**

8 188. Plaintiff re-alleges and incorporates by reference the allegations contained in the
9 paragraphs above, as though fully set forth herein.

10 189. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a
11 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
12 boards, agencies or employees for violation of the code may, as an alternative, be covered through a civil
13 action brought by an aggrieved employee on behalf of himself or herself and other current or former
14 employees pursuant to the procedures specified in Labor Code § 2699.3.

15 190. This cause of action involves allegations of violations of Labor Code 201, 202, 203, 204,
16 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, which
17 pursuant to Labor Code § 2699.5, provide for a civil penalty to be assessed and collected by the LWDA
18 or recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
19 other current or former employees pursuant to the procedures specified in Labor Code §2699.3.

20 191. Plaintiff exhausted his obligation to provide administrative notice and now seeks penalties
21 on behalf of himself and other current and former California employees of Defendant.

22 192. Pursuant to Labor Code § 2699(a), Plaintiff seeks civil penalties, on behalf of himself and
23 all other current and former employees of Defendant that worked in non-exempt positions in California
24 (collectively referred to as the “Aggrieved Employees”).

25 193. Defendant employed Plaintiff and Plaintiff had one or more of the alleged violations
26 committed against him. Therefore, Plaintiff is an “Aggrieved Employee” under PAGA because the alleged
27 violators employed him and he had one or more of the alleged violations committed against him. As such,
28 Plaintiff is properly suited to represent the interests of other Aggrieved Employees in a PAGA

1 Representative action.

2 194. Plaintiff seeks the recovery of all available civil penalties under Labor Code section
3 2699(a).

4 195. For all provisions of the Labor Code for which a civil penalty is not specifically provided,
5 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100.00) for each
6 Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
7 Aggrieved Employee per pay period for each subsequent violation.

8 196. Defendant violated Labor Code §§201-203 by failing to timely pay Plaintiff all wages due
9 and owing upon separation of employment and/or the required waiting time penalties.

10 197. Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide Plaintiff and
11 Aggrieved Employees lawfully compliant meal periods and by failing to pay them meal period premium
12 wages for each day a meal period was not provided. Under Labor Code § 2699(f)(2), Defendant is subject
13 to a civil penalty of \$100 for each Aggrieved Employee per pay period for the initial violation of Labor
14 Code §§ 226.7, and \$200 for each Aggrieved Employee per pay period for each subsequent violation.

15 198. Defendant violated Labor Code §§ 204 and 226.7 by failing to authorize and permit
16 Plaintiff and Aggrieved Employees to take duty-free rest periods and by failing to pay them rest period
17 premium wages for each day a rest period was not provided. Under Labor Code § 2699(f)(2), Defendant
18 is subject to a civil penalty of \$100 for each Aggrieved Employee per pay period for the initial violation
19 of Labor Code §§ 226.7, and \$200 for each Aggrieved Employee per pay period for each subsequent
20 violation.

21 199. Defendant violated Labor Code sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1,
22 and 1198 by not paying Plaintiff and other Aggrieved Employees all minimum, regular, overtime, and/or
23 double time wages for all the time they were suffered or permitted to work, engaged in work and/or under
24 Defendant's control, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendant is subject
25 to a civil penalty of \$100 for each Aggrieved Employee per pay period for the initial violation of Labor
26 Code sections 1194 and 1198, and \$200 for each Aggrieved Employee per pay period for each subsequent
27 violation.

28 200. Under Labor Code § 210(a), Defendant, in addition to, and entirely independent and apart

1 from any other penalty, are subject to a civil penalty for failing to pay the wages of each Aggrieved
2 Employee as provided in Labor Code § 204, as follows: (1) For any initial violation, one hundred dollars
3 (\$100) for each failure to pay each Aggrieved Employee. (2) For each subsequent violation, or any willful
4 or intentional violation, two hundred dollars (\$200) for each failure to pay each Aggrieved Employee,
5 plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor
6 Commissioner.

7 201. Defendant violated Labor Code §§ 226(a), 1174(d), and 1198 by failing to maintain records
8 detailing premium wages for non-compliant breaks and knowingly and intentionally failing to maintain
9 and provide Plaintiff and other aggrieved employees of Defendant with wage statements itemizing
10 accurately all information required by Labor Code § 226(a), as alleged herein, including the total hours
11 worked, all regular hours worked, all overtime hours worked, the applicable hourly rate per hour worked,
12 and the total gross and net wages earned. Thus, under Labor Code § 2699(f)(2), Defendant is subject to a
13 civil penalty of \$100 for each Aggrieved Employee per pay period for the initial violation of Labor Code
14 §§ 226(a) and 1198, and \$200 for each Aggrieved Employee per pay period for each subsequent violation.

15 202. Defendant violated Labor Code § 2802 by failing to indemnify Plaintiff and other
16 Aggrieved Employees for all necessary expenditures incurred by them in direct consequence of their
17 duties. Under Labor Code § 2699(f)(2), Defendant is subject to a civil penalty of \$100 for each Aggrieved
18 Employee per pay period for the initial violation of Labor Code § 2802, and \$200 for each Aggrieved
19 Employee per pay period for each subsequent violation.

20 203. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
21 violation in an initial citation and \$1,000 for each violation in a subsequent citation, for which the
22 employer fails to keep the records required in subdivision (a) of section 226.

23 204. Labor Code § 1174.5 provides a civil penalty of \$500 for any person employing labor who
24 willfully fails to maintain accurate and complete records required by subdivision (d) of section 1174.

25 205. For bringing this action, Plaintiff is additionally entitled to attorney's fees and costs
26 incurred herein.

27 206. Plaintiff seeks to recover civil penalties on behalf of himself and other Aggrieved
28 Employees for Defendant's violations of the Labor Code, including but not limited to Defendant's alleged

violations of Labor Code §§ 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 pursuant to Labor Code section 2698, *et seq.* The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, in his representative and individual capacity, prays for judgment against Defendant in favor of the state of California, Plaintiff, and all other Non-Exempt Employees, as follows:

- a. For general damages;
- b. For special damages;
- c. For punitive and exemplary damages in an amount appropriate to punish Defendant for the wrongful conduct and set an example for others;
- d. For an award of liquidated damages to the extent permissible by Labor Code §§ 1194.2, 1197.1, 1197.5, and/or other applicable law;
- e. For all minimum, regular, overtime, and/or double time wages owed pursuant to Labor Code §§ 510, 558, 1194, 1197, and/or other applicable law;
- f. For premium wages pursuant to Labor Code § 226.7, and/or other applicable law;
- g. For waiting time penalties pursuant to Labor Code § 203, and/or other applicable law;
- h. For damages, pursuant to Labor Code § 226(e)(1), Civil Code § 3281, and/or other applicable law.
- i. For any and all penalties available for the Labor Code and IWC Wage Order violations alleged herein, including penalties under Labor Code §§ 203, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 1198.5(k), and/or other applicable law;
- j. For injunctive relief, pursuant to Labor Code § 226(h), Business & Professions Code § 17203, and/or other applicable law.
- k. For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5, 226(e)(1), 226(h), 1194(a), and 1198.5(l); Government Code § 12965(b); and/or other applicable law, theory, or doctrine;

- 1 l. For a declaratory judgment that Defendant violated Labor Code §§ 201-204, 226,
2 226.7, 432.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5,
3 1198, and 1198.5; the “Hours and Days of Work,” “Minimum Wages,” “Records,”
4 “Meal Periods,” and “Rest Periods,” sections of the applicable IWC Wage Order;
5 Business & Professions Code §§ 17200, *et seq.*; and Government Code § 12940;
6 m. For pre- and post- judgement interest to the extent permitted by California law;
7 n. For appropriate equitable relief pursuant to California; and
8 o. For any other relief, the Court may deem as just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial by jury to the extent authorized by law.

11
12 Dated:

GRAHAMHOLLIS APC

13 By:

14
15 _____
16 Graham S.P. Hollis
17 Hali M. Anderson
18 Nora J. Steinhagen
19 Attorneys for Plaintiff Julis Gray
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EXHIBIT B

NOTICE OF PAGA SETTLEMENT

Julis Gray v. Moz Designs, Inc.
(Superior Court of the State of California for the County of Alameda,
Case No. 22CV023297)

[Settlement Administrator]
[Name]
[Address]

[DATE]

Dear [NAME]:

The enclosed check is your proportional share of the civil penalties settlement payment in the California Private Attorneys General Act (“PAGA”) lawsuit titled *Julis Gray v. Moz Designs, Inc.* (Superior Court of California, County of Alameda, Case No. 22CV023297), filed on December 7, 2022. This was a representative action meaning it settled claims for civil penalties on behalf of Plaintiff Gray, the State of California, and all allegedly aggrieved employees.

Defendant strongly denies the claims, denies that it did anything wrong or violated any laws, and denies that it owes any penalties. To avoid further time and expense in litigation, Defendant and Plaintiff agreed to settle the case. The settlement resolves and releases all the claims that were asserted and could have been asserted in the lawsuit and the Court has approved the settlement and release of the PAGA claims.

You are receiving this check because you worked for Moz Designs, Inc. as an hourly (non-exempt) employee within the state of California at some point between October 3, 2021 through June 21, 2023, meaning you are a PAGA Member covered by the settlement. An IRS Form 1099 for 100% of this payment is also provided.

The settlement check shall remain valid for ninety (90) days. Checks remaining un-cashed for more than 90 days after issuance will be cancelled and the amounts paid instead to the Labor Workforce Development Agency.

Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date.