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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

ALAN GARCIA, an individual, for the real
party in interest, the State of California,

Plaintiff,

vs.

THE BRIGANTINE, INC.; and DOES 1
through 50;

Defendants.

Case No.: 37-2022-00042595-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code Section 2698 et seq.)**

1 Plaintiff ALAN GARCIA (“Plaintiff”), in his capacity as the State of California’s designated
2 proxy under the Private Attorneys General Act, and on behalf of other current and former California
3 employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendant THE
7 BRIGANTINE, INC. (“BRIGANTINE”) and DOES 1 through 50 (all defendants are hereinafter
8 collectively referred to as “Defendants”) for wage and hour violations of the California Labor Code
9 and the applicable Industrial Welfare Commission Wage Order (the “IWC Wage Order”).

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

16 3. Through this representative action, Plaintiff seeks to recover civil penalties under the
17 PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46 Cal.4th 969.)

18 **JURISDICTION AND VENUE**

19 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
20 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California
21 because Plaintiff alleges claims arising under California law.

22 5. This Court has jurisdiction over Defendants because each is believed to be an
23 association, corporation, business entity, or individual that conducts substantial business in the State
24 of California, County of San Diego.

25 6. Defendants do business in the County of San Diego, State of California.

26 7. This Court has jurisdiction over Plaintiff’s claim for civil penalties under PAGA.

27 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in the
28 Superior Court of California for the County of San Diego because this is where Plaintiff was employed

1 and where the wrongful misconduct alleged herein occurred.

2 **THE PARTIES**

3 9. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins Int'l*
4 *California, Inc.* (2020) 9 Cal.5th 73, 81. [The “government entity on whose behalf the plaintiff files
5 suit is always the real party in interest.”].)

6 10. Plaintiff is an “aggrieved employee” because he was employed by Defendants and had
7 one or more of the alleged violations committed against her, and therefore is properly suited to act on
8 behalf the state, and collect civil penalties for all violations committed against the Represented
9 Employees, who are also aggrieved employees as defined by Labor Code section 2699(c).

10 11. Plaintiff worked for Defendants during which time he was paid hourly and was
11 considered non-exempt.

12 12. Defendants are the owner and operator of a restaurant chain throughout California.

13 13. The true names and capacities, whether individual, corporate, associate or otherwise of
14 the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time. Plaintiff
15 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil
16 Procedure section 474. Plaintiff will seek leave to amend the operative complaint (“Complaint”) to
17 allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff
18 is informed and believes, and based thereon allege, that each of the DOE Defendants is in some
19 manner liable to Plaintiff for the events and actions alleged herein.

20 14. Plaintiff is informed and believes, and based thereon allege, that at all times, each
21 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the
22 other defendants and each were co-conspirators with respect to the acts and the wrongful conduct
23 alleged herein so that each is responsible for the acts of the other in connection with the conspiracy
24 and in proximate connection with the other defendants.

25 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
26 acting partly within and partly without the scope and course of their employment, and was acting with
27 the knowledge, permission, consent, and ratification of every other Defendant.
28

1 16. At all material times, Defendants were and/or are Represented Employees' employers
2 or persons acting on behalf of Represented Employees' employer, under California law, the IWC
3 Wage Order, and Labor Code sections 558 and 558.1 and thus are jointly and severally liable for the
4 violations alleged herein and any amounts awarded and/or recoverable as a result of this action.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 17. On August 16, 2022, Plaintiff, via counsel, sent the statutorily required notice to the
7 LWDA, indicating that Plaintiff intends to pursue claims against Defendants for violations of the
8 Labor Code.

9 18. On August 16, 2022, Plaintiff, via counsel, sent a copy of the August 16, 2022 notice
10 to Defendant BRIGANTINE.

11 19. The statutory period expired since Plaintiff sent the statutory notices to the LWDA and
12 LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
13 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A).

14 20. Therefore, Plaintiff has exhausted the administrative requirements under the PAGA.

15 **THE PAGA REPRESENTATIVE ACTION CLAIMS**

16 21. On information and belief, current and former employees of Defendants were subject
17 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
18 sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.7, 233, 234, 246, 510, 512, 1194, 1197.1, 1198,
19 2698, and 2699 et seq.

20 22. California law provides that an aggrieved employee may file a representative action
21 under the PAGA against an employer for civil penalties in connection with violations of the Labor
22 Code and IWC Wage Order.

23 23. Plaintiff brings this representative action against Defendants under the PAGA on behalf
24 of the state, who is the real party in interest.

25 24. The Causes of Action alleged in this Complaint are appropriately suited for a
26 Representative Action under the PAGA because:

- 27 a. Their action involves allegations of violations of provisions of the California Labor
28 Code that provide for a civil penalty to be assessed and collected by the LWDA or any

1 departments, divisions, commissions, boards, agencies or employees;

2 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
3 violator and had one or more of the alleged violations committed against her; and

4 c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set
5 forth above.

6 25. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties under the
7 PAGA for violations of the following Labor Code provisions:

8 a. failure to allow use of sick leave in violation of Labor Code section 233 and 234;

9 b. failure to allow exercise of rights afforded under Labor Code in violation of Labor Code
10 section 98.6;

11 c. failure to provide overtime wages in violation of Labor Code sections 510, 1194, 1198,
12 and the IWC Wage Order;

13 d. failure to provide accurate itemized wage statements in violation of Labor Code
14 sections 226(a), 226(a)(1), 226(a)(5), and 226(a)(9);

15 e. failure to provide meal periods in violation of Labor Code sections 512, 226.7, and
16 IWC Wage Order;

17 f. failure to provide rest periods in violation of Labor Code section 226.7, and IWC Wage
18 Order;

19 g. failure to provide meal and rest premium wages at the regular rate of pay in violation
20 of Labor Code section 226.7, and IWC Wage Order;

21 h. failure to pay earned wages in violation of Labor Code section 204;

22 i. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203;

23 **FIRST CAUSE OF ACTION**

24 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
25 **Sections 233 and 234 against all Defendants)**

26 26. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
27 forth herein.

28 27. Under Labor Code section 233, “[a]n employer shall not deny an employee the right

1 to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate
2 against an employee for using, or attempting to exercise the right to use, sick leave to attend to an
3 illness or the preventive care of a family member, or for any other reason specified in subdivision (a)
4 of Section 246.5”.

5 28. “An employer absence control policy that counts sick leave taken pursuant to Section
6 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per
7 se violation of Section 233. An employee working under this policy is entitled to appropriate legal
8 and equitable relief pursuant to Section 233.”

9 29. Upon information and belief, Defendants denied, disciplined, retaliated, and
10 discharged Plaintiff when he attempted to make use of his available sick leave in violation of Labor
11 Code sections 233 and 234. By way of example, Defendants would deny Plaintiff’s request to
12 withdraw from his scheduled shift as a result of his feeling ill. By way of another example, Defendants
13 would discipline Plaintiff for refusing to take on unplanned second shifts when he was feeling ill and
14 unwell. In fact, Defendants terminated Plaintiff for refusing to take on an unplanned second shift
15 even though Plaintiff explained that he was not feeling well enough to continue working beyond his
16 regularly scheduled hours.

17 30. Pursuant to Labor Code section 233(e) and/or any other applicable statute, Claimant
18 seeks to recover reasonable attorney’s fees and costs in an amount to be shown according to proof.

19 31. Plaintiff and the Represented Employees were entitled to paid sick leave.

20 32. Upon information and belief, Defendants failed to properly provide Plaintiff and the
21 Represented Employees with paid sick leave.

22 33. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
23 Labor Code sections 233 and 234.

24 34. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
25 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
26 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
27 all Labor Code provisions for which a civil penalty is not specifically provided.

28 35. Plaintiff is seeking civil penalties against Defendants, including Labor Code section

1 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
2 amount to be shown according to proof.

3 36. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
4 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
5 shown according to proof.

6 **SECOND CAUSE OF ACTION**

7 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**

8 **Section 98.6 against all Defendants)**

9 37. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
10 set forth herein.

11 38. Under Labor Code section 98.6(a) "A person shall not discharge an employee or in any
12 manner discriminate, retaliate, or take any adverse action against any employee or applicant for
13 employment because [...] of the exercise by the employee or applicant for employment on behalf of
14 himself, herself, or others of any rights afforded him or her".

15 39. Upon information and belief, Defendants denied, disciplined, retaliated, and
16 discharged Plaintiff when he attempted to make use of his sick leave hours accrued pursuant to section
17 246, and this resulted in Defendants' violation of Labor Code section 98.6.

18 40. Under Labor Code section 98.6(b)(1) "Any employee who is discharged, threatened
19 with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other
20 manner discriminated against in the terms and conditions of his or her employment because the
21 employee engaged in any conduct delineated in this chapter [...] shall be entitled to reinstatement and
22 reimbursement for lost wages and work benefits caused by those acts of the employer."

23 41. Under Labor Code section 98.6(b)(3), "an employer who violates this section is liable
24 for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of
25 this section to be awarded to the employee or employees who suffered the violation."

26 42. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
27 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
28 amount to be shown according to proof.

43. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

THIRD CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 510, 1194, and 1198 and IWC Wage Order against all Defendants)**

44. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

45. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one-and one-half times the regular rate of pay for an employee. Any work in excess 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. (Labor Code § 510 and IWC Wage Order.)

46. Upon information and belief, Defendants failed to properly provide Plaintiff and the Represented Employees with overtime pay for hours worked in excess of eight hours in a workday and/or hours worked in excess of 40 hours in one workweek.

47. Upon information and belief, Plaintiff and the Represented Employees would regularly receive additional nondiscretionary payments, including but not limited to, service charges, incentives and/or nondiscretionary bonuses.

48. Upon information and belief Plaintiff and the Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to include all compensation earned during a given period when determining the regular rate of pay, resulting in the underpayment of overtime wages.

49. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 510, 1194, 1198, and the IWC Wage Order.

50. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two

1 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
2 Code provisions for which a civil penalty is not specifically provided.

3 51. Pursuant to Labor Code section 558, any employer or other person acting on behalf of
4 an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision
5 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
6 to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them,
7 penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations,
8 and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

9 52. Plaintiff is seeking civil penalties against Defendants, including Labor Code sections
10 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing recovery
11 of civil penalties under the PAGA in an amount to be shown according to proof.

12 53. Pursuant to Labor Code section 1194, Plaintiff seeks to recover reasonable attorney's
13 fees, costs, interest, and civil penalties in an amount to be shown according to proof.

14 54. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
15 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
16 shown according to proof.

17 **FOURTH CAUSE OF ACTION**

18 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 19 **Section 226(a)(1) against all Defendants)**

20 55. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
21 forth herein.

22 56. Labor Code section 226(a)(1) requires that wage statements that an employer issues to
23 its employees accurately state the gross wages earned.

24 57. Defendants failed to accurately state the proper gross on the wage statements in
25 violation of Labor Code section 226(a)(1). By way of one example, the wage statements issued to
26 Plaintiff and the Represented Employees failed to include the accurate amount of gross wages because
27 it failed to include the proper amount of sick pay wages, overtime wages, and meal and rest premium
28 wages.

58. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement.

59. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226(a)(1).

60. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

61. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

62. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

63. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FIFTH CAUSE OF ACTION

(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code

Section 226(a)(5) against all Defendants)

64. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

65. Labor Code section 226(a)(5) requires that wage statements that an employer issues to its employees accurately state the net wages earned.

66. Defendants failed to accurately state the proper net on the wage statements in violation of Labor Code section 226(a)(5). By way of one example, the wage statements issued to Plaintiff and the Represented Employees failed to include the accurate amount of net wages because it failed to

1 include the proper amount of sick pay wages, overtime wages, and meal and rest premium wages.

2 67. All other claims alleged in this complaint have also resulted in a derivative claim of an
3 inaccurate itemized wage statement.

4 68. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
5 Labor Code section 226(a)(5).

6 69. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
7 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
8 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
9 all Labor Code provisions for which a civil penalty is not specifically provided.

10 70. With respect to violations of Labor Code section 226, Labor Code section 226.3
11 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
12 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
13 employee for each pay period.

14 71. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
15 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
16 PAGA in an amount to be shown according to proof.

17 72. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
18 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
19 shown according to proof.

20 **SIXTH CAUSE OF ACTION**

21 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 22 **Section 226(a)(9) against all Defendants)**

23 73. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
24 set forth herein.

25 74. Labor Code section 226(a)(9) requires that the employer's wage statements accurately
26 state all applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee.

28 75. Defendants failed to provide the applicable hourly rates in effect during the pay period

1 and the corresponding number of hours worked at each hourly rate by the employee in violation of
2 Labor Code section 226(a)(9).

3 76. By way of one example, the rates for sick pay, overtime, and meal and rest premiums
4 are inaccurately itemized.

5 77. All other claims alleged in this complaint have also resulted in a derivative claim of an
6 inaccurate itemized wage statement.

7 78. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
8 Labor Code section 226(a)(9).

9 79. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
10 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
11 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
12 all Labor Code provisions for which a civil penalty is not specifically provided.

13 80. With respect to violations of Labor Code section 226, Labor Code section 226.3
14 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
15 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
16 employee for each pay period.

17 81. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
18 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
19 PAGA in an amount to be shown according to proof.

20 82. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
21 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
22 shown according to proof.

23 **SEVENTH CAUSE OF ACTION**

24 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 25 **Section 226(a) against all Defendants)**

26 83. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
27 set forth herein.

28 84. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage

1 statement provided to an employee or a computer-generated record that accurately shows all of the
2 information required under 226(a)(1) through (a)(9).

3 85. Upon information and belief, during all times relevant to this action, Defendants failed
4 to keep records required under Labor Code section 226(a). By way of example, the copies of the
5 wage statements that Defendants kept do not include the accurate gross and net wages as well as all
6 applicable hourly rates and corresponding hours worked as described herein and in the aforementioned
7 paragraphs.

8 86. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
9 Labor Code section 226(a).

10 87. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
11 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
12 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
13 all Labor Code provisions for which a civil penalty is not specifically provided.

14 88. With respect to violations of Labor Code section 226, Labor Code section 226.3
15 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
16 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
17 employee for each pay period.

18 89. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
19 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
20 PAGA in an amount to be shown according to proof.

21 90. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
22 reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
23 shown according to proof.

24 **EIGHTH CAUSE OF ACTION**

25 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 26 **Sections 512, 226.7 and the IWC Wage Order against all Defendants)**

27 91. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
28 set forth herein.

1 92. Under Labor Code section 512 and the IWC Wage Order, an employer must provide a
2 meal period of at least thirty minutes if the employee works more than five hours. California Labor
3 Code section 512 “requires a first meal period no later than the end of an employee’s fifth hour of
4 work [...]” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

5 93. Labor Code section 226.7 prohibits an employer from requiring an employee to work
6 during a meal period and provides that an employee must be paid a wage for doing so.

7 94. Upon information and belief, during all times relevant to this action, Defendants failed
8 to provide Plaintiffs and the Represented Employees with compliant meal periods in violation of
9 Labor Code sections 512, 226.7, and the IWC Wage Order.

10 95. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
11 Labor Code sections 512, 226.7 and the IWC Wage Order.

12 96. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
13 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
14 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
15 all Labor Code provisions for which a civil penalty is not specifically provided.

16 97. Pursuant to Labor Code section 558, any employer or other person acting on behalf of
17 an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision
18 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
19 to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them,
20 penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial violations,
21 and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

22 98. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
23 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of
24 civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

25 99. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
26 reasonable attorney’s fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
27 be shown according to proof.

1 **NINTH CAUSE OF ACTION**

2 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code Sections 226.7**
3 **and the IWC Wage Order against all Defendants)**

4 100. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set
5 forth herein.

6 101. Rest periods under California labor law are required for non-exempt employees who
7 work three and a half (3 1/2) or more hours in a day. Employees are entitled to ten (10) minutes of
8 rest period for each four (4) hours, or a substantial fraction thereof, that they work in a day.

9 102. Labor Code section 226.7 prohibits an employer to require an employee to work during
10 a rest period and provides that an employee must be paid a wage for doing so.

11 103. Upon information and belief, during all times relevant to this action, Defendants
12 violated section 226.7 and the IWC Wage Order.

13 104. Upon information and belief, during all times relevant to this action, Defendants failed
14 to provide Plaintiff and the Represented Employees with proper rest periods in violation of the IWC
15 Wage Order. By way of example, Plaintiff would regularly work shifts of three and a half hours or
16 more but was not relieved to take a 10-minute rest period.

17 105. Under Labor Code section 226.7(c), if an employer fails to provide an employee with
18 a proper rest period, the employer shall pay the employee one hour of pay at the employee's regular
19 rate of compensation for each workday that the rest period is not provided.

20 106. At minimum, Plaintiff and the Represented Employees should have been paid a rest
21 period premium for missed, delayed, or shortened rest periods, which Defendants failed to pay. As
22 such, Defendants violated Labor Code section 226.7(c).

23 107. PAGA imposes upon Defendants, and each of them, penalties for violating Labor
24 Code section 226.7 and the IWC Wage Order.

25 108. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of
26 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
27 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
28 Code provisions for which a civil penalty is not specifically provided.

109. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

110. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of penalties under the PAGA in an amount to be shown according to proof.

111. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

TENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 226.7, 226.7(c), and the IWC Wage Order against all Defendants)**

112. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

113. Under Labor Code section 226.7(c), if an employer fails to provide an employee with a proper meal or rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

114. At minimum, Plaintiff and the Represented Employees should have been paid a meal and rest break premium for each and every missed, delayed, or shortened meal and rest period in an amount that was equivalent to their regular rate of pay for the pay period. Because Defendants failed to issue such meal and rest premiums at the regular rate of pay for the pay period, Defendants violated Labor Code section 226.7(c). (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

115. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 226.7, 226.7(c) and the IWC Wage Order.

116. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

117. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.7, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA as alleged herein in an amount to be shown according to proof.

118. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 204 against all Defendants)**

119. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

120. Pursuant to Labor Code section 204, Wages must be paid at least twice monthly on days designated in advance by the employer. Wages earned between the 1st and the 15th of each month must be paid by no later than the 26th of that month. (Labor Code § 204.) Wages earned between the 16th and the last day of each month must be paid no later than the 10th day of the following month. (*Id.*)

121. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages during the applicable pay period.

122. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 204.

123. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

124. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

125. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

TWELFTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 201, 202, and 203 against all Defendants)**

126. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

127. Under Labor Code section 201, if an employee is discharged by his/her employer, the wages earned and unpaid at the time of discharge are due and payable immediately.

128. Under Labor Code section 202, if on the other hand, “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.”

129. Labor Code section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... 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. ...”

130. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and the Represented Employees were owed sick pay wages, overtime wages, and meal and rest premium wages. To this date, Defendants have not paid those wages.

131. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 201, 202, and 203.

132. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

133. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

134. Pursuant to the PAGA, Labor Code section 2699(g), or any other applicable statute, Plaintiff seeks to recover reasonable attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

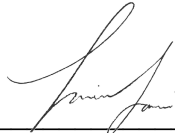
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant to the PAGA, California Labor Code section 2699(g) and/or other applicable law;
3. Post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

Dated: October 24, 2022

THE JAMI LAW FIRM P.C.

By: 

Tamim Jami
Attorney for Plaintiff
Alan Garcia