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16 Attorneys for Plaintiff PAUL F. MAISNIER,
17 on behalf of the general public as private attorney general.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF ALAMEDA**

20 PAUL F. MAISNIER, on behalf of the general
21 public as private attorney general,

22 Plaintiff,

23 v.

24 NATIONAL VISION, INC. dba AMERICA'S
25 BEST CONTACTS AND EYEGLASSES; and
26 DOES 1-50, inclusive,

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
11/29/2022 at 10:34:59 AM
By: Angela Linhares,
Deputy Clerk

CASE NO.: **22CV022738**

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

1 Plaintiff PAUL F. MAISNIER (“Plaintiff”), on behalf the general public and all non-
2 exempt aggrieved employees, acting on behalf of the California Attorney General as private
3 attorney general, asserts claims against Defendants NATIONAL VISION, INC. dba AMERICA’S
4 BEST CONTACTS AND EYEGLASSES; and DOES 1-50, inclusive (collectively “Defendants”)
5 as follows:

6 **I. INTRODUCTION**

7 1. This is a representative action for recovery of penalties under the Private Attorneys
8 General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved
9 employees” to bring a lawsuit as a representative action on behalf of the general public as private
10 attorney general and all other current and former aggrieved employees, to recover civil penalties
11 and address an employer’s violations of the California Labor Code.

12 2. In this case, Defendants violated various provisions of the California Labor Code.
13 As set forth below, Defendants implemented policies and practices which led to Defendant’s (a)
14 failure to pay wages including overtime; (b) failure to provide meal periods for every work period
15 exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour’s of
16 pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to
17 provide rest breaks for every four hours or major fraction thereof worked and failure to pay an
18 additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest
19 period; (d) failing to pay timely wages required by Labor Code § 203; (e) failing to provide
20 accurate itemized wage statements; (f) failing to reimburse expenses; and (g) unlawful deductions
21 from wages. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the
22 general public as private attorney general and all other aggrieved employees.

23 **II. JURISDICTION AND VENUE**

24 3. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, Section 10, which grants the Superior Court “original
26 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under
27 which this action is brought do not give jurisdiction to any other court.

28 4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
8 all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present (“liability period”), Defendant consistently maintained and enforced against
21 Defendant’s Non-Exempt aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
23 overtime; (b) failure to provide meal periods for every work period exceeding more than five (5)
24 or ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an
25 additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for
26 every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or
27 accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay
28 timely wages required by Labor Code § 203; (e) failing to provide accurate itemized wage

1 statements; (f) failing to reimburse expenses; and (g) unlawful deductions from wages. Plaintiff on
2 behalf of the general public as private attorney general and all other aggrieved employees bring
3 this action pursuant to Labor Code 2698, et seq. for violations enumerated under 2699.5 as
4 follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197,
5 1197.1, 1198, 2802, and seeking penalties, interest, attorneys' fees and costs.

6 **III. PARTIES**

7 **A. Plaintiff**

8 9. Plaintiff, PAUL F. MAISNIER was, at all times relevant to this action, a resident of
9 California. Plaintiff was employed by Defendants in approximately December 30, 2017, as a Non-
10 Exempt Employee with the title of Manager and worked during the liability period for Defendants
11 until Plaintiff's separation from Defendants' employ in approximately September 29, 2021.
12 Plaintiff's duties included but were not limited to: assisting customers, making the store profitable,
13 cutting costs, and other managerial tasks.

14 10. As Defendant's employee, Plaintiff, and all other aggrieved employees were
15 regularly required to and subsequently suffered:

16 a) perform work subject to the control of the employer without being compensated all
17 wages including overtime and minimum wages, all in violation of California labor laws,
18 regulations, and the Industrial Welfare Commission Wage Order ("IWC");

19 b) work without being permitted or authorized a minimum ten-minute rest period for
20 every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his
21 regular rate of compensation for each workday that a rest period was not provided, all in
22 violation of California labor laws, regulations, and the Industrial Welfare Commission Wage
23 Orders ("IWC");

24 c) work in excess of five and ten hours per day without being provided meal periods
25 and not compensated one (1) hour of pay at the regular rate of compensation for each workday that
26 a meal period was not provided, all in violation of California labor laws, regulations, and the
27 Industrial Welfare Commission Wage Orders ("IWC");
28

- d) not provided accurate itemized wage statements;
- e) not reimbursed for expenses;
- f) not timely paid wages;
- g) unlawful deductions from wages; and
- h) conducting and engaging in unfair business practices.

11. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages, minimum wages, overtime wages to its Non-Exempt Employees and Aggrieved Employees; nor have Defendants returned to Plaintiff or Aggrieved Employees, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

B. Defendants

12. Defendants NATIONAL VISION, INC. dba AMERICA'S BEST CONTACTS AND EYEGLASSES operate as optical retail stores and business. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

13. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capacities are ascertained.

14. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other Aggrieved Employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other

1 defendants.

2 **IV. GENERAL ALLEGATIONS**

3 15. At all times set forth herein, Defendants employed Plaintiff and other persons in the
4 capacity of non-exempt positions, however titled, throughout the state of California.

5 16. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
6 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
7 rules and regulations of the IWC California Wage Orders.

8 17. Defendants continue to employ Non-Exempt Employees, however titled, in
9 California and implement a uniform set of policies and practices to all non-exempt employees, as
10 they were all engaged in the job duties related to Defendants' optical retail business.

11 18. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
12 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
13 of the requirements of California's wage and employment laws.

14 19. Plaintiff is informed and believes that during the relevant time frame, all Aggrieved
15 Employees are citizens of the state of California.

16 20. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
17 Employees based upon an hourly rate.

18 21. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
19 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
20 at the employee's correct rate of pay per hour for overtime.

21 22. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
22 Employees' regular rate of pay including but not limited to by failing to include all forms of
23 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
24 commissions, training and orientation pay, shift differential pay, and other compensation for
25 overtime calculation purposes.

26 23. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
27 excess of five hours without being provided a lawful meal period and over ten hours in a day
28 without being provided a second lawful meal period as required by law.

1 24. Plaintiff and Aggrieved Employees missed meal breaks several times a week and
2 had late meal breaks more often than not. Meal breaks were interrupted daily and lasted for less
3 than the 30 minutes required by law. Defendants failed to pay premium wages for missed, short or
4 late meal breaks.

5 25. On information and belief, during the relevant time period, Defendants instructed
6 Plaintiff to modify his time to include lawfully required meal periods even during times when
7 Plaintiff and Aggrieved Employees did not receive a meal period at all.

8 26. Indeed, during the relevant time, as a consequence of Defendants' staffing and
9 scheduling practices, work demands, and Defendants' policies and practices, Defendants
10 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally compliant
11 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

12 27. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
13 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
14 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
15 required by law.

16 28. For instance, often times Plaintiff would work over 10 hours to conduct inventory
17 at the store. During inventory, managers were prohibited from leaving the store. Despite never
18 taking a second meal break, Plaintiff recorded that he did so to avoid being written up.

19 29. Plaintiff and Aggrieved Employees were required to keep their personal cellphones
20 on their persons at all times during their shifts in order to respond to work related calls, even
21 during meal periods.

22 30. On information and belief, Plaintiff and Aggrieved Employees did not waive their
23 rights to meal periods under the law.

24 31. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
25 meal periods.

26 32. Despite the above-mentioned meal period violations, Defendants failed to
27 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
28 one additional hour of pay at their regular rate as required by California law when meal periods

1 were not timely or lawfully provided in a compliant manner.

2 33. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
3 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
4 were entitled to receive premium wages based on their regular rate of pay under Labor Code
5 §226.7 but were not receiving such compensation.

6 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
7 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
8 period for every four hours worked or major fraction thereof, including third rest breaks which is a
9 violation of the Labor Code and IWC wage order.

10 35. Plaintiff and Aggrieved Employees were required to keep their personal cellphones
11 and their persons at all times during their shifts in order to respond to work related calls, even
12 during rest breaks.

13 36. Plaintiff and Aggrieved Employees were prohibited from leaving the premises
14 during their meal and rest periods.

15 37. Defendants maintained and enforced scheduling practices, policies, and imposed
16 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
17 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
18 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
19 provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

20 38. Despite the above-mentioned rest period violations, Defendants did not compensate
21 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
22 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
23 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
24 permitted.

25 39. On information and belief, Defendants also required Plaintiff and Aggrieved
26 Employees to work off the clock. For instance, Plaintiff, and on information and belief Aggrieved
27 Employees, were required to participate in COVID-19 screenings. During the pandemic and
28 throughout 2021, Defendants performed temperature checks of employees prior to them clocking-

1 in. Despite requiring these temperature checks, Defendants did not compensate Plaintiff
2 Aggrieved Employees for their time spent in COVID-19 screenings.

3 40. On information and belief, Defendants also required Plaintiff and Aggrieved
4 Employees to work off the clock because Defendants required employees to use their personal cell
5 phones for work related purposes, on and off the clock. For instance, Plaintiff, and on information
6 and belief Aggrieved Employees, were called on their personal cell phones while off the clock to
7 discuss work related matters. Defendants failed to compensate Plaintiff and Aggrieved Employees
8 for their time spent using their personal cell phone to discuss work related matters with
9 Defendants, while off the clock.

10 41. Defendants also failed to reimburse Plaintiff and Aggrieved Employees for
11 mileage. For instance, Plaintiff was required to drive to the bank in his personal vehicle on a near
12 daily basis. Defendants never reimbursed Plaintiff for mileage despite driving to the bank for work
13 purposes almost every day.

14 42. Defendants also failed to reimburse Plaintiff for costs related to providing food for
15 employees to celebrate the month's work. Plaintiff incurred out-of-pocket expenses each month
16 because Defendants required he purchase food for the employees as a celebratory gesture. Plaintiff
17 was never reimbursed for the years of out-of-pocket expenses associated with purchasing food for
18 the employees.

19 43. Defendants also failed to provide accurate, lawful itemized wage statements to
20 Plaintiff and the Aggrieved Employees in part because of the above-specified violations. In
21 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
22 worked, including premiums due and owing for meal and rest period violations, overtime pay,
23 gross pay and net pay figures from Plaintiff and the Aggrieved Employees' wage statements.

24 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
26 thereof for resignations without prior notice as the case may be) they had a duty to accurately
27 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
28 meal and rest period premiums, and that Defendants had the financial ability to pay such

1 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
2 because of the above-specified violations.

3 45. Defendants violated Labor Code section 203 by failing to timely pay Plaintiff and
4 Aggrieved Employees' final wages. For instance, Plaintiff was terminated on September 29, 2021,
5 but he did not receive his final pay on that day. Plaintiff received three (3) separate paychecks
6 including, 72 hours of COVID-19 pay two weeks after his termination and a bonus paycheck on
7 October 01, 2021, two days after his termination date. Plaintiff was not compensated for the days
8 he spent waiting for these final wages.

9 46. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned Defendants unlawfully deducted wages from Plaintiff's and Aggrieved Employees' pay
11 pursuant to Labor Code § 221. For instance, Defendants reimbursed Plaintiff for the business use
12 of his personal cell phone, however, paystubs show the reimbursements being taxed. Accordingly,
13 Defendants unlawfully deducted wages from Plaintiff's pay.

14 47. Upon information and belief, Defendants knew and or should have known that it is
15 improper to implement policies and commit unlawful acts such as:

16 (a) requiring employees to work four (4) hours or a major fraction thereof
17 without being provided a minimum ten (10) minute rest period and without compensating the
18 employees with one (1) hour of pay at the employees' regular rate of compensation for each
19 workday that a rest period was not provided;

20 (b) requiring employees to work in excess of five (5) hours or ten (10) hours
21 per day without being provided an uninterrupted thirty-minute meal period and/or a second meal
22 period, and without compensating employees with one (1) hour of pay at the regular rate of
23 compensation for each workday that such a meal period was not provided;

24 (c) failing to pay overtime and minimum wages;

25 (d) failing to provide accurate itemized wage statements;

26 (e) failing to timely pay Plaintiff and Aggrieved Employees;

27 (f) failure to reimburse business expenses;

28 (g) unlawfully deducting wages; and

1 (h) conducting and engaging in unfair business practices.

2 48. In addition to the violations above, and on information and belief, Defendants knew
3 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
4 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
5 knowingly, recklessly, and/or intentionally failed to do so.

6 49. Plaintiff and Aggrieved Employees they seek to represent are covered by, and
7 Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare
8 Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding
9 applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

10 **REPRESENTATIVE CLAIMS**

11 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

12 50. Plaintiff incorporates by reference and re-alleges each and every allegation
13 contained above, as though fully set forth herein.

14 51. On September 20, 2022, Plaintiff complied with notice requirements pursuant to
15 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
16 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
17 that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
18 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
19 representative capacity. The substance and violations set forth in this Complaint of which the
20 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
21 Action Complaint to the LWDA.

22 52. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
23 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
24 Employees of Defendants.

25 53. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
26 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
27 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
28 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and

1 California Code of Regulations, Title 8, section 11000 *et seq.*

2 54. At all times relevant, Plaintiff and all other aggrieved employees regularly
3 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
4 rest break requirements of the applicable IWC wage order and the Labor Code.

5 55. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
6 accurately pay at least minimum wages due as a result of Defendants' requiring Plaintiff and
7 aggrieved Employees to work off-the-clock as outlined above.

8 56. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
9 overtime wages owed as discussed above due Defendants' requiring Plaintiff and aggrieved
10 Employees to work off-the-clock as outlined above. Therefore, Defendants violated section 510,
11 and 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight
12 hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the
13 right to overtime compensation at the rate of one and one-half times the regular rate of pay for all
14 hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to
15 overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12)
16 hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular
17 work week.

18 57. Defendants failed to provide Plaintiff and all other aggrieved employees
19 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
20 and enforced policies of on duty meal period practices which required employees to work during
21 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
22 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
23 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at
24 time of trial.

25 58. Plaintiff, and on information and belief, all aggrieved employees, were
26 systematically not permitted or authorized to take ten minute rest periods for every four hours
27 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
28 Plaintiff and on information and belief, aggrieved employees, were not compensated with one

1 hour of wages for every day in which a rest period was missed or untimely as a result of
2 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute
3 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt
4 Employees, and by failing to provide compensation for such non-provided or shortened rest
5 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
6 226.7, 512 and the applicable IWC Wage Order.

7 59. Defendants also willfully violated Labor Code sections 201-203 by failing to
8 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
9 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
10 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
11 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
12 the subject employee's wages until the back wages are paid in full or an action is commenced.
13 The penalty cannot exceed 30 days of wages.

14 60. Plaintiff and all other aggrieved employees who were separated from employment
15 are entitled to compensation for all forms of wages earned, including but not limited to
16 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
17 have not received such compensation, therefore entitling them to penalties under PAGA for
18 violations of Labor Code sections 201-203.

19 61. On information and belief, Defendants willfully failed to pay all wages due and
20 owing upon separation from employment. These wages include but are not limited to regular and
21 overtime wages, and meal and rest period premiums.

22 62. On information and belief, Defendants failed to provide accurate itemized wage
23 statements which failed to include the rate of pay and total hours worked per pay period, failed to
24 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
25 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
26 to Labor Code section 226(a).

27 63. Defendants have failed to provide Plaintiff and aggrieved Employees rates of pay
28 and the hours for which they worked for any given pay period.

1 64. Defendants have failed to accurately record all time worked.

2 65. Plaintiff and aggrieved Employees have been injured as they were unable to
3 determine whether they had been paid correctly for all hours worked per pay period among other
4 things.

5 66. Defendants have also failed to accurately record the meal and rest period premiums
6 owed and all wages owed per pay period.

7 67. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
8 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
9 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
10 for each violation in a subsequent citation, for which the employer fails to provide the employee a
11 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

12 68. On information and belief, Defendants failed to reimburse Plaintiff and aggrieved
13 Employees for business expenses incurred as described above. Labor Code § 2802 requires
14 Defendants to indemnify Plaintiff and aggrieved Employees for necessary expenditures incurred in
15 direct consequences of the discharge of his or her duties. Despite these realities of the job,
16 Defendants failed to provide reimbursements.

17 69. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
18 implied, made by any employee to waive the benefits of this article or any part thereof is null and
19 void, and this article shall not deprive any employee or his or her personal representative of any
20 right or remedy to which he is entitled under the laws of this State.

21 70. Additionally, Defendants have no accurate records relating to aggrieved
22 employees’ work periods, total daily hours worked, total hours worked per payroll period and
23 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain
24 accurate records relating to hours worked daily in violation of Labor Code sections 1174(d),
25 1174.5.

26 71. As a result of Defendants' unlawful conduct, Plaintiff and aggrieved employees
27 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
28 worked.

72. Plaintiff and the Representative aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs sunder Labor Code section 2698, et seq.

PRAYER FOR RELIEF

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

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: November 29, 2022

JAMES HAWKINS APLC

By: 
 JAMES R. HAWKINS, ESQ.
 GREGORY MAURO, ESQ.
 MICHAEL CALVO, ESQ.
 LAUREN FALK, ESQ.
 AVA ISSARY, ESQ.
 Attorneys for Plaintiff PAUL F. MAISNIER
 on behalf of the general public as private
 attorney general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 20, 2022

Via LWDA Website

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

NATIONAL VISION, INC.

dba AMERICA'S BEST CONTACTS AND EYEGLASSES

c/o Agent for Service of Process:

CSC- Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Receipt No.: 7021 1970 0000 9061 1499

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff PAUL F. MAISNIER, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and Defendant NATIONAL VISION, INC. doing business as AMERICA'S BEST CONTACTS AND EYEGLASSES, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims.

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Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint