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

JUAN DE LOS SANTOS VILLABA, an
individual, on behalf of himself and the State of
California, as a private attorney general,

Plaintiff,

v.

T&R PAINTING AND DRYWALL, a
California Corporation; and DOES 1 TO 50,

Defendants.

**Electronically FILED by
Superior Court of California,
County of Los Angeles
4/29/2024 11:14 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By M. Estorga, Deputy Clerk**

Case Number: 22STCV34394

**Third Amended Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of California
Labor Code Sections and Other Provisions
of the California Labor Code.

1 Plaintiff Juan De Los Santos Villaba (“Plaintiff”), on behalf of himself and the State of
2 California, as a private attorney general, complains and alleges of defendants T&R Painting and
3 Drywall and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This action is a representative action brought pursuant to the California Labor Code
6 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
7 through 2699.6.

8 2. The “PAGA Period” as used herein, is defined as the period from October 26, 2021, and
9 continuing into the present and ongoing.

10 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private
11 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
12 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
13 “Aggrieved Employees”).

14 4. The violations upon which penalties are sought are as follows:

- 15 A. Failure to pay all minimum wages,
- 16 B. Failure to pay all overtime wages,
- 17 C. Failure to maintain accurate employment records,
- 18 D. Failure to pay wages timely during employment,
- 19 E. Failure to pay all wages earned and unpaid at separation,
- 20 F. Failure to indemnify all necessary business expenditures, and
- 21 G. Failure to furnish accurate itemized wage statements,

22 5. Plaintiff is informed and believes and thereon alleges that the California Industrial
23 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 4-
24 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
25 tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
26 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
27 are discovered in litigation.
28

1 **II. JURISDICTION & VENUE**

2 6. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
4 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
5 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
6 is subject to adjudication in the courts of the State of California.

7 7. This Court has personal jurisdiction over Defendants because Defendants have caused
8 injuries in the County of Los Angeles and the State of California through their acts, and by their
9 violation of the California Labor Code and California state common law. Defendants transact millions
10 of dollars of business within the State of California. Defendants own, maintain offices, transact
11 business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within
12 the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
13 service of process.

14 8. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
15 Code of Civil Procedure. Defendants operate within California and do business within Los Angeles
16 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
17 Defendants' employees identified above within Los Angeles County and surrounding counties where
18 Defendants may remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of*
19 *Alameda County* (2021) 60 Cal.App.5th 1069, 1075 ["We hold that venue is proper in any county in
20 which an aggrieved employee worked and Labor Code violations allegedly occurred."].)

21 **III. THE PARTIES**

22 **A. PLAINTIFF**

23 9. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
24 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
25 employee in the County of Los Angeles.

26 10. Plaintiff brings this action on behalf of himself and the State of California, as a private
27 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
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1 are or were employed by Defendants as non-exempt employees in California during the PAGA Period
2 (the “Aggrieved Employees”).

3 11. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
4 Defendants during the relevant statutory period.

5 **B. DEFENDANTS**

6 12. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
7 to and doing business in Los Angeles County and is and/or was the legal employer of Plaintiff and the
8 other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
9 Employees were, and are, subject to Defendants’ policies and/or practices complained of herein and
10 have been deprived of the rights guaranteed to them by: California Labor Code sections and others that
11 may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

12 13. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
13 Period, Defendants did (and continue to do) business in the State of California, County of Los Angeles.

14 14. Plaintiff does not know the true names or capacities, whether individual, partner, or
15 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
16 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
17 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
18 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
19 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
20 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,
21 injuries, and damages complained of herein.

22 15. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At
24 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
25 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
26 were the agents, servants, and employees of each and every one of the other Defendants, as well as the
27 agents of all Defendants, and at all times herein mentioned were acting within the course and scope of
28

1 said agency and employment. Defendants, and each of them, approved of, condoned, or otherwise
2 ratified every one of the acts or omissions complained of herein.

3 16. At all relevant times, Defendants, and each of them, were members of and engaged in a
4 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
5 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed,
6 and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff
7 and the other Aggrieved Employees.

8 **IV. COMMON FACTS & ALLEGATIONS**

9 17. Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved Employees”)
10 are, and were at all relevant times, employed by the Defendants within the State of California.

11 18. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
12 for the purposes of the claims alleged in this complaint.

13 19. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
14 working as an hourly, non-exempt employee for Defendants.

15 **A. MINIMUM WAGE VIOLATIONS**

16 20. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
17 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
18 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
19 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
20 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
21 (Cal. Code of Regs., tit. 8, § 11040.) Labor Code section 1198 makes unlawful the employment of an
22 employee under conditions that the IWC Wage Orders prohibit.

23 21. These minimum wage standards apply to each hour that employees work. Therefore,
24 an employer’s failure to pay for any particular time worked by an employee is unlawful, even if
25 averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage
26 above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

27 22. Here, Defendants failed to fully conform their pay practices to the requirements of the
28 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all

1 hours worked including, but not limited to, all hours they were subject to the control of Defendants
2 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Order.

3 23. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
4 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
5 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
6 due and interest thereon.

7 24. When employees, such as the Aggrieved Employees, are not paid for all hours worked
8 under Labor Code section 1194, they are entitled to recover minimum wages for the time which they
9 received no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015)
10 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages
11 under Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

12 25. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
13 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
14 damages, as follows:

15 (1) “For any initial violation that is intentionally committed, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for
17 which the employee is underpaid.”

18 (2) “For each subsequent violation for the same specific offense, two
19 hundred fifty dollars (\$250) for each underpaid employee for each pay
20 period for which the employee is underpaid regardless of whether the
21 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
22 (a).)

23 26. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
24 all minimum wages. Accordingly, the Aggrieved Employees are entitled to recover liquidated damages
25 for violations of Labor Code section 1197.1.

26 27. Based upon these same factual allegations, the Aggrieved Employees are likewise
27 entitled to penalties under Labor Code sections 1199.
28

1 **B. OVERTIME VIOLATIONS**

2 28. Labor Code section 510 requires employers to compensate employees who work more
3 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
4 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
5 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
6 employees at no less than twice the regular rate of pay when an employee works more than twelve
7 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
8 subd. (a).) These rules are also reflected in the Applicable Wage Order.

9 29. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
10 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the
11 amount provided by Labor Code sections 510 or the Applicable Wage Order.

12 30. Here, Defendants violated their duty to accurately and completely compensate the
13 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours
14 that entitled them to overtime compensation under the law but were not fully compensated for those
15 hours.

16 31. These actions were and are in clear violation of California’s overtime laws as set forth
17 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8,
18 § 11040.) As a result of Defendants’ faulty policies and practices, the Aggrieved Employees were not
19 compensated for all hours worked or paid accurate overtime compensation.

20 **C. UNTIMELY WAGES DURING EMPLOYMENT**

21 32. Labor Code section 204 expressly requires employers who pay employees on a weekly,
22 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
23 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
24 Labor Code section 204 subject to a penalty of:

25 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
26 pay each employee.

27 “(2) For each subsequent violation, or any willful or intentional violation, two
28 hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
2 (a).)

3 33. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
4 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
5 subd. (a).)

6 34. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above
7 Defendants failed to timely pay the Aggrieved Employees within seven calendar days following the
8 close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See
9 *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010,
10 at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support
11 claims under Labor Code sections 203 and 204].)

12 **D. UNTIMELY WAGES AT SEPARATION**

13 35. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
14 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
15 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
16 of Defendants’ failure to pay the Aggrieved Employees for the wages described above Defendants
17 violated and continue to violate Labor Code section 203.

18 36. Due to Defendants’ faulty pay policies, those Aggrieved Employees whose employment
19 with Defendants concluded were not compensated for each and every hour worked at the appropriate
20 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were
21 certain at the time of termination within at least seventy-two hours of their resignation and have failed
22 to pay those sums for thirty days thereafter.

23 **E. FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 37. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
25 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
26 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
27 obedience to the directions of the employer.” The purpose of this section is to “prevent employers
28

1 from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers,*
2 *Inc.* (2007) 42 Cal.4th 554, 562.)

3 38. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
4 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
5 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
6 personal representative of any right or remedy to which he is entitled under the laws of this State.”

7 39. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses
8 they incurred during the course of their duties. The duty to reimburse even extends to the use of
9 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
10 *Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case
11 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
12 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in
13 which the employee incurred an extra expense that he or she would not have otherwise incurred absent
14 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive
15 a windfall because it would be passing its operating expenses on to the employee.”].)

16 40. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
17 expenditures incurred as a direct consequence and requirement of performing their job duties, including
18 the costs associated with their personal cell phone and mileage they required to perform their work.
19 Consequently, Defendants failed to comply with Labor Code section 2802.

20 **F. WAGE STATEMENT VIOLATIONS**

21 41. Defendants also failed to provide accurate itemized wage statements in accordance with
22 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
23 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
24 statement in writing showing:

- 25 (1) The gross wages earned;
- 26 (2) The total hours worked by the employee;
- 27 (3) The number of piece-rate units earned and any applicable piece rate if
28 the employee is paid on a piece rate basis;

- 1 (4) All deductions, provided that all deductions made on written orders of
2 the employee may be aggregated and shown as one item;
3 (5) The net wages earned;
4 (6) The inclusive dates of the period for which the employee is paid;
5 (7) The name of the employee and only the last four digits of his or her social
6 security number or an employee identification number other than a social
7 security number;
8 (8) The name and address of the legal entity that is the employer; and
9 (9) All applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee.

12 42. Due to Defendants' failure to pay the Aggrieved Employees properly as described
13 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
14 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
16 Code section 226, subdivisions (a)(1), (2), (5), and (9).

17 43. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
18 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
19 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
20 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
21 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
22 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
23 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other
24 employees paid on commission” even though it believed that employees paid solely on commission or
25 commission and salary “are exempt and therefore we do not record hours on a wage statement.”].)
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1 **G. RECORDKEEPING VIOLATIONS**

2 44. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
3 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in
4 pertinent part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
6 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to
9 provide the employee a wage deduction statement or fails to keep the records
10 required in subdivision (a) of Section 226. The civil penalties provided for in
11 this section are in addition to any other penalty provided by law.” (Lab. Code,
12 § 226.3, emphasis added.)

13 45. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
14 Defendants, to:

15 “Keep, at a central location in the state or at the plants or establishments at which
16 employees are employed, payroll records showing the hours worked daily by
17 and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments. These records shall be kept in accordance with rules established
20 for this purpose by the commission, but in any case shall be kept on file for not
21 less than three years. An employer shall not prohibit an employee from
22 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
23 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

24 46. As explained in detail above, Defendants failed to provide the Aggrieved Employees
25 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
26 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records
27 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),
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1 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are
2 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

3 47. The failure to accurately track hours worked also resulted in a failure of Defendants to
4 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
5 including Plaintiff and the other Aggrieved Employees, in violation of Labor Code section 1174,
6 subdivision (d).

7
8 **V. EXHAUSTION OF REMEDIES**

9 48. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
10 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online
11 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
12 Defendants setting forth the facts and theories of the violations alleged against Defendants, as
13 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

14 49. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
15 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
16 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
17 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
18 action pursuant to Labor Code section 2699.

19 **VI. CAUSES OF ACTION**

20 **First Cause of Action**

21 *Penalties Pursuant to PAGA for Violations of Labor Code Sections and Other*

22 *Provisions of the California Labor Code*

23 *(Against All Defendants)*

24 50. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 51. Based on the above allegations incorporated by reference, Defendants violated Labor
26 Code sections and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs.,
27 tit. 8, § 11040), and others that may be applicable.
28

1 52. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
2 2698 through 2699.6 because of Defendants’ violation of Labor Code sections and others that may be
3 applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040), and others that may
4 be applicable.

5 53. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
6 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
7 of trial subject to the following formula:

8 A. \$100 for the initial violation per employee per pay period; and

9 B. \$200 for each subsequent violation per employee per pay period.

10 54. These penalties must be allocated seventy-five percent to the Labor and Workforce
11 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
12 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
13 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
14 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
15 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
16 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
17 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
18 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
19 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
20 different Labor Code violations.”], internal quotation marks omitted).

21 55. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
22 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
23 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
24 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at
25 pp. 780, 788.)

26 56. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
27 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
28 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount

1 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
2 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
3 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
4 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
5 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
6 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
7 subdivision (e).

8 57. Labor Code section 210 provides that “in addition to, an entirely independent and apart
9 from, any other penalty provided in this article, every person who fails to pay the wages of each
10 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
11 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
12 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
13 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
14 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
15 penalties under Labor Code section 210 through PAGA.

16 58. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
17 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
18 intentionally committed for each underpaid employee for each pay period for which the employee is
19 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
20 offense for each underpaid employee for each pay period for which the employee is underpaid
21 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
22 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
23 to Labor Code section 1197.1.

24 59. Plaintiff was compelled to retain the services of counsel to file this action to protect his
25 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
26 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
27 to recover under Labor Code section 2699, subdivision (g)(1).
28

1 **VII. PRAYER FOR RELIEF**

2 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
3 against Defendants, as follows:

- 4 **1.** For the claim of penalties pursuant to PAGA and other provisions of the California
5 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
6 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
7 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
8 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
9 available under Labor Code section 210;
- 10 **2.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
11 and Civil Code sections 3287 and 3289;
- 12 **3.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
13 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
14 section 1021.5, and others as may be applicable;
- 15 **4.** For an order enjoining Defendants, and each of them, and their agents, servants, and
16 employees, and all persons acting under, in concert with, or for them, from acting in
17 derogation of any rights or duties adumbrated in this complaint; and
- 18 **5.** For such other and further relief, this Court may deem just and proper.

19 Dated: April 29, 2024

MELMED LAW GROUP P.C.

21 

24 **HANNAH BECKER**

25 Attorney for Plaintiff and the Aggrieved
26 Employees