

MATERN LAW GROUP, PC
Matthew J. Matern (SBN 159798)
Email: mmatern@maternlawgroup.com
Joshua D. Boxer (SBN 226712)
Email: jboxer@maternlawgroup.com
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90266
Tel: (310) 531-1900
Facsimile: (310) 531-1901

MATERN LAW GROUP, PC
Sara B. Tosdal (SBN 267816)
Email: stosdal@maternlawgroup.com
1330 Broadway, Suite 436
Oakland, California 94612
Telephone: (310) 531-1900
Facsimile: (310) 531-1901

E-FILED
3/17/2023 1:06 PM
Superior Court of California
County of Fresno
By: S. Garcia, Deputy

Attorneys for Plaintiff RODOLFO
GALARZA individually, and on behalf of
others similarly aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

RODOLFO GALARZA, an individual, and on
behalf of others similarly aggrieved,

Plaintiff,

vs.

DONAGHY SALES, LLC; a California
limited liability company; DONAGHY SALES
& PROMOTION, LLC; a California limited
liability company; EDWARD J. DONAGHY,
an individual, RYAN DONAGHY, an
individual, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: [23CECG01026](#)

COMPLAINT FOR:

**VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEY'S
GENERAL ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

DEMAND FOR JURY TRIAL

1 Plaintiff RODOLFO GALARZA (“PLAINTIFF”) individually and on behalf of others
2 similarly aggrieved employees, demanding a jury trial, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other similarly
5 aggrieved employees of Defendants DONAGHY SALES, LLC (“DONAGHY”), DONAGHY
6 SALES & PROMOTION, LLC (“DONAGHY PROMOTION”), EDWARD J. DONAGHY
7 (“EDWARD”), RYAN DONAGHY (“RYAN”), and DOES 1 through 50, inclusive (collectively
8 “DEFENDANTS”) to recover penalties arising from unpaid wages earned and due, including but
9 not limited to unpaid and illegally calculated overtime compensation, illegal meal and rest period
10 policies, failure to pay all wages due to discharged or quitting employees, failure to maintain
11 required records, failure to provide accurate itemized wage statements, failure to timely pay
12 wages during employment, failure to indemnify employees for necessary expenditures and/or
13 losses incurred in discharging their duties. PLAINTIFF hereby alleges as follows:

14 **JURISDICTION AND VENUE**

15 2. The Superior Court of the State of California has jurisdiction in this matter because
16 PLAINTIFF is a resident of the State of California, and Defendants DONAGHY SALES, LLC, a
17 California limited liability company; DONAGHY SALES & PROMOTION, LLC, a California
18 limited liability company; EDWARD J. DONAGHY, an individual; RYAN DONAGHY, an
19 individual; and DOES 1 through 50 inclusive (collectively “DEFENDANTS”), are qualified to do
20 business in California and regularly conduct business in California. Further, no federal question is at
21 issue because the claims are based solely on California law.

22 3. Venue is proper in this judicial district and the County of Fresno, California
23 because PLAINTIFF, and other aggrieved employees, performed work for DEFENDANTS in the
24 County of Fresno, DEFENDANTS maintain offices and facilities and transact business in the
25 County of Fresno, and many of DEFENDANTS’ unlawful actions and omissions, as set forth
26 herein, occurred in the County of Fresno.

27 //

28 //

PARTIES

4. PLAINTIFF is a citizen and male resident of the State of California. At times material to this complaint, PLAINTIFF was employed by DEFENDANTS in the State of California as an hourly, non-exempt employee. PLAINTIFF was employed as a delivery driver from around July 2021 to September 2022.

5. At all relevant times herein, DEFENDANT DONAGHY SALES LLC (“DONAGHY”) is and was a beer distribution company.

6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT DONAGHY SALES, LLC is, and at all times relevant hereto was, a California limited liability company organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT DONAGHY SALES, LLC is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT DONAGHY SALES, LLC maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Fresno, State of California.

7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT DONAGHY SALES & PROMOTION, LLC is, and at all times relevant hereto was, a California limited liability company organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT DONAGHY SALES & PROMOTION, LLC is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, defendant DONAGHY SALES & PROMOTION, LLC maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Fresno, State of California.

8. On information and belief, PLAINTIFF alleges that DEFENDANTS DONAGHY SALES, LLC and DONAGHY SALES & PROMOTION, LLC maintain the same address with the California Secretary of State’s office.

9. PLAINTIFF is informed and believes, and based thereon alleges, that

1 DEFENDANT EDWARD J. DONAGHY is a male resident of the State of California. At all
2 times relevant herein, EDWARD J. DONAGHY was an owner, officer and director and employee
3 of DEFENDANTS. EDWARD J. DONAGHY was also a direct employer of PLAINTIFF and
4 issued wage statements for plaintiff asserting that he was and is PLAINTIFF's employer.
5 Additionally, defendant EDWARD J. DONAGHY acted within the course and scope of his
6 employment and/or as an agent of DEFENDANTS during the events described herein, unless
7 alleged otherwise.

8 10. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant
9 RYAN DONAGHY is a male resident of the State of California. At all times relevant herein,
10 RYAN DONAGHY was an owner, officer and director and employee of DEFENDANTS. RYAN
11 DONAGHY was also a direct employer of PLAINTIFF and issued wage statements for plaintiff
12 asserting that he was and is PLAINTIFF's employer. Additionally, defendant RYAN DONAGHY
13 acted within the course and scope of his employment and/or as an agent of DEFENDANTS
14 during the events described herein, unless alleged otherwise.

15 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
16 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious
17 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
18 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
19 that PLAINTIFF and CLASS MEMBERS'S injuries and damages, as alleged herein, were
20 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
21 court to amend this Complaint to allege their true names and capacities of such DOE Defendants
22 when ascertained.

23 12. At all relevant times herein, DEFENDANTS were the joint employers of
24 PLAINTIFF and other similarly aggrieved employees. PLAINTIFF is informed and believes, and
25 thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos,
26 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
27 related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors,
28 actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its

1 co-Defendant, and each was the alter ego of the other.

2 13. At all relevant times herein, PLAINTIFF and other similarly aggrieved employees
3 were employed by DEFENDANTS under employment agreements that were partly written, partly
4 oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS,
5 and each of them, acted pursuant to, and in furtherance of, their policies and practices of not
6 paying PLAINTIFF and other similarly aggrieved employees all wages earned and due, through
7 methods and schemes which include, but are not limited to, failing to pay overtime premiums;
8 failing to provide rest and meal periods; failing to properly maintain records; failing to provide
9 accurate itemized statements for each pay period; failing to timely pay wages during employment;
10 failing to properly compensate PLAINTIFF and other aggrieved employees for necessary
11 expenditures; and requiring, permitting or suffering the employees to work off the clock, in
12 violation of the California Labor Code and the applicable Welfare Commission (“IWC”) Orders.

13 14. PLAINTIFF is informed and believes, and thereon allege, that each and every one
14 of the acts and omissions alleged herein were performed by, and/or attributable to, all
15 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
16 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
17 and scope of said agency, employment and/or direction and control.

18 15. As a direct and proximate result of the unlawful actions of DEFENDANTS,
19 PLAINTIFF and other similarly aggrieved employees have suffered, and continue to suffer, from
20 loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the
21 jurisdiction of this Court.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 16. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
24 Labor Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all
25 current and former non-exempt aggrieved employees of DEFENDANTS in the State of
26 California (“aggrieved employees”) at any time within the period beginning one (1) year and
27 sixty five (65) days prior to providing notice to the California Labor and Workforce Development
28 Agency (“LWDA”) of this action, and ending at the time this action settles or proceeds to final

1 judgment (“PENALTY PERIOD”).

2 17. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice by online filing
3 on November 29, 2022 to the LWDA and by certified mail to DEFENDANTS of the specific
4 provisions of the Labor Code and IWC Wage Orders alleged to have been violated, including the
5 facts and theories to support the alleged violations. PLAINTIFF has not received any response
6 from the LWDA. As PLAINTIFF has waited more than sixty-five (65) days from the November
7 29, 2022 postmark date of PLAINTIFF’s written notice before filing this action, PLAINTIFF has
8 complied with all of the requirements set forth in Labor Code § 2699.3 to commence a
9 representative action under PAGA.

10 **Failure to Provide Required Meal Periods**

11 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

12 18. During the PENALTY PERIOD, as part of DEFENDANTS’ illegal payroll
13 policies and practices to deprive their non-exempt employees all wages earned and due,
14 DEFENDANTS required, permitted or otherwise suffered PLAINTIFF and other similarly
15 aggrieved employees to take less than the 30-minute meal period, or to work through them, and
16 have failed to otherwise provide the required meal periods to PLAINTIFF and other similarly
17 aggrieved employees pursuant to California Labor Code § 226.7, 512 and IWC Order No. 9-2001,
18 § 11.

19 19. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
20 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF and other similarly aggrieved
21 employees who were not provided with a meal period, in accordance with the applicable wage
22 order, one additional hour of compensation at each employee’s regular rate of pay for each
23 workday that a meal period was not provided.

24 20. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
25 1197, and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF and other similarly
26 aggrieved employees for all hours worked during their meal periods.

27 21. As a proximate result of the aforementioned violations, PLAINTIFF and other
28 similarly aggrieved employees have been damaged in an amount according to proof at trial, and

1 seek all wages earned and due, interest, penalties, expenses, and costs of suit.

2 **Failure to Provide Required Rest Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

4 22. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
5 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
6 failed to provide rest periods to PLAINTIFF and other similarly aggrieved employees as required
7 under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12.

8 23. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
9 Order No. 9-2001, § 12 by failing to pay PLAINTIFF and other similarly aggrieved employees
10 who were not provided with a rest period, in accordance with the applicable wage order, one
11 additional hour of compensation at each employee's regular rate of pay for each workday that a
12 rest period was not provided.

13 24. As a proximate result of the aforementioned violations, PLAINTIFF and other
14 similarly aggrieved employees have been damaged in an amount according to proof at trial, and
15 seek all wages earned and due, interest, penalties, expenses, and costs of suit.

16 **Failure to Pay Overtime Wages**

17 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

18 **(Against all DEFENDANTS)**

19 25. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
20 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other similarly aggrieved
21 employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of
22 pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
23 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
24 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of
25 eight (8) hours on the seventh consecutive day of work in any workweek.

26 26. PLAINTIFF and other similarly aggrieved employees are current and former non-
27 exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC
28 Wage Order No. 9-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate

1 PLAINTIFF and other similarly aggrieved employees for all overtime hours worked as required
2 under the foregoing provisions of the California Labor Code and IWC Wage Order by, among
3 other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
4 provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3;
5 requiring, permitting or suffering PLAINTIFF and other similarly aggrieved employees to work
6 off the clock; requiring, permitting or suffering PLAINTIFF and other similarly aggrieved
7 employees to work through meal and rest breaks; illegally and inaccurately recording time in
8 which PLAINTIFF and other similarly aggrieved employees worked; failing to properly maintain
9 PLAINTIFF's and other similarly aggrieved employees' records; failing to provide accurate
10 itemized wage statements to PLAINTIFF for each pay period; and other methods to be
11 discovered.

12 27. In violation of California law, DEFENDANTS have knowingly and willfully
13 refused to perform their obligations to compensate PLAINTIFF and other similarly aggrieved
14 employees for all wages earned and all hours worked. As a proximate result, PLAINTIFF and
15 other similarly aggrieved employees have suffered, and continue to suffer, substantial losses
16 related to the use and enjoyment of such wages, lost interest on such wages, and expenses and
17 attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations under state
18 law, all to their respective damages in amounts according to proof at time of trial, and within the
19 jurisdiction of this Court.

20 28. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
21 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
22 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
23 Code and IWC Wage Orders, PLAINTIFF and other similarly aggrieved employees are entitled
24 to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
25 attorneys' fees, expenses, and costs of suit.

26 //

27 //

28 //

1 **Failure to Pay Minimum Wages**

2 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

3 **(Against all DEFENDANTS)**

4 29. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
5 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
6 worked in a payroll period is unlawful.

7 30. During the PENALTY PERIOD and in violation of California Labor Code §§
8 1194 and 1197 and IWC Wage Order No. 9-2001, § 4, DEFENDANTS failed to pay PLAINTIFF
9 and other similarly aggrieved employees minimum wages for all hours worked in a payroll period
10 by, among other things: requiring, permitting or suffering PLAINTIFF and other similarly
11 aggrieved employees to work off the clock; requiring, permitting or suffering PLAINTIFF and
12 other similarly aggrieved employees to work through meal and rest breaks; illegally and
13 inaccurately recording time in which PLAINTIFF and other similarly aggrieved employees
14 worked; failing to properly maintain PLAINTIFF's and other similarly aggrieved employees'
15 records; failing to provide accurate itemized wage statements to PLAINTIFF and other similarly
16 aggrieved employees for each pay period; and other methods to be discovered.

17 **Failure to Timely Pay Wages During Employment**

18 **[Cal. Lab. Code § 204]**

19 31. Pursuant to California Labor Code § 204, for all labor performed between the 1st
20 and 15th days of any calendar month, DEFENDANTS are required to pay their non-exempt
21 employees between the 16th and 26th day of the month during which the labor was performed.
22 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
23 days of any calendar month, DEFENDANTS are required to pay their non-exempt employees
24 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
25 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
26 no later than the payday of the next regular payroll period.

27 During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay
28 PLAINTIFF and other aggrieved employees all the wages for labor performed by the next regular

1 payroll period as required by California Labor Code § 204.

2 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

3 **[Cal. Labor Code §§ 201, 202, 203]**

4 **(Against all DEFENDANTS)**

5 32. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
6 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
7 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
8 and unpaid at the time of discharge are due and payable immediately.

9 33. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
10 required to pay all accrued wages due to an employee no later than 72 hours after the employee
11 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
12 intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

13 34. California Labor Code § 203 provides that if an employer willfully fails to pay, in
14 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
15 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
16 compensation to the employee at the same rate for up to 30 workdays.

17 35. During the PENALTY PERIOD and in violation of Labor Code §§ 201 and 202,
18 DEFENDANTS have willfully failed to pay accrued wages and other compensation to
19 PLAINTIFF and other similarly aggrieved employees in who were discharged or quit his or her
20 employment.

21 36. As a result, PLAINTIFF and other similarly aggrieved employees are entitled to all
22 available statutory penalties, including the waiting time penalties provided in California Labor
23 Code § 203, together with interest thereon, as well as other available remedies.

24 37. As a proximate result of DEFENDANTS' unlawful actions and omissions,
25 PLAINTIFF and other similarly aggrieved employees have been deprived of compensation in an
26 amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and
27 are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
28 pursuant to California Labor Code §§ 1194 and 2699.

1 **Failure to Maintain Required Records**

2 **[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

3 **(Against all DEFENDANTS)**

4 38. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
5 policies and practices to deprive PLAINTIFF and other similarly aggrieved employees of all
6 wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as
7 required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7,
8 including but not limited to the following records: total daily hours worked by each employee;
9 applicable rates of pay; all deductions; meal periods; time records showing when each employee
10 begins and ends each work period; and accurate itemized statements.

11 39. As a proximate result of DEFENDANTS' unlawful actions and omissions,
12 PLAINTIFF and other similarly aggrieved employees have been damaged in an amount
13 according to proof at trial, and are entitled to all wages earned and due, plus interest thereon.
14 Additionally, PLAINTIFF and other similarly aggrieved employees are entitled to all available
15 statutory penalties, including but not limited to civil penalties pursuant to California Labor Code
16 §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
17 including but not limited to those provided in California Labor Code § 226(e), as well as other
18 available remedies.

19 **Failure to Furnish Accurate Itemized Wage Statements**

20 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]**

21 **(Against all DEFENDANTS)**

22 40. During the PENALTY PERIOD, DEFENDANTS routinely failed to provide
23 PLAINTIFF and other similarly aggrieved employees with timely, accurate, and itemized wage
24 statements in writing showing each employee's gross wages earned, total hours worked, the
25 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
26 rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the
27 employee is paid, the name of the employee and only the last four digits of his or her social
28 security number or employee identification number, the name and address of the legal entity or

1 entities employing PLAINTIFF and other similarly aggrieved employees, and all applicable
2 hourly rates in effect during each pay period and the corresponding number of hours worked at
3 each hourly rate, in violation of Labor Code § 226 and IWC Wage Order No. 9-2001, § 7.

4 41. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally
5 failed to provide PLAINTIFF and other similarly aggrieved employees with timely, accurate, and
6 itemized wage statements in accordance with California Labor Code § 226(a).

7 42. During the PENALTY PERIOD, PLAINTIFF and other aggrieved employees
8 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized
9 wage statements as PLAINTIFF and other similarly aggrieved employees could not promptly and
10 easily determine from the wage statement alone one of more of the following: the gross wages
11 earned, the total hours worked, all deductions made, the net wages earned, the name and address
12 of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and/or all
13 applicable hourly rates in effect during each pay period and the corresponding number of hours
14 worked at each hourly rate.

15 43. As a proximate result of DEFENDANTS' unlawful actions and omissions,
16 PLAINTIFF and other similarly aggrieved employees have been damaged in an amount
17 according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally,
18 PLAINTIFF and other similarly aggrieved employees are entitled to all available statutory
19 penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e),
20 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but
21 not limited to those provided in California Labor Code § 226(e), as well as other available
22 remedies.

23 //

24 //

25 //

26 //

27 //

28 //

**Failure to Indemnify Employees for Necessary Expenditures
Incurred in Discharge of Duties
[Cal. Labor Code § 2802]
(Against all DEFENDANTS)**

44. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

45. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to indemnify PLAINTIFF and other similarly aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other employment-related expenses, in violation of California Labor Code § 2802.

46. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and other similarly aggrieved employees have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, PLAINTIFF and other similarly aggrieved employees are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

FIRST CAUSE OF ACTION

**VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY'S
GENERAL ACT [Cal. Labor Code §§ 2698, *et seq.*]
(Against All DEFENDANTS)**

47. PLAINTIFF incorporates herein by specific reference as though fully set forth the allegations in all preceding paragraphs.

48. PLAINTIFF is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of DEFENDANTS pursuant to the procedures

1 specified in California Labor Code § 2699.3, because DEFENDANTS engaged PLAINTIFF to
2 perform work for them, and caused one or more of the alleged Labor Code violations to be
3 committed against PLAINTIFF during the PENALTY PERIOD.

4 49. PLAINTIFF seeks to recover civil penalties through a representative action
5 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969
6 (2009). Thus, class certification is not required.

7 50. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seeks to recover civil
8 penalties from DEFENDANTS in a representative action for the violations set forth above,
9 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226(a),
10 226.3, 226.7, 246, 247.5, 248.5, 510, 512, 1174(d), 1194, 1197, 1198, and 2802.

11 51. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
12 DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
13 provided, including but not limited to the following:

- 14 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
15 DEFENDANTS are subject to a civil penalty in the amount of one hundred
16 dollars (\$100) for the initial violation for each failure to pay each employee
17 and two hundred dollars (\$200) per employee for violations in subsequent pay
18 periods.
- 19 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
20 DEFENDANTS are subject to a civil penalty in the amount of two hundred
21 and fifty dollars (\$250) per aggrieved employee for the initial pay period
22 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
23 employee for violations in subsequent pay periods.
- 24 c. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
25 DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500).
- 26 d. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid
27 to any employee a wage less than the minimum fixed by an order of the
28 commission, shall be subject to a civil penalty as follows: for any initial

violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

52. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFFS seek such civil penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

53. PLAINTIFF additionally seeks reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1).

//

//

//

//

//

//

//

//

//

//

//

//

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1. For civil penalties according to proof, including but not limited to the amount of any unpaid wages of PLAINTIFFS and other aggrieved employees and all penalties authorized by the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);
2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
3. For reasonable attorneys' fees and costs pursuant to California Labor Code 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
4. For such further relief that the Court may deem just and proper.

Respectfully submitted,

MATERN LAW GROUP, PC

By: 

Matthew J. Matern
Joshua D. Boxer
Sara B. Tosdal
Attorneys for Plaintiff
RODOLFO GALARZA, individually, and
on behalf of others similarly aggrieved

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED: March 17, 2023

MATERN LAW GROUP, PC

Stratford

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28