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on behalf of themselves and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

FRANCISCO A. SALDANA and ABRAHAM
GONZALEZ, on behalf of themselves and
current and former aggrieved employees

Plaintiff,

vs.

NATIONWIDE LEGAL, LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 23STCV01925

PAGA ACTION

**PLAINTIFF FRANCISCO A.
SALDANA and ABRAHAM
GONZALEZ'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff FRANCISCO A. SALDANA and ABRAHAM GONZALEZ
("Plaintiff"), who alleges and complains against Defendants NATIONWIDE LEGAL, LLC; and
DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California,
themselves and other current and former aggrieved employees of Defendants who worked as
hourly non-exempt employees in California during the relevant time period seeking civil penalties
associated with Defendants' violation of the Labor Code based on Defendants' failure to pay all

1 overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally
2 required and/or compliant meal periods or pay meal period premium wages; failure to authorize
3 or permit all legally required and/or compliant rest periods or pay rest period premium wages;
4 indemnification for all necessary expenditures or losses incurred by employees in direct
5 consequence of discharging their duties; statutory penalties for failure to timely pay earned wages
6 during employment; statutory penalties for failure to provide accurate wage statements. Plaintiff
7 seeks on a representative basis, following notice to the Labor and Workforce Development
8 Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and
9 costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to Los Angeles County, at 1609 James M. Wood Blvd, Los
19 Angeles, California 90015.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
23 tolled from April 6, 2020, until October 1, 2020.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of themselves and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiffs and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California.

3 5. Defendants employed Plaintiff FRANCISCO A. SALDANA as an hourly non-
4 exempt employee from in or around January 21, 2008 to present.

5 6. Defendants employed Plaintiff ABRAHAM GONZALEZ as an hourly non-exempt
6 employee from in or around January 1, 2008 to present.

7 7. Plaintiff is informed and believes and thereon alleges that Defendant
8 NATIONWIDE LEGAL, LLC is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant NATIONWIDE LEGAL, LLC in the
11 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
12 Defendant NATIONWIDE LEGAL, LLC operates in Los Angeles County and employed Plaintiff
13 and aggrieved employees in Los Angeles County, including but not limited to, at 1609 James M.
14 Wood Blvd, Los Angeles, California 90015.

15 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 10. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 11. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**
9 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 12. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 13. During the period beginning one (1) year preceding Plaintiff sending the initial
13 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 226,
14 226.7, 510, 512, 1194, 2802, and Sections 14 and 15 of the applicable Wage Orders.

15 14. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 15. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services that inure to the benefit of the employer.'

23 16. Labor Code sections 510 and 1194 require an employer to compensate employees a
24 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
25 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

26 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
27 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
28 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

17. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

18. In this case, Plaintiff alleges that when they and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at one- and one-half times hourly who earned commission's regular rate of pay, due to failure to include those employees' commissions into the "regular rate" of pay for purposes of calculating overtime wages.

19. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

20. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

21. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an

1 employee for a work period of more than ten (10) hours per day without providing the employee
2 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
3 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
4 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
5 period is only permitted when: (1) the nature of the work prevents an employee from being
6 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

7 22. If an employer fails to provide an employee a meal period in accordance with the
8 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
9 for each workday that a legally required and compliant meal period was not provided. Labor Code
10 section 226.7; Wage Order 9 at §11.

11 23. In this case, on occasions when Defendants paid Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
13 missed, short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay meal
14 period premium wages at one- and one-half times hourly who earned commission’s regular rate of
15 pay, due to failure to include those employees’ commissions into the “regular rate” of pay for
16 purposes of calculating meal period premium wages.

17 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
18 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
19 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
20 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
21 employees did not receive legally required and compliant meal periods, in violation of Labor Code
22 section 226.7.

23 25. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
24 and other current and former aggrieved California-based hourly non-exempt employees not
25 receiving wages to compensate them for workdays during which Defendants did not provide them
26 with meal periods in compliance with California law.

27 26. **Failure to pay wages to hourly non-exempt employees for workdays that**
28 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees regularly worked
2 shifts of more than three-and-a-half (3.5) hours.

3 27. California law requires every employer to authorize and permit an employee a rest
4 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
5 Code section 226.7; Wage Order 9 at §12. Under California law, “[e]mployees are entitled to 10
6 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
7 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
8 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
9 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
10 each work period. Wage Order 9 at §12. Additionally, the rest period requirement “obligates
11 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
12 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
13 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

14 28. If the employer fails to authorize or permit a required rest period, the employer
15 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
16 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
17 Wage Order 9 at § 12.

18 29. In this case, on occasions when Defendants did pay Plaintiff and other current and
19 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
20 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay rest
21 period premium wages at one- and one-half times hourly who earned commission’s regular rate of
22 pay, due to failure to include those employees’ commissions into the “regular rate” of pay for
23 purposes of calculating rest period premium wages.

24 30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
25 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
26 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
27 workday they did not receive legally required and compliant rest periods, in violation of Labor
28 Code section 226.7.

1 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
2 and other current and former aggrieved California-based hourly non-exempt employees not
3 receiving wages to compensate them for workdays in which Defendants did not provide them with
4 rest periods in compliance with California law.

5 32. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
6 **Employment:** California law requires that every employer must indemnify its employees for all
7 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
8 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
9 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
10 2802.)

11 33. Defendants have violated Labor Code Section 2802 by failing to indemnify
12 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
13 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
14 employed policies, practices, and/or procedures of impermissibly passing business-related
15 expenses to Plaintiff and other current and former aggrieved California-based hourly non-exempt
16 employees. These policies, practices, and/or procedures included, but were not limited to,
17 requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt
18 employees to use their personal vehicle for work-related purposes and were incorrectly reimbursed
19 at 45 cents per mile despite that the IRS mileage rate during the relevant time period ranged
20 between 53.5 cents per mile and 58 cents per mile.

21 34. Moreover, Defendants employed policies and procedures which ensured Plaintiff
22 and aggrieved employees would not receive indemnification for their employment related
23 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
24 indemnification in compliance with California law.

25 35. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
26 employment related expenses, including but not limited to costs related to use of their personal
27 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

28 36. **Failure to timely pay earned wages during employment:** In California, wages

1 must be paid at least twice during each calendar month on days designated in advance by the
2 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
3 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
4 16th and the 26th day of that month and wages earned between the 16th and the last day,
5 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
6 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
7 paid within seven (7) calendar days following the close of the payroll period in which wages were
8 earned. Labor Code section 204(d).

9 37. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
10 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
11 exempt employees' earned wages (overtime wages, meal period premium wages, and/or rest
12 period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
13 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
14 and former aggrieved California-based hourly non-exempt employees' their earned wages within
15 the applicable time frames outlined in Labor Code section 204.

16 38. **Failure to provide complete and accurate wage statements:** Labor Code section
17 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
18 employee his or her wages, the employer must "furnish each of his or her employees ... an
19 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
20 employee, except for any employee whose compensation is solely based on a salary and who is
21 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
22 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
23 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
24 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
25 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
26 name of the employee and his or her social security number, (8) the name and address of the legal
27 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
28 the corresponding number of hours worked at each hourly rate by the employee."

1 39. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
2 and other current and former aggrieved California-based hourly non-exempt employees all wages
3 earned (including overtime wages, meal period premium wages, and/or rest period premium
4 wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-
5 exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

6 40. Defendants' violations of Wage Order 9 constituted violations of Labor Code
7 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

8 41. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
9 employee, on behalf of himself or herself and other current or former employees, to bring a civil
10 action to recover civil penalties against all Defendants pursuant to the procedures specified in
11 Labor Code section 2699.3.

12 42. Plaintiff has complied with the procedures for bringing suit specified in Labor
13 Code section 2699.3. On November 23, 2022, Plaintiff filed a PAGA Claim Notice with the
14 LWDA and provided notice to Defendants by certified mail which provided notice of the specific
15 provisions of the Labor Code alleged to have been violated, including the facts and theories to
16 support the violations alleged.

17 43. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
19 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
20 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
21 to investigate Plaintiff's claims.

22 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
23 penalties for Defendants' violations of Labor Code sections 226, 226.7, 510, 512, 1194, and 2802,
24 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to
25 the present, in the following amounts:

26 a. For violations of Labor Code sections 226.7, 512, and 2802; one hundred
27 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
28 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation

[penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

45. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF THEMSELVES AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

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1 Dated: January 30, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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3 By: 
4 Joseph Lavi, Esq.
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7 Attorneys for Plaintiff
8 FRANCISCO A. SALDANA and
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10 on behalf of themselves and current and
11 former aggrieved employees
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