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Clerk of the Napa Superior Court
By: Rudy Arroyo, Deputy

Attorneys for Plaintiff MIGUEL OCHOA, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

MIGUEL OCHOA, on behalf of himself and all other aggrieved employees,

Plaintiff,

v.

THEONI INC., a corporation doing business in California; BETSY L STONE, an individual; and DOES 1- 50, Inclusive,

Defendants,

Case No. 23CV000054

COMPLAINT

1. **Civil Penalties under the Private Attorneys General Act (PAGA), Labor Code § 2698, *et seq.***

Plaintiff, MIGUEL OCHOA, ("Plaintiff"), as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other current or former aggrieved employees, complains and alleges as follows:

INTRODUCTION

1. This is a representative action brought by Plaintiff, as a representative of the State of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect civil penalties for Defendants' Labor Code violations.

2. Defendants and Employers, THEONI INC., and BETSY L. STONE ("Collectively Defendants") violated numerous wage and hour laws with respect to Plaintiff and other aggrieved employees by failing to provide, for example: accurate and itemized wages statements, payment for all hours worked (including regular wages and overtime), failure to provide a minimum wage lawful meal periods, lawful rest periods, timely payment during employment, failure to reimburse for expenses incurred during the course and scope of employment, and payment upon separation of employment.

PARTIES

The Plaintiff

3. Plaintiff MIGUEL OCHOA ("Plaintiff" or "OCHOA") is, and at all times mentioned herein, was a resident of the County of NAPA in the State of California.

4. Similarly aggrieved, former and/or current non-exempt employees employed by Defendants during the relevant time period who were subject to the same wage and hour policies and practices as Plaintiff, and thereby, suffered similar or substantially similar violations (hereinafter "Aggrieved Employees").

The Defendants

5. Defendant THEONI INC is a California corporation which, at all relevant times mentioned herein, existing, doing business and employing individuals in the County of Napa, State of California.

6. Defendant BETSY L. STONE ("STONE") is an individual over the age of 18 years, and based on information and belief, was residing at all times mentioned herein in the County of Napa State of California.

7. Plaintiff is informed and thereon alleges that Defendants exercised control over Plaintiff and Aggrieved Employees' wages, hours, and working conditions.

8. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants, and each of them, exercised control over Plaintiff and Aggrieved Employees' wages, hours, or working conditions.

9. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this Complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff as alleged hereinafter.

10. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, including those Defendants named DOES 1-50, acted in concert with one another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and thereon alleges, that the Defendants, and each of them, including those Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff harm.

JURISDICTION AND VENUE

11. Venue is proper in Napa County, because Defendants maintains its locations and transacts business in this county, the obligations and liability primarily arise in this county, and

work was primarily performed by Plaintiff and other aggrieved employees in this county.

12. The California Superior Court has jurisdiction over this matter. The individual claims are under the seventy-five thousand dollar ($75,000.00) jurisdictional threshold for federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

GENERAL ALLEGATIONS

13. Defendants, an event company, employed Plaintiff and aggrieved employees, in non-exempt positions, in California during the relevant PAGA period. Plaintiff began working or on about June 2021 to December 2021 as a non-exempt "Warehouse Helper".

14. The position required Plaintiff to work more than 8 hours a day and/or 40 hours per week without lawful compensation. Plaintiff and nonexempt aggrieved employees were regularly not paid for minimum wages and overtime for compensable work time spent under the control of Defendants, but which was performed off-the-clock, even though such additional work time was in excess of regularly scheduled, eight-hour daily shifts.

15. Plaintiff and nonexempt aggrieved employees were subject to not having all their compensable work time recorded. Not all of Plaintiff and nonexempt aggrieved employees' compensable work time spent under the control of Defendants was accounted for and compensated. Specifically, Defendants (1) adjusted clock in and clock out times to the disadvantage of Plaintiff and other non-exempt aggrieved employees by rounding up clock-in times when Plaintiff and non-exempt employees clocked in before the scheduled start of their respective shifts and rounded down clock-out times when Plaintiff and nonexempt aggrieved employees worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff and non-exempt employees to continue working when ostensibly on duty-free meal periods, or requiring them to return to work before the end of their thirty-minute meal periods but prohibiting

them from clocking back in until the legally required thirty-minute mark.

16. Based on information and belief, Plaintiff believes non-exempt employees were also not being fully reimbursed for all necessary expenses incurred in the performance of their job duties. Specifically, Defendants required Plaintiff and aggrieved employees, regardless of classification, to use their personal cellular telephones to send and receive messages and calls with supervisors to understand their duties and the scope of work. As well as having Mr. Ochoa and Aggrieved Employees use their personal cellphone to clock in and out of their shifts. Defendants failed to reimburse Plaintiff and Aggrieved Employees fully for use of their personal cellular devices, for consumption of personal calling or data plans tools to perform their work duties

17. Defendants failed to authorize and permit all required meal and rest periods for Plaintiff and nonexempt aggrieved employees because, upon information and belief, Defendants maintained unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendants regularly did not staff enough employees to provide sufficient coverage to maintain their business operations so Plaintiff and aggrieved employees could not both complete their assigned daily duties and take complete, timely and uninterrupted meal and rest breaks. Defendants prioritized completion of daily duties ahead of meal and rest period compliance. Furthermore, Defendants nevertheless deducted a half hour from the daily time worked by Plaintiff and aggrieved employers for ostensible meal periods despite the fact such breaks not actually taken or delayed or interrupted. Moreover, Defendants failed to provide Plaintiff and aggrieved employees with an additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as required by Labor Code section 226.7.

18. As a result of the violations described above, Plaintiff and nonexempt aggrieved employees experienced collateral or derivative violations. Specifically, Defendants failed to provide Plaintiff and nonexempt Aggrieved Employees accurate itemized wage statements in writing in compliance with Labor Code section 226 and failed to compensate Plaintiff and other former nonexempt aggrieved employees for all wages owed at the time employment with

Defendants had ended.

19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

20. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a penalty of one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

21. Defendants' conduct during the PAGA period with respect to Plaintiff and the Aggrieved Employees violates numerous Labor Code sections as detailed herein.

22. Plaintiff alleges that Defendants has engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

23. At all relevant times herein, Defendants employed Plaintiff and other aggrieved employees as employees who were subject to the employment policies, in whole or in part, and therefore suffered the same or substantially similar violations, in whole or in part.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive wages for all hours worked, including the applicable minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and aggrieved employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and aggrieved employees all earned minimum, regular, and/or overtime compensation.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants

knew or should have known that Plaintiff and aggrieved employees were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing timely meal periods. Defendants failed to pay an additional hour of pay to Plaintiff and aggrieved employees for late meal periods. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive all required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing timely rest periods. Defendants failed to pay an additional hour of pay to Plaintiff and aggrieved employees for each rest periods were not provided or was interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved employees did not receive all requited rest periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted 10 minute off-duty rest period.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and certain aggrieved employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain aggrieved employees did not receive payment of all wages due, within permissible time periods, upon separation of employment.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive

itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and correct employer information in accordance with California law. As a result of the wage violations specified above, and in violation of the Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage statements that accurately reported their gross and net wages earned, total hours worked, each applicable rate of pay in effect during the pay period with the corresponding number of hours worked, and the address of the legal entity that is the employer, among other things.

29. Plaintiff and aggrieved employees were employees covered under one or more statutes under the Labor Code, including but not limited to section 2802, but were not reimbursed by Defendants for all business expenses incurred, including but not limited to expenses arising from use of personal cellular devices for work purposes, buying special tools to complete their work assignments and the prorated cost of personal cellular plans utilized for work purposes.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Defendants were required to maintain accurate records of the hours worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendants failed to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its off-the-clock and/or unfair rounding practices, among other things.

<u>FIRST CAUSE OF ACTION</u>

(Civil Penalties Under the Private Attorneys General Act,

Labor Code § 2699 et seq., For Violations of the Labor Code)

31. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

32. By this complaint, Plaintiff brings this case as a representative action seeking penalties for himself, the Aggrieved Employees, and the State of California in a representative capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved employee who was employed by Defendants and subject to at least one of the Labor Code

violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802.

33. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

34. Prior to filing this complaint, on November 1, 2022, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-917242-22. True and correct copies of Plaintiff's notices to the LWDA and Defendants, dated November 1, 2022, are attached hereto as **Exhibit A**.

35. The LWDA has not provided Plaintiff with any notice that it intends to investigate the violations as alleged in Plaintiff's notice dated November 1, 2022, and more than 65 calendar days have elapsed since the postmark date on the latter notice.

36. California Labor Code §§2698-2699.5, in relevant part provides, "any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency…for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

37. As an aggrieved employee, Plaintiff brings this civil action to recover civil penalties for Defendant's Labor Code violations.

First Violation

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

38. Under California Labor Code §512(a), "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

39. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other qualifying employees who worked shifts of greater than five hours, meal periods within the first five hours of the shifts worked. Defendants failed to pay Plaintiff one hour's pay at Plaintiff's regular rate of pay for each day Defendants failed to provide a meal period in compliance with section 512.

<u>Second Violation</u>

(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)

40. Under California Labor Code §226.7(b), "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

41. Industrial Welfare Commission (IWC) provides, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

42. Defendants failed to authorize and permit Plaintiff and other employee to take rest periods and mandated by the Wage Order.

43. Under §226.7(c), an employer who violates §226.7(b), "…shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

44. Defendants failed to pay Plaintiff and other employees who were not provided rest periods one hour of pay at their regular rate of pay.

<u>Third Violation</u>

(Failure to Provide Complete and Accurate Wage Statements, in Violation of Labor Code Section 226)

45. Under California Labor Code §226(a), an employer is legally obligated to provide its employees, semi-monthly or at the time of payment of wages, "an accurate itemized statement in writing..."

46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

<u>Fourth Violation</u>

(Failure to Pay Overtime Wages)

47. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an employer is required to compensate employees for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

<u>Fifth Violation</u>

(Failure to Pay Minimum Wages)

49. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties

for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Sixth Violation

(Failure to Timely Pay Wages During Employment)

51. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, an employer is required to pay its employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants was required to pay their employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Seventh Violation

(Failure to Pay All Wages Due to Discharged and Quitting Employees)

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

54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

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Eighth Violation

Failure to Reimburse Business Expenses in Violation of Labor Code § 2802

(Against all Defendants and DOES 1 to 50, inclusive)

55. Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

56. Defendants failed to indemnify and reimburse Plaintiff for all necessary expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's job duties.

57. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses incurred as a result of discharging his duties, including interest.

58. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For penalties in an amount according to proof;
2. For reasonable attorney's fees and costs pursuant to the PAGA; and
3. For such other and further relief as this Court may deem just and proper.

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Respectfully Submitted,

Dated: January 16, 2023 **WORK LAWYERS, PC**

By: Justin Lo

Justin Lo, Esq.
Attorney for Plaintiff MIGUEL OCHOA and Aggrieved Employees

EXHIBIT A

WORK LAWYERS PC
Helping California Workers

NOTICE OF LABOR CODE VIOLATIONS - PAGA

(Labor Code § 2699.3)

DATE November 1, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: ***Miguel Ochoa v. Theoni, Inc..; ET AL*** **— NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3**

Dear Representative:

This office represents Miguel Ochoa ("Mr. Ochoa") with respect to his claims against Theoni, Inc. and Betsy L Stone (an individual) ("Employer") for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers employed Mr. Ochoa from approximately June 2021 to December 2021, as a non-exempt employee. During his employment with Employers, Mr. Ochoa was employed as a "Warehouse Helper" at Employers' warehouse located at 9038 Kaiser Road Napa CA 94558.

Mr. Ochoa intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 ("PAGA"). Mr. Ochoa is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers ("Aggrieved Employees"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California's wage and hour laws during Mr. Ochoa employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including inter alia, IWC Wage Order No. 5. The claims made on behalf of Mr. Ochoa and Aggrieved Employees are based upon the following facts and theories:

1. **FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.**

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Ochoa and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Mr. Ochoa and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Ochoa and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Ochoa and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Ochoa and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Ochoa and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Ochoa and Aggrieved Employees, which resulted in a failure to pay Mr. Ochoa and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Ochoa and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Mr. Ochoa and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys’ fees and costs.

2. **FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS**

Employers failed to provide Mr. Ochoa and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Mr. Ochoa and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Ochoa and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Ochoa and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Ochoa and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Ochoa and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Ochoa and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Ochoa and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Ochoa and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Ochoa and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Ochoa and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Ochoa and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.**

Employers failed to authorize and permit Mr. Ochoa and Aggrieved Employees take legally compliant 10-minute periods. Employers required Mr. Ochoa and Aggrieved Employees to work through rest periods. Mr. Ochoa and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Ochoa and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Ochoa and Aggrieved Employees were never completely relieved of duty as required by Augustus v. ABM Security Services, Inc., 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Ochoa and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Ochoa and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Ochoa and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Ochoa and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Ochoa and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Ochoa and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Ochoa and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.**

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Ochoa and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. **FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.**

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Armendariz and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Ms. Armendariz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.**

As a result of the practices described above, the wage statements provided to Mr. Ochoa and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. **FAILURE TO MAINTAIN ACCURATE RECORDS.**

Employers have failed to maintain accurate records relating to Mr. Ochoa and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. **FAILURE TO REIMBURSE NECESSARY EXPENDITURES.**

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Ochoa and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Mr. Ochoa and Aggrieved Employees of their personal cell phone to send and receive messages regarding their work schedules as well as an use application on their personal cell phone to clock in and out of their shifts to receive their compensable work time

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

9. **FAILURE TO PAY VACATION TIME.**

Pursuant to California Labor Code section 227.3, ". . .whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employers failed to pay Mr. Ochoa and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Mr. Ochoa and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

Sincerely,

Justin Lo

JUSTIN LO ESQ.

WORK LAWYERS PC
Helping California Workers

Notice provided to Employer via Certified Mail

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