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David W. Slayton,
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By Y. Tarasyuk, Deputy Clerk

Attorney for Plaintiff FRANKLIN GATICA

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

FRANKLIN GATICA, an individual;

Plaintiff,

v.

PURE CARE SOLUTION CORPORATION, a
California Corporation; YAN KRIV, an individual;
GARRY ITKIN, an individual; and DOES 1
through 100, inclusive;

Defendants.

Case Number: **24STCV05019**

COMPLAINT FOR:

- 1. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 et seq. ("PAGA");**
- 2. FAILURE TO PAY MINIMUM WAGE (Cal. Lab. Code § 1197);**
- 3. FAILURE TO COMPENSATE FOR ALL HOURS WORKED (Cal. Lab. Code § 1198);**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (Cal. Lab. Code § 1198);**
- 5. FAILURE TO PAY MEAL PERIOD COMPENSATION (Cal. Lab. Code § 226.7);**
- 6. FAILURE TO PAY REST PERIOD COMPENSATION (Cal. Lab. Code § 226.7);**
- 7. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (Cal. Lab. Code § 226);**
- 8. FAILURE TO PAY WAGES UPON DISCHARGE (Cal. Lab. Code § 201);**
- 9. STATUTORY PENALTIES (Cal. Lab. Code §§ 203 and 558);**
- 10. FAILURE TO INDEMNIFY AND ILLEGAL DEDUCTIONS FROM WAGES (Cal. Lab. Code § 2802);**

**11. UNFAIR COMPETITION (Business
and Professions Code 17200);**

**(CIVIL UNLIMITED)
(DEMAND EXCEEDS \$35,000)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff FRANKLIN GATICA (“Plaintiff”) hereby complains against Defendants PURE CARE SOLUTION CORPORATION, YAN KRIV, GARRY ITKIN, and DOES 1 through 100, inclusive, (collectively “Defendants”) and each of them, and alleges as follows:

JURISDICTION

1. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful conduct in the State of California, which caused harm to Plaintiff in this state.

2. Venue is proper in this Court, because Defendants employ persons in this county, employed Plaintiff in this county, and thus a substantial portion of the occurrences related to this action occurred in this county. *Cal. Civ. Proc. Code* § 395.

PARTIES

3. Plaintiff FRANKLIN GATICA is an individual and a resident of the County of Los Angeles and citizen of the State of California.

4. Plaintiff is informed and believes, and based thereon alleges that Defendant PURE CARE SOLUTION CORPORATION, is a California Corporation, organized and existing to do business under the laws of the State of California, with its principal place of business located in Woodland Hills, California.

5. Plaintiff is informed and believes, and based thereon alleges that Defendant YAN KRIV is an individual and a resident of the County of Los Angeles and citizen of the State of California.

6. Plaintiff is informed and believes, and based thereon alleges that Defendant GARRY ITKIN is an individual and a resident of the County of Los Angeles and citizen of the State of California.

7. Plaintiff is informed and believes, and based thereon alleges that at all times herein

1 mentioned Defendants and DOES 1 through 100, are and were individuals, sole proprietorships,
2 corporations, business entities, persons, and partnerships, licensed to do business and/or actually doing
3 business in the State of California.

4 8. Plaintiff is unaware of the true names and capacities, whether informed and believes
5 and thereon alleges that at all times herein mentioned Defendants and DOES 1 through 100, are and
6 were individual, corporate, associate, or otherwise, of the Defendants sued as DOES 1 through 100,
7 inclusive. They are unknown to Plaintiff and therefore Plaintiff issues them by such fictitious names.
8 Plaintiff will amend this complaint to allege their true names and capacities when they become known
9 to Plaintiff. Plaintiff is informed and believes, and based thereon alleges, that DOES 1 through 100,
10 inclusive, are indebted to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such
11 fictitiously named Defendants arise from such indebtedness.

12 9. Plaintiff is informed and believes, and based thereon alleges that each Defendant sued
13 in this action, including each Defendant sued by the fictitious names DOES 1 through 100, inclusive,
14 is responsible and liable in some manner for the occurrences, controversies and damages alleged
15 below.

16 10. All references to "Defendants," "Defendants," "company," "company's," "employer"
17 or any similar language, whether singular or plural, shall mean "Defendants, and each of them" when
18 used throughout this complaint.

19 11. At all times herein mentioned, Defendants participated in the doing of the acts and
20 omissions herein alleged, were acting within the purpose, course and scope of said agency and/or
21 employment to have been done by the named Defendants; and furthermore, the Defendants, and each
22 of them, were the agents, managing agents, servants, employees, alter-egos, co-conspirators, joint-
23 venturers, partners, successors in interest and predecessors in interest of each of the other Defendants.

24 12. At all times herein mentioned, Defendants were acting within the purpose, course and
25 scope of said agency and/or employment so as to invoke vicarious liability and respond at superior
26 liability among other theories of liability to hold Defendants liable and responsible for the injuries and
27 damages to Plaintiff.

28 13. At all times herein mentioned, Defendants were members of and engaged in a joint

1 venture, partnership and common enterprise, and acting within the purpose, course and scope of, and
2 in pursuit of, said joint venture, partnership and common enterprise.

3 14. At all times herein mentioned, the acts and omissions of various Defendants contributed
4 to the various acts and omissions of each and all of the other Defendants in proximately causing the
5 injuries and damages as herein alleged.

6 15. At all times herein mentioned, Defendants, including Defendant PURE CARE
7 SOLUTION CORPORATION's managing agents, officers and directors, had advanced knowledge of
8 and/or ratified each and every act or omission complained throughout this complaint. At all times
9 relevant herein, Defendants and/or their managing agents, officers or directors committed and/or
10 participated in the wrongful acts and omissions complained of throughout this complaint or ratified
11 such acts and omissions. At all times herein mentioned, the Defendants aided and abetted the acts and
12 omissions of each and all of the other Defendants in proximately causing the damages as herein
13 alleged.

14 16. Plaintiff is informed and believes, and based thereon alleges that Defendants are alter
15 egos of each other.

16 17. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times
17 there has existed a unity of interest and ownership between Defendants such that any individuality and
18 separateness between the entities has ceased.

19 18. The business affairs of Defendants are, and at all times relevant hereto were, so mixed
20 and intermingled that the same cannot reasonably be segregated, and the same are in inextricable
21 confusion.

22 19. The recognition of the separate existence of any Defendant would not promote
23 injustice, in that it would permit the Defendant to wrongfully insulate itself from liability to Plaintiff.

24 20. Adherence to the fiction of the separate existence of Defendants would permit an abuse
25 of the corporate privilege, and would promote injustice by protecting Defendants from liability for the
26 wrongful acts committed by it.

27 21. Plaintiff is informed and believes, and based thereon alleges that the individual
28 Defendants YAN KRIV, GARRY ITKIN and DOES 1 through 100, have treated the corporation as

1 their “alter ego,” rather than as a separate entity; and upholding the corporate entity and allowing for
2 the shareholders to dodge personal liability for its debts would “sanction a fraud or promote an
3 injustice.

4 22. Additionally, per *Labor Code 558.1*, each individual Defendant is liable for their direct
5 causation of wage and hour violations against Plaintiff and other aggrieved employees.

6 **GENERAL FACTS AND ALLEGATIONS**

7 23. This is an action brought by Plaintiff FRANKLIN GATICA (“Plaintiff”) pursuant to
8 California statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendants.
9 Plaintiff was at all times relevant to this complaint, employed by Defendants.

10 24. At all relevant times set forth herein, Defendants, jointly and severally, employed
11 Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California,
12 including the County of Los Angeles.

13 25. Plaintiff is informed and believes and thereon alleges that Defendant PURE CARE
14 SOLUTION CORPORATION is an auto detail business, operating as a carwash called “PURE CARE
15 CARWASH”, with its principal and mailing address located at 21326 Ventura Blvd, Woodland Hills,
16 California 91364.

17 26. Defendant YAN KRIV is the chief executive officer, chief financial officer, and a
18 director of the business and resides in Los Angeles County, CA. Defendant GARRY ITKIN is a
19 principal and/or manager of Defendant and resides in Los Angeles County, CA. Plaintiff alleges that
20 individual defendants are owners/operators, officers, and/or managing agents of the business and are
21 liable jointly and severally for damages pursuant to Labor Code §558.1.

22 27. Plaintiff alleges that Defendants were in charge of managing, supervising, and
23 controlling Plaintiff’s and other employees’ wages, work hours, pay, and work conditions, along with
24 managing the day-to-day operations for the business. Therefore, Defendants controlled Plaintiff’s (and
25 other aggrieved employees’) employment.

26 28. Plaintiff (and other aggrieved employees) engaged in working as laborers and other
27 general positions for Defendants. Defendants employed Plaintiff as a car wash laborer for over two
28 years until approximately November 10, 2022.

1 29. Plaintiff alleges that Defendants first paid Plaintiff in cash, then by business check
2 outside of payroll, thereby misclassifying Plaintiff and others as independent contractors in violation
3 of Labor Code 226.8.

4 30. Defendants failed to keep track of Plaintiff's and other employees' actual hours worked.
5 Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Orders 1-17
6 and other wage orders.

7 31. Defendants' meal and rest break violations were based on business necessities.

8 32. Overtime was paid at the base rate of pay.

9 33. Defendants failed to provide Plaintiff's final pay upon separation.

10 34. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the
11 conduct by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on
12 the basis that Defendants violated such statutes, decisional law, and regulations.

13 35. Plaintiff alleges that Defendants failed to compensate Plaintiff for all hours worked,
14 missed, short, late, and/or interrupted meal periods and/or rest breaks, e.g., Plaintiff and others
15 regularly took their meal breaks after their 5th hour of employment and were not paid a premium.
16 Employees were deprived of any breaks after their lunch hour.

17 36. Defendants had the authority to hire and terminate Plaintiff, to set work rules and
18 conditions governing Plaintiff's employment, and to supervise Plaintiff's daily employment activities.
19 Therefore, Defendants controlled Plaintiff's employment.

20 37. Defendants directly hired and paid wages to Plaintiff.

21 38. Plaintiff alleges that at all relevant times, Defendants were each an "employer" of
22 Plaintiff within the meaning of all applicable California state laws and statutes.

23 39. At all times herein mentioned, Defendants ratified each and every act or omission
24 complained herein.

25 **Wage and Hour Allegations:**

26 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
27 in a uniform policy of wage abuse against their hourly-paid or non-exempt employees within the State
28 of California. This uniform policy involved, inter alia, failing to pay them for all hours worked, missed,

1 short, late, and/or interrupted meal periods, rest breaks, etc. in violation of California law.

2 41. Plaintiff is informed and believes, and based thereon alleges, that at all material times
3 set forth herein, Defendants were advised by skilled lawyers and other professionals, employees, and
4 advisors knowledgeable about California and federal labor and wage law and employment and
5 personnel practices, and about the requirements of California and federal law.

6 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
7 should have known that Plaintiff was entitled to receive certain wages for overtime compensation and
8 that Plaintiff was not receiving wages for overtime compensation.

9 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
10 provide Plaintiff the required rest and meal periods during the relevant time period as required under
11 the Industrial Welfare Commission Wage Orders and thus Plaintiff was entitled to any and all
12 applicable penalties.

13 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
14 should have known that Plaintiff was entitled to receive all meal periods or payment of one additional
15 hour of pay at Plaintiff's regular rate of pay when a meal period was missed, and Plaintiff did not
16 receive all meal periods or payment of one additional hour of pay at Plaintiff's regular rate of pay
17 when a meal period was missed.

18 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
19 should have known that Plaintiff was entitled to receive all rest periods or payment of one additional
20 hour of pay at Plaintiff's regular rate of pay when a rest period was missed, and Plaintiff did not receive
21 all rest periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a rest
22 period was missed.

23 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
24 should have known that Plaintiff was entitled to receive all wages owed to him upon discharge or
25 resignation, including overtime, minimum wages, meal and rest period premiums, and Plaintiff did
26 not, in fact, receive all such wages owed to him at the time of his discharge or resignation.

27 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
28 should have known that Plaintiff was entitled to receive all wages owed to him during his employment.

1 Plaintiff did not receive payment of all wages, including overtime and minimum wages and meal and
2 rest period premiums, within any time permissible under California Labor Code section 204.

3 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
4 should have known that Plaintiff was entitled to receive complete and accurate wage statements in
5 accordance with California law, however Plaintiff did not receive complete and accurate wage
6 statements from Defendants. The deficiencies included, inter alia, the failure to include the total
7 number of hours worked by Plaintiff.

8 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
9 should have known that Defendants had to keep complete and accurate payroll records for Plaintiff in
10 accordance with California law, but, in fact, did not keep complete and accurate payroll records.

11 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
12 should have known that they had a duty to compensate Plaintiff pursuant to California law, and that
13 Defendant had the financial ability to pay such compensation, but willfully, knowingly, and
14 intentionally failed to do so, and falsely represented to Plaintiff that Plaintiff was properly denied
15 wages, all in order to increase Defendant's profits.

16 51. Plaintiff alleges that during the time of his employment, these Defendants acted
17 negligently, recklessly, and/or intentionally to routinely deprive Plaintiff of statutorily mandated rest
18 breaks during work shifts of four (4) hours or greater. Plaintiff and other employees regularly took
19 their meal after their 5th hour of employment and were not paid a premium. Defendants also
20 intentionally failed to compensate Plaintiff for those missed rest breaks over the entire period of her
21 employment with Defendants.

22 52. Plaintiff was not properly compensated for his overtime hours and Defendants failed
23 to keep accurate records of Plaintiff's overtime hours and compensation.

24 53. Defendants, and each of them, violated other provisions of the laws of the State of
25 California, including Employment Laws and Regulations which provide for a civil penalty to be
26 assessed and collected by the California Labor and Workforce Development Agency or its various
27 departments, divisions, commissions, boards, agencies, or employees.

28 54. In addition to any other remedies which may be available at law or equity, or as may

1 otherwise asserted herein, Plaintiff seeks payment of overtime wages and other compensation owed
2 to him, plus all benefits required pursuant to the laws of the State of California, including Employment
3 Laws and Regulations, based on the sums withheld from Plaintiff. Plaintiff also seeks recovery of
4 penalties, attorney's fees, and costs as provided by statute.

5 55. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by
6 Defendants through their unfair business practices in violation of California Business & Professions
7 Code Section 17200 et seq., to prevent Defendants from benefitting from their ongoing unfair
8 practices, and which sums recovered under the Unfair Competition Act and Unfair Businesses Act are
9 equitable in nature and are not to be considered damages. Plaintiff is also entitled to costs, attorney's
10 fees, interest and penalties as provided for by the California Labor Code and California Business &
11 Professions Code.

12 56. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
13 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or
14 her] under this article."

15 57. WHEREFORE, Plaintiff requests relief as hereinafter provided.

16 **PRIVATE ATTORNEY GENERAL ACT OF 2004 ("PAGA")**

17 **(Cal. Lab. Code section 2698 et seq.)**

18 58. In 2003, California's Legislature declared that, "staffing levels for state labor law
19 enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up
20 with the growth of the labor market in the future. It is therefore in the public interest to provide those
21 civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved
22 employees acting as private attorneys general, while also ensuring that state labor law enforcement
23 agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant
24 to this act." Dunlap v. Superior Court (2006) 142 Cal.App.4th 330, 337-338, citing Stats. 2003. Ch.
25 906 § 1.

26 59. In response, California's Legislature passed the Private Attorney General Act of 2004
27 ("PAGA"), which "was adopted to empower aggrieved employees, acting as private attorneys general,
28 to seek civil penalties for Labor Code violations, penalties which previously could be assessed only

1 by state agencies.” Dunlap v. Superior Court (2006) 142 Cal.App.4th 330, 336. “Thus, PAGA
2 empowers or deputizes an aggrieved employee to sue for civil penalties ‘on behalf of himself or herself
3 and other current or former employees’ as an alternative to enforcement by the LWDA.” Id. At 337
4 citing to Cal. Lab. Code 2699(a). Class action requirements do not apply to representative actions
5 brought by one employee on behalf of other current or former employees under the PAGA. Arias v.
6 Superior Court (2009) 46 Cal. 4th 969, 984.

7 60. Prior to bringing the action, the aggrieved employee shall give written notice by
8 certified mail to the Labor and Workforce Development Agency and the employer of the specific
9 provisions of this code alleged to have been violated, including the facts and theories to support the
10 alleged violation. Cal. Lab. Code 2699.3 (c)(1). The agency shall notify the employer and the
11 aggrieved employee or representative by certified mail that it does not intend to investigate the alleged
12 violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph
13 (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark
14 date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil
15 action pursuant to Section 2699.

16 61. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in the
17 PAGA action and the remaining 75% goes to the Labor and Workforce Development Agency. *Cal.*
18 *Lab. Code* 2699(i).

19 62. On December 1, 2022, Plaintiff FRANKLIN GATICA gave written notice by certified
20 mail to the Labor and Workforce Development Agency (“LWDA”) and the employers (Defendants
21 PURE CARE SOLUTION CORPORATION and YAN KRIV), of the specific conditions of the codes
22 alleged to have been violated, including the facts and theories to support the alleged violations.
23 Attached hereto as “**EXHIBIT A**”, is a true and correct copy of Plaintiff’s written PAGA Notice
24 Letter.

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1 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **(Violation of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*)**

3 63. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
4 in full.

5 64. Plaintiff seeks civil penalties for the above acts, which violate the California Labor
6 Code, under the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*

7 65. Plaintiff is “aggrieved employees” under PAGA, as he was employed by Defendants
8 during the applicable statutory period and suffered one or more of the Labor Code violations set forth
9 herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former
10 aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’
11 fees and costs.

12 66. Plaintiff seeks to recover the PAGA civil penalties through a representative action
13 permitted by PAGA and the *California Supreme Court in Arias v. Superior Court*, (2009) 46 Cal.4th
14 969. Therefore, class certification of the PAGA claims is not required.

15 67. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
16 Code provisions:

- 17 a. failure to provide prompt payment of wages to employees upon termination and resignation
18 in violation of Labor Code § 201, 202, 203;
- 19 b. failure to provide itemized wage statements to employees in violation of Labor Code §§
20 226(a), 1174, and 1174.5;
- 21 c. failure to provide meal and rest periods in violation of all applicable IWC wage orders and
22 Labor Code §§ 1174 and 1174.5;
- 23 d. failure to pay overtime wages in violation of all applicable IWC wage orders and Labor
24 Code §§ 510, 558, 1194 and 1198;
- 25 e. failure to provide unpaid balance of full amount of overtime compensation in violation of
26 Labor Code section 1194 and 2698 *et seq.*;
- 27 f. failure to pay minimum wage in violation of all applicable IWC wage orders and Labor
28 Code §§ 1182.12, 1194, and 1197;

- g. Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*;
- h. failure to reimburse employees for all reasonably necessary expenditures and losses incurred by employees in direct consequence of the discharge of their duties and other work-related expenses, in violation of Labor Code section 2802;
- i. failure to provide itemized wage statements to employees in violation of Labor Code section 226(a); and
- j. Violation of Labor Code 226.8 by misclassifying its employees as independent contractors;
- k. Violations of California Labor Code sections 201; 202; 203; 204; 206; 216; 218.6; 221; 226 *et seq.*; 226.8; 432.5; 450; 226.7; 512; 1174; 1174.5; 2802; and all applicable IWC wage orders.

68. On December 1, 2022, Plaintiff FRANKLIN GATICA gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and the employers (Defendants PURE CARE SOLUTION CORPORATION and YAN KRIV), of the specific conditions of the codes alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as “**EXHIBIT A**”, is a true and correct copy of Plaintiff’s written PAGA Notice Letter.

69. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff. *See Cal. Labor Code section 2699.3(a)(2)(A).*

70. With respect to violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code section 226(a).

71. With respect to violations of Labor Code sections 510, 512, Labor Code section 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each unpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages.

2 72. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
3 aggrieved employees pursuant to Labor Code section 558(a)(3).

4 73. With respect to violations of Labor Code section 1174, Labor Code section 1174.5
5 imposes a civil penalty of \$500.

6 74. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100)
7 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay
8 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a
9 civil penalty is not specifically provided, including Labor Code sections 226.7, 226.8, 1174, 1182.12,
10 1194, 1197, 1198, and 2802.

11 75. WHEREFORE, Plaintiff requests relief as hereafter provided.

12 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

13 **(Failure to Pay Minimum Wage)**

14 **(Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198 *et seq.*)**

15 76. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
16 in full.

17 77. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to
18 suffer or permit a California employee to work without paying wages at the proper minimum wage for
19 all time worked.

20 78. At all times material hereto, “hours worked” included “the time during which an
21 employee is subject to the control of an employer, and includes all the time the employee is suffered
22 or permitted to work, whether or not required to do so.”

23 79. During the liability period, Plaintiff suffered, permitted to work, and required to
24 perform work “off-the-clock,” for which she received no pay.

25 80. As a direct and proximate result of Defendants’ failure to pay Plaintiff the minimum
26 wage, Plaintiff has been damaged in the amount of unpaid minimum wages. Pursuant to Labor Code
27 §§ 1194 and 1194.2, Plaintiff is entitled to recover the full amount of unpaid minimum wages,
28 liquidated damages in an equal amount, interest and attorney’s fees, all in a total amount subject to

1 proof at time of trial. In addition, insofar as the failure of Defendants to pay the minimum wage was
2 willful, Plaintiff who no longer works for Defendants are entitled to waiting time penalties pursuant
3 to Labor Code § 200 *et seq.*

4 81. The aforementioned acts by Defendants were intentional, with the intention on the part
5 of the Defendants to deprive Plaintiff of her property and/or legal rights and causing injury to her. As
6 a result of Defendants' failure to compensate Plaintiff at the minimum wage, pursuant to Labor Code
7 § 1197.1, Plaintiff is entitled to civil penalties from Defendants of \$50 for each underpaid employee
8 for each pay period for which the employee is underpaid, for the initial violation; and \$100 for each
9 underpaid employee for each pay period for which the employee is underpaid, for each subsequent
10 violation.

11 82. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
12 to Labor Code §558.1.

13 83. WHEREFORE, Plaintiff requests relief as hereinafter provided.

14 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

15 **(Failure to Compensate for All Hours Worked)**

16 **(Cal. Lab. Code § 1198 *et seq.*)**

17 84. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
18 in full.

19 85. At all times relevant herein, Defendants were required to compensate Plaintiff for all
20 hours worked upon reporting for work at the appointed time stated by Defendants, pursuant to
21 applicable IWC Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1197.

22 86. At all times relevant hereto, Defendants failed to compensate Plaintiff for all hours
23 worked by not compensating her for work performed. Defendants failed to pay minimum wages;
24 Defendants failed to provide breaks as required by law; Defendants failed to compensate employees
25 for all overtime worked; Defendants failed to pay for break periods; Defendants did not accurately
26 record hours worked; Defendants failed to properly itemize wages.

27 87. Under the applicable IWC Wage Orders and California law, Plaintiff is entitled to
28 recover compensation for all hours worked, but not paid, for the three (3) years preceding the filing of

1 this Complaint, plus reasonable attorney's fees and costs of suit pursuant to Labor Code § 218.5, and
2 penalties pursuant to Labor Code §§ 203 and 226.

3 88. In violation of state law, Defendants have knowingly and willfully refused to perform
4 their obligations to compensate Plaintiff for all wages earned and all hours worked. As a direct result,
5 Plaintiff has suffered, and continues to suffer, substantial losses related to the use and enjoyment of
6 such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel
7 Defendants to fully perform their obligations under state law, all to her respective damage in amounts
8 according to proof at time of trial, but not in amounts in excess of the jurisdiction of this Court.

9 89. Defendants committed the acts alleged herein knowingly and willfully, with the
10 wrongful and deliberate intention of injuring Plaintiff, and in conscious disregard of Plaintiff's rights.
11 Plaintiff is thus entitled to recover general, nominal, actual, compensatory, and liquidated damages in
12 amounts according to proof at time of trial, but not in amounts in excess of the jurisdiction of this
13 Court.

14 90. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
15 an amount according to proof at time of trial, but not in an amount in excess of the jurisdiction of this
16 Court.

17 91. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 1197 and
18 1198, and applicable IWC Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558,
19 1194, and 1194.2, Plaintiff is entitled to recover damages for the nonpayment of wages of all hours
20 worked that were improperly deducted by Defendants' policies, penalties, reasonable attorney's fees,
21 expenses, and costs of suit.

22 92. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
23 to Labor Code §558.1.

24 93. WHEREFORE, Plaintiff requests relief as hereinafter provided.

25 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

26 **(Failure to Pay Overtime Compensation)**

27 **(Cal. Lab. Code §§ 1198 & 510 *et seq.*)**

28 94. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth

1 in full.

2 95. Pursuant to applicable IWC Wage Orders, and Labor Code §§ 200, 226, and 1198, at
3 all times relevant hereto, Defendants were required to compensate Plaintiff for all overtime, which is
4 calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight
5 (8) hours per day and/or forty (40) hours per week.

6 96. Pursuant to applicable IWC Wage Orders, and Labor Code §§ 200, 226, and 1198, as
7 of January 1, 1998, Defendants were required to compensate Plaintiff for all overtime, which is
8 calculated as one and one-half (1½) times the regular rate of pay for hours worked in excess of forty
9 (40) hours per week.

10 97. Pursuant to Labor Code §§ 200, 226, 500, 510, and 1198, Defendants were required to
11 compensate Plaintiff for all overtime, which is calculated at one and one-half (1½) times the regular
12 rate of pay for hours worked in excess of eight (8) hours per day.

13 98. Plaintiff was a non-exempt employee entitled to the protections of California Labor
14 Code §§ 200, 226, 500, 510, and 1198. During the course of Plaintiff's employment, Defendants failed
15 to properly compensate him for overtime hours worked as required under the aforementioned Labor
16 Code sections.

17 99. In violation of state law, Defendants have knowingly and willfully refused to perform
18 their obligations to compensate Plaintiff for all wages earned and all hours worked.

19 100. As a direct result of aforementioned violations, Plaintiff has suffered, and continues to
20 suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
21 and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations
22 under state law, all to her respective damage in amounts according to proof at time of trial, but not in
23 amounts in excess of the jurisdiction of this Court.

24 101. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 510 and
25 1198. Therefore, pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff is entitled to
26 recover the unpaid balance of overtime compensation Defendants owe Plaintiff and civil penalties
27 (including the penalties described in Labor Code § 558 and other statutory penalties) plus interest
28 penalties, attorney's fees, expenses, and costs of suit.

1 102. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
2 to Labor Code §558.1.

3 103. WHEREFORE, Plaintiff requests relief as hereinafter provided.

4 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

5 **(Failure to Pay Meal Period Compensation)**

6 **(Cal. Lab. Code §§ 226.7, 512(a) & 1198 *et seq.*)**

7 104. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
8 in full.

9 105. Defendants failed to allow Plaintiff to take rest periods during every four-hour period
10 worked. The law requires that non-exempt employees be allowed a 10-minute break during every
11 four-hour work period, or major fraction thereof. Defendants denied her such breaks.

12 106. In addition, Plaintiff is entitled to recover interest on the unpaid rest period wages due
13 to him. Further, Plaintiff demands reasonable attorney's fees and costs of suit, pursuant to Labor Code
14 § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the one-hour's
15 compensation as premium pay as provided for by law.

16 107. As a result of the conduct alleged herein, Plaintiff was damaged by Defendants' failure
17 to pay wages for breaks withheld in an amount to be established at the time of trial. Moreover,
18 Defendants' failure to pay wages, as alleged herein was at all times knowing and willful.

19 108. Plaintiff is not only entitled to compensation for the lost rest periods, but to the extent
20 that Defendants claim that rest periods were taken which are not documented, Plaintiff also seeks all
21 applicable penalties for Defendants' failure to keep accurate time records and to issue to Plaintiff her
22 accurate earnings statements.

23 109. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
24 to Labor Code §558.1.

25 110. WHEREFORE, Plaintiff requests relief as hereinafter provided.

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **(Failure to Pay Rest Period Compensation)**

3 **(Cal. Lab. Code §§ 226.7 & 1198 *et seq.*)**

4 111. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
5 in full.

6 112. At all times herein mentioned, Plaintiff was a non-exempt employee and subject to the
7 meal period provisions.

8 113. Defendant failed to allow Plaintiff to take 30-minute meal periods for every 5 hours
9 worked. Defendant denied her such breaks. Thus, Defendant sometimes deprived employees of both
10 his meal period and the 30 minutes pay for the time when the employees were working, when they
11 should have been allowed to take their meal breaks.

12 114. Wages are due to employees for “all hours worked” pursuant to applicable laws, rules,
13 orders, requirements, and regulations. Plaintiff demands all applicable reimbursement and penalties
14 for her lost meal breaks, in addition to the one-hour’s compensation due under the wage order. Further,
15 Plaintiff demands reasonable attorney’s fees and costs of suit, pursuant to Labor Code § 218.5.

16 115. Under California law, meal periods must be recorded unless all operations cease during
17 the scheduled meal periods. Defendant failed to record the meal periods. Plaintiff is not only entitled
18 to compensation for the lost meal periods, but to the extent that Defendant claims that meal periods
19 were taken which are not documented, Plaintiff also seeks all applicable penalties for Defendant’s
20 failure to keep accurate time records and to issue to Plaintiff her accurate earnings statements.

21 116. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
22 to Labor Code §558.1.

23 117. WHEREFORE, Plaintiff requests relief as hereinafter provided.

24 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

25 **(Failure to Furnish Accurate Wage and Hour Statements)**

26 **(Cal. Lab. Code § 226)**

27 118. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
28 in full.

1 119. At all relevant times herein, California Labor Code section 226(a) provides that every
2 employer shall furnish each of his or her employees an accurate and complete itemized wage statement
3 in writing, including, but not limited to, the name and address of the legal entity that is the employer,
4 the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

5 120. During the relevant time period, Defendants have knowingly and intentionally
6 provided Plaintiff with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants
7 violated sections 226(a)(1), 226(a)(5), 226(a)(8), and 226(a)(9). Because Plaintiff was forced to work
8 during all or part of his rest break periods, and because Defendants did not calculate Plaintiff's regular
9 rate of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of
10 gross wages earned by Plaintiff in compliance with section 226(a)(1). For the same reasons, Defendants
11 failed to list the correct amount of net wages earned by Plaintiff in violation of section 226(a)(5).
12 Plaintiff was damaged by these failures because, among other things, these failures led her to believe
13 that he was not entitled to be paid overtime, even though he was so entitled and because these failures
14 hindered her from determining the amounts of overtime wages owed to her.

15 121. Defendants also failed to correctly list all applicable hourly rates in effect during the
16 pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, as a
17 result of miscalculating the regular rate of pay, in violation of section 226(a)(9).

18 122. The wage statement deficiencies also include, among other things, failing to list total
19 hours worked by employees; failing to list the number of piece-rate units earned and any applicable
20 piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the
21 inclusive dates of the period for which employees were paid; failing to list the name of the employee
22 and only the last four digits of his or her social security number or an employee identification number
23 other than a social security number; failing to list the correct name of the legal entity that is the
24 employer; and/or failing to state all hours worked as a result of not recording or stating the hours he
25 or she worked off-the-clock.

26 123. By causing Plaintiff to work without compensation, Defendants have violated the
27 requirement that the total hours worked and all wages earned is included in the wage statement that
28 must be provided to Plaintiff.

1 124. Plaintiff was damaged by these failures because, among other things, these failures led
2 Plaintiff to believe that she was not entitled to be paid overtime, even though she was so entitled and
3 because these failures hindered Plaintiff from determining the amounts of overtime wages owed to
4 her.

5 125. By virtue of Defendants' knowing, intentional, and unlawful failure to provide accurate
6 wage statements, Plaintiff has suffered, and will continue to suffer, damages in amounts, which will
7 be ascertained according to proof at trial.

8 126. Plaintiff is entitled to recover from Defendants the greater of her actual damages caused
9 by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty
10 not exceeding four thousand dollars (\$4,000) per employee.

11 127. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
12 to Labor Code §558.1.

13 128. WHEREFORE, Plaintiff requests relief as hereinafter provided.

14 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

15 **(Failure to Pay Wages Upon Discharge)**

16 **(Cal. Lab. Code §§ 201 & 202 *et seq.*)**

17 129. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
18 in full.

19 130. Pursuant to California Labor Code § 201, upon former employee Plaintiff's termination
20 date, Defendants were required to pay Plaintiff all earned wages. At the time of former employee
21 Plaintiff's termination date, former employee Plaintiff had unpaid wages. In violations of Labor Code
22 § 201, Defendants failed to pay former employee Plaintiff any amount of wages due and owing him,
23 in amounts to be proven at the time of trial, but not in excess of the jurisdiction of this Court.

24 131. Defendants' failure to pay former employee Plaintiff the wages due and owing him was
25 willful, and done with the wrongful and deliberate intention of injuring Plaintiff, and in conscious
26 disregard of Plaintiff's rights. Plaintiff is thus entitled to recover general, nominal, actual,
27 compensatory, and liquidated damages in amounts according to proof at time of trial, but not in
28 amounts in excess of the jurisdiction of this Court.

1 132. Defendants' willful failure to pay Plaintiff the wages due and owing to him constitutes
2 violations of Labor Code §§ 201 and 203, which provides that an employee's wages will continue as
3 a penalty for up to thirty (30) days from the time the wages were due. Therefore, Plaintiff is entitled
4 to statutory penalties pursuant to Labor Code § 203.

5 133. Pursuant to Labor Code § 218.5, Plaintiff is also entitled to an award of reasonable
6 attorney's fees, expenses, and costs incurred in this action.

7 134. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
8 to Labor Code §558.1.

9 135. WHEREFORE, Plaintiff requests relief as hereinafter provided.

10 **NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

11 **(Statutory Penalties)**

12 **(Cal. Lab. Code §§ 203 and 558)**

13 136. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
14 in full.

15 137. Labor Code section 201 provides, in relevant part: "(a) If an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

17 138. Labor Code section 202 provides in relevant part:

18 "(a) If an employee not having a written contract for a definite period quits his or her
19 employment, his or her wages shall become due and payable not later than 72 hours
20 thereafter, unless the employee has given 72 hours previous notice of his or her
21 intention to quit, in which case the employee is entitled to his or her wages at the time
22 of quitting. Notwithstanding any other provision of law, an employee who quits
23 without providing 72-hour notice shall be entitled to receive payment by mail if he or
24 she so requests and designates a mailing address. The date of the mailing shall
25 constitute the date of payment for purposes of the requirement to provide payment
26 within 72 hours of the notice of quitting."

27 139. Labor Code section 203 provides:

28 "If an employer willfully fails to pay, without abatement or reduction, in accordance

1 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
2 or who quits, the wages of the employee shall continue as a penalty from the due date
3 thereof at the same rate until paid or until an action therefore is commenced; but the
4 wages shall not continue for more than 30 days. An employee who secretes or absents
5 himself or herself to avoid payment to him or her, or who refuses to receive the payment
6 when fully tendered to him or her, including any penalty then accrued under this
7 section, is not entitled to any benefit under this section for the time during which he or
8 she so avoids payment. Suit may be filed for these penalties at any time before the
9 expiration of the statute of limitations on an action for the wages from which the
10 penalties arise.”

11 140. By willfully failing to pay its separated employee the amounts owed in a timely manner
12 as required by Labor Code sections 201 and 202, Defendants are liable for statutory penalties pursuant
13 to Labor Code § 203, in an amount equal to thirty (30) days of said employee’s per diem wage rate.
14 These statutory penalties, in a sum to be proven at trial, are owed and unpaid.

15 141. Labor Code section 558 provides:

16 “(a) Any employer or other person acting on behalf of an employer who violates, or
17 causes to be violated, a section of this chapter or any provision regulating hours and
18 days of work in any order of the Industrial Welfare Commission shall be subject to a
19 civil penalty as follows:

20 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
21 for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages.

23 (2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was underpaid
25 in addition to an amount sufficient to recover underpaid wages.

26 142. By violating Labor Code sections above and the within-referenced orders of the
27 Industrial Welfare Commission, Defendants are liable for statutory penalties pursuant to Labor Code
28 § 558, in a sum to be proven at trial.

1 143. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
2 to Labor Code §558.1.

3 144. WHEREFORE, Plaintiff requests relief as hereinafter provided.

4 **TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

5 **(Failure to Indemnify and Illegal Deductions from Wages)**

6 **(Cal. Lab. Code § 2802)**

7 145. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
8 in full.

9 146. Pursuant to Labor Code § 2802, requiring employees to expend monies or indemnify
10 their employer for losses in direct consequence of the discharge of their duties is unlawful. Pursuant
11 to aforementioned orders, Labor Code § 226, and other laws of the State of California, it is also
12 unlawful for employers to make set-offs and/or deductions from employees' wages and fail to properly
13 itemize all deductions from wages.

14 147. At all times relevant hereto, Plaintiff was employed by Defendants, and each of them,
15 within the State of California. Defendant was required to indemnify and reimburse Plaintiff for all
16 expenditures or losses incurred in direct consequence of the discharge of Plaintiff's duties, but failed
17 to indemnify and reimburse as an employer is required to do under the laws and regulations of the
18 State of California; further, Defendant made unlawful deductions and/or set-offs from Plaintiff's
19 wages, and failed to properly itemize all deductions from wages in violation of Labor Code §§ 226
20 and 2802, and aforementioned Orders; Defendant also breached the employment contract by failing
21 to fully reimburse Plaintiff for, or requiring Plaintiff to pay other employees out of Plaintiff's own
22 compensation; failing to pay for all hours worked; failing to provide breaks as required by law; failing
23 to provide meal periods as required by law; illegally not accurately recording time worked; and other
24 reason to be discovered.

25 148. At all times relevant hereto, Defendant has withheld indemnification from, charged,
26 deducted, and or set-off the wages of Plaintiff, for illegal purposes.

27 149. In violation of state law, Defendant has knowingly and willfully refused to perform its
28 obligations to compensate Plaintiff for all wages earned and all hours worked and failed to properly

1 indemnify and reimburse Plaintiff. As a direct result, Plaintiff has suffered, and continues to suffer,
2 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
3 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under
4 state law, respective damage in amounts according to proof at time of trial, but not in amounts in
5 excess of the jurisdiction of this Court.

6 150. Defendant committed the acts alleged herein knowingly and willfully, with the
7 wrongful and deliberate intention of injuring Plaintiff, and in conscious disregard of Plaintiff's rights.
8 Plaintiff is entitled to recover general, nominal, actual, compensatory, and liquidated damages in
9 amounts according to proof at time of trial, but not in amounts in excess of the jurisdiction of this
10 Court.

11 151. Defendant's conduct described herein violates Labor Code §§ 200, 226 and 2802. As
12 a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount
13 according to proof at time of trial, but not in an amount in excess of the jurisdiction of this Court.
14 Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, and 2802, Plaintiff is entitled to recover
15 the unpaid balances of wages Defendant owes Plaintiff, plus interest, statutory penalties, attorneys'
16 fees, expenses, and costs of suit.

17 152. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant
18 to Labor Code §558.1

19 153. WHEREFORE, Plaintiff requests relief as hereinafter provided.

20 **ELEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

21 **(Unfair Competition)**

22 **(Violation of California Business & Professions Code §§ 17200 *et seq.*)**

23 154. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth
24 in full.

25 155. Business & Professions Code § 17200 prohibits unfair competition in the form of any
26 unlawful, unfair, or fraudulent business act or practice.

27 156. Business & Professions Code § 17204 allows "any person acting for the interests of
28 itself, its members or the general public" to prosecute a civil action for violation of the UCL.

1 157. Defendants are a “person” as defined by California Business & Professions Code
2 sections 17201, as it is a corporation, firm, partnership, joint stock company, and/or association.

3 158. Beginning at an exact date unknown to Plaintiff, but at least since approximately 2017,
4 Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined
5 by Business & Professions Code § 17200, by engaging in the following conduct:

- 6 (a) failing to pay Plaintiff minimum wage for all hours worked, as required by Labor
7 Code §§ 1182.12, 1194 *et seq.*, 1197 *et seq.* and applicable IWC wage orders;
- 8 (b) failing to pay Plaintiff overtime compensation for all hours worked over eight (8)
9 in a day or forty (40) in a workweek, as required by Labor Code §§ 510, 1194 *et*
10 *seq.* and applicable IWC wage orders;
- 11 (c) failing and/or refusing to provide rest and meal break periods to Plaintiff, as
12 required by Labor Code §§ 226.7 and 512 and applicable IWC wage orders;
- 13 (d) failing to indemnify Plaintiff for employment-related business expenses and
14 losses, as required by Labor Code §2802;
- 15 (e) failing to provide accurate itemized wage statements to Plaintiff, as required by
16 Labor Code § 226 and applicable IWC wage orders;
- 17 (f) failing to maintain payroll records showing the actual hours worked each day by
18 Plaintiff as require by Labor Code § 1174 *et seq.* and applicable IWC wage orders;
- 19 (g) failing to pay, upon termination of employment, all wages due to Plaintiff, as
20 required by Labor Code §§ 201, 202, and 203;
- 21 (h) misclassifying Plaintiff as a contractor in violation of Cal. Lab. Code § 226.8 (b).

22 159. Defendants’, and each of their, conduct as alleged herein, has been, and continues to
23 be, unfair, and harmful to Plaintiff, and to the general public. Plaintiff has suffered injury in fact and
24 has lost money as a result of Defendants’, and each of their, unfair business practices. Plaintiff seeks
25 to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
26 section 1021.5.

27 160. A violation of California Business & Professions Code sections 17200 *et seq.* may be
28 predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have

1 violated the spirit of California's meal and rest break laws and constitute acts against the public policy
2 behind these laws. Plaintiff is entitled to restitution pursuant to Business & Professions Code §§ 17203
3 and 17208 for all unpaid wages, minimum wage, overtime pay, missed rest period compensation,
4 reporting time compensation, and interest for four years prior to the filing of this complaint.

5 161. Pursuant to Business & Prof. Code §17203, Plaintiff is entitled to restitution of money
6 acquired by Defendants by means of its unfair business practices, in amounts not yet ascertained but
7 to be ascertained at trial.

8 162. Plaintiff is entitled to enforce all applicable penalty provisions of the Labor Code
9 pursuant to Business & Professions Code § 17202.

10 163. By all of the foregoing alleged conduct, Defendants, and each of them, have committed,
11 and are continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
12 meaning of Business & Professions Code §17200 *et seq.*

13 164. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims
14 specified herein. There is a financial burden incurred in pursuing this action, which is in the public
15 interest. Therefore, reasonable attorney's fees are appropriate pursuant to Cal. Code of Civil
16 Procedure § 1021.5.

17 165. WHEREFORE, Plaintiff requests relief as hereinafter provided.

18 **PRAYER FOR RELIEF**

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

- 20 1. For general and special damages, according to proof, on all causes of action for which
21 such damages are available, in an amount not less than \$500,000;
- 22 2. For additional compensatory damages for Plaintiff's emotional pain and suffering, in
23 an amount to be proven at trial, in an amount not less than \$50,000;
- 24 3. That Defendants are found to have violated the above-referenced provisions of the
25 Labor Code and IWC Wage Orders as to Plaintiff;
- 26 4. That Defendants' actions are found to be willful and/or in bad faith to the extent
27 necessary under Sections 201, 202 and 203 of the Labor Code for failure to pay all
28 compensation owed at the time of separation to Plaintiff, as to Section 226 of the Labor

Code for willful failure to provide the required accurate and itemized wage statements to Plaintiff;

5. That Defendants are found to have violated provisions of the Labor Code and Wage Orders regarding meal periods and rest periods;

6. That Plaintiff receives an award in the amount of unpaid wages owed, including interest thereon, and penalties subject to proof at trial;

7. For equitable and/or injunctive relief pursuant to California Government Code § 12965(c);

8. An award to Plaintiff of statutory penalties because of Defendants' failure to provide Plaintiff with itemized wage statements that comply with the requirements of Labor Code § 226 and because of Defendants' failure to pay all wages due upon the date of his termination, subject to proof at trial;

9. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff for Defendants' failure to pay legally required minimum wage, overtime compensation, business expenses, missed meal break and rest break periods, pursuant to Business & Professions Code § 17203;

10. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;

11. For lost earnings;

12. For liquidated damages in an amount to be ascertained at trial;

13. For all other penalties as required by law;

14. For costs of suit incurred herein;

15. For restitution of money acquired by Defendants by means of their unfair business practices pursuant to Business & Prof. Code § 17203;

16. For Labor Code penalties pursuant to Business & Professions Code § 17202;

17. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g) and Labor Code section 226.8;

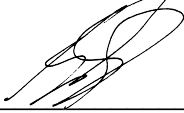
1 18. For reasonable attorney's fees pursuant to California Labor Code section 218.5 and
2 other applicable sections; and

3 19. For such further relief as is appropriate in the interest of justice.

4
5 DATED: February 28, 2024

SIRMABEKIAN LAW FIRM, PC

6
7 By: _____


Sarkis Sirmabekian, Esq.
Attorney for Plaintiff

8
9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands that this matter be tried before a jury under California Code of Civil
12 Procedure Section 631.

13
14 DATED: February 28, 2024

SIRMABEKIAN LAW FIRM, PC

15
16 By: _____


Sarkis Sirmabekian, Esq.
Attorney for Plaintiff

EXHIBIT A



SIRMABEKIAN
LAW FIRM

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December 1, 2022

PURE CARE SOLUTION CORPORATION
21326 Ventura Blvd
Woodland Hills, California 91364

via U.S. Certified Mail

YAN KRIV
21326 Ventura Blvd
Woodland Hills, California 91364

via U.S. Certified Mail

Labor and Workforce Development Agency
("LWDA")
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed/served online at:
<http://www.dir.ca.gov>

RE: FRANKLIN GATICA's Notice of Labor Code Violations Pursuant to California Labor Code Section 2699 et seq. ("PAGA")

Dear Sir or Madam:

Please be advised that FRANKLIN GATICA (hereinafter "Plaintiff") has retained the Sirmabekian Law Firm, PC to represent him and other aggrieved employees for various California Labor Code violations including wage and hour claims against PURE CARE SOLUTION CORPORATION and YAN KRIV (hereafter referred to as "Employer," "Defendants," or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER" or "DEFENDANTS").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code Section 2699.3, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 et seq.

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved employees engaged in working as car wash laborers for Defendants.

Defendant PURE CARE SOLUTION CORPORATION is an auto detail business, operating as a carwash called “PURE CARE CARWASH”, with its principal and mailing address located at 21326 Ventura Blvd, Woodland Hills, California 91364. Defendant YAN KRIV is the chief executive officer, chief financial officer, and a director of the business.

Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling Plaintiff’s and other employees’ wages, work hours, pay, and work conditions, along with managing the day-to-day operations of the business. Therefore, Defendants controlled the employment of Plaintiff and other aggrieved employees.

Defendants employed Plaintiff as a car wash laborer for over two years until approximately November 10, 2022. Below are facts supporting allegations of Defendants’ labor code violations against Plaintiff and other employees:

- Defendants first paid Plaintiff in cash, then by business check outside of payroll, thereby misclassifying Plaintiff and others as independent contractors in violation of Labor Code 226.8;
- Defendants failed to keep track of Plaintiff’s and other employees’ actual hours worked. Employees’ pay was rounded and inaccurate. This is in violation of Section 7 of Wage Orders 1-17 and other wage orders;
- Meal and rest breaks violations were based on business necessities;
- Overtime was paid at the base rate of pay;
- Defendants failed to provide Plaintiff’s final pay upon separation;
- Defendants violated these and other labor laws as described throughout this letter;

The term “aggrieved employees” is broadly defined as all employees of either Defendant, regardless of exempt or non-exempt status, and regardless of whether such employee was also employed by the remaining Defendant. All employees are included in this definition, including positions other than that of Plaintiff.

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and sick pay and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Many other aggrieved employees were also treated as exempt from those protections.

Plaintiff and other aggrieved employees primarily engage(d) in duties that failed to meet the requirements of the various exemptions. They lacked the requisite discretion and independent judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying aggrieved employees, EMPLOYER deprived them of many protections.

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including

Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for overtime work. Further, Overtime was paid at the base rate of pay. As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty hours in a week as a result of working their regular shifts, but EMPLOYER has not paid these employees overtime compensation. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Orders 1-17 and other wage orders. As a result, Plaintiff and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. EMPLOYER did not compensate Plaintiff and other employees for time spent working off the clock. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced to skip or take untimely breaks without appropriate compensation. Here, Plaintiff and other employees' meal breaks were based on business necessities and often interrupted. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Here, Plaintiff and other employees' meal breaks were based on business necessities and often interrupted. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

EMPLOYER has failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. EMPLOYER did not reimburse Plaintiff for various work-related expenses. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of California Labor Code § 2802, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form,

properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Plaintiff and others were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, and the employers' address. Moreover, EMPLOYER's employees' work hours, overtime time hours and pay, missed rest or meal break premiums, wages, without limitation, were misreported on their wage statements. Here, Defendants issued inadequate wage statements for, but not limited to, unfair rounding of employees' hours, which resulted in an underpayment of wages to their employees. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees." Here, Plaintiff would be required to do substantial off the clock work, including showing up early, driving for employer, and was not compensated for that time. Because EMPLOYER did not keep complete and accurate time records reflecting hours worked for Plaintiff and other employees, including, but not limited to, beginning work prior to the start of their shifts, working after the end of their shifts, and missed/short/late rest and meal breaks, it is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.* Section 6 or 7 of the applicable wage order requires the recording of this time. EMPLOYER would not keep track of action time. Instead, Defendants unfairly rounded employees' hours, which resulted in underpayment of wages to their employees. Defendants also failed to properly pay out Plaintiff's and others' sick leave. To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Misclassification of Employees

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Here, Defendants first paid Plaintiff in cash, then by business check outside of payroll, thereby misclassifying Plaintiff and others as independent contractors in violation of Labor Code 226.8. As such, Defendants violated California Labor Code § 226.8 and numerous other Labor Code sections. Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position required him to work for EMPLOYER, among many other duties which were directly related to the services provided by EMPLOYER. EMPLOYER supplied the instrumentalities, tools, and the place for the employees to do their work (all work was done under EMPLOYER's supervision; the employees' investment in the equipment or materials required were limited or non-existent; no special skills were required of the employees; the employees' services were to be performed for a long period of time with a high degree of permanence in the working relationship; and the parties believed they were maintaining an employer-employee relationship.).

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202 including, but not limited to, missing wages due to inaccurate tracking of employees' time records and failing to properly track their hours works and premium pay for missed/short/late meal and rest breaks. Here, Defendants failed to provide Plaintiff adequate and complete final pay upon separation. Therefore, and for other failures to pay as stated within this letter, Defendants failed to provide Plaintiff's final pay upon separation. Plaintiff and other employees are now also entitled to recover up to thirty (30) days of wages due to EMPLOYER's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'S. Sirmabekian', with a stylized, overlapping loop at the end.

Sarkis Sirmabekian, Esq.