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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/21/2023 at 12:01:00 AM
Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 DANIEL ALONSO, an individual, on behalf of
12 himself, and on behalf of other aggrieved
13 employees pursuant to the California Private
14 Attorneys General Act;

15 Plaintiff,

16 v.

17 MNRO HOLDINGS, LLC, a Delaware
18 Corporation; and DOES 1 through 50,
19 Inclusive,

20 Defendants.

Case No. 37-2023-00007450-CU-OE-CTL

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT:**

1. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the California Code of Regulations

21 Plaintiff Daniel Alonso (“PLAINTIFF”), individually, and on behalf of other aggrieved
22 employees pursuant to the California Private Attorneys General Act on behalf of the people of the
23 State of California and as “AGGRIEVED EMPLOYEES” acting as a private attorney general
24 under the Labor Code Private Attorney General Action of 2004, §2699, *et seq.* (“PAGA”) only,
25 alleges on information and belief, except for his own acts and knowledge which are based on
26 personal knowledge, the following:

27 **INTRODUCTION**

- 28 1. PLAINTIFF brings this action against MNRO HOLDINGS, LLC

1 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for
2 himself, and on behalf of all current and former aggrieved employees that worked for
3 DEFENDANT. PLAINTIFF does not seek to recover anything other than penalties as
4 permitted by California Labor Code § 2699. To the extent that statutory violations are
5 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
6 damages for those violations in this action, but simply the civil penalties permitted by
7 California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to
8 pursue his individual claims for, *inter alia*, Defendant’s wage violations, and/or general or
9 special damages arising from those violations, and he fully intends to, at a future date,
10 pursue claims for those individual claims and damages.

11 2. California has enacted the PAGA to permit an individual to bring an action on
12 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
13 sole nature of this action.

14 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
15 DEFENDANT’S violations under PAGA and solely for the relief as permitted by PAGA –
16 that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing
17 in this complaint should be construed as attempting to obtain any relief that would not be
18 available in a PAGA-only action.

19 PRELIMINARY ALLEGATIONS

20 1. Defendant MNRO HOLDINGS, LLC (“DEFENDANT” or “DEFENDANTS”) is
21 a DELAWARE limited liability company, and at all relevant times mentioned herein conducted
22 and continues to conduct substantial and regular business in California.

23 2. DEFENDANT is a Delaware limited liability company and at all relevant times
24 mentioned herein operates Tire and Auto Maintenance/Repair Stores in California, including in
25 San Diego County.

26 3. PLAINTIFF is an individual residing in the State of California.

27 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
28 employee entitled to minimum wages, overtime pay, commissions, and meal and rest periods from

1 July 2022 to October 2022. PLAINTIFF was at all times during his employment with
2 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
3 meal, rest periods and paid training. PLAINTIFF from time to time was unable to take off duty
4 meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was also
5 required to be paid for his rest periods and training. DEFENDANT did not separately and/or
6 properly compensate PLAINTIFF for his meal, rest periods and training. PLAINTIFF was at all
7 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in
8 whole or in part on an hourly basis.

9 5. PLAINTIFF was at all times during his employment with DEFENDANT entitled
10 to be paid minimum wages, entitled to commission payments, and entitled to the legally required
11 off-duty meal, rest periods and paid training. PLAINTIFF from time to time were unable to take
12 off duty meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was
13 also required to be paid for his meal periods, rest periods and training. DEFENDANT did not
14 separately and/or properly compensate PLAINTIFF for his, meal periods, rest periods and
15 training. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
16 non-exempt employee paid in whole or in part on an hourly basis.

17 6. PLAINTIFF, and such persons that may be added from time to time who satisfy the
18 requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 herself and all individuals who are or previously were employed by DEFENDANT in
21 California (the "AGGRIEVED EMPLOYEES") during the time period of December 13,
22 2021 until the present (the "PAGA PERIOD").

23 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
24 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
25 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S
26 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226(a)(8),
27 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12,
28 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the applicable Wage
Orders. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are

1 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

2 8. The true names and capacities, whether individual, corporate, subsidiary, partnership,
3 associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown
4 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to
5 Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
6 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
7 PLAINTIFF is informed and believes, and based upon that information and belief alleges,
8 that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
9 responsible in some manner for one or more of the events and happenings that proximately
10 caused the injuries and damages hereinafter alleged.

11 9. The agents, servants and/or employees of the Defendants and each of them acting on
12 behalf of the Defendants acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants
16 and all Defendants are jointly and severally liable to PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of
18 the Defendants' agents, servants and/or employees.

19 **THE CONDUCT**

20 10. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
21 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including
22 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
23 accurately calculate wages for time worked and penalties for meal and rest periods owed to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these
25 employees the correct compensation. As a result, PLAINTIFF and other AGGRIEVED
26 EMPLOYEES forfeited wages due to them for working without compensation at the correct
27 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice to not pay
28 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in

1 accordance with applicable law is evidence by DEFENDANT's business records.

2 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
3 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. DEFENDANT required
6 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time
7 they are under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
8 to work while clocked out. As a result, the PLAINTIFF and other AGGRIEVED
9 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
10 without their time being accurately recorded and without compensation at the applicable
11 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
12 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
13 DEFENDANT's business records.

14 12. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Orders, DEFENDANT
16 as a matter of company policy, practice and procedure, intentionally and knowingly failed
17 to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate
18 of pay for all overtime worked and correct meal premium pay for all meal period violations.
19 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
20 payment of the correct overtime compensation as required by California law which allowed
21 DEFENDANT to illegally profit and gain an unfair advantage over competitors who
22 complied with the law. To the extent equitable tolling operates to toll claims by the
23 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be
24 adjusted accordingly.

25 13. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required
26 off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the
27 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF
28 and Aggrieved Employees did not prevent these employees from being relieved of all of

1 their duties for the legally required off-duty meal periods. DEFENDANT’S meal period
2 policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees
3 were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal
4 period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved
5 Employees were often not fully relieved of duty by DEFENDANT for their meal periods.
6 Additionally, DEFENDANT’s failure to provide PLAINTIFF and the Aggrieved Employees
7 with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
8 DEFENDANT’s business records. As a result, PLAINTIFF and other members of the
9 Aggrieved Employees forfeited meal breaks without additional compensation and in
10 accordance with DEFENDANT’s strict corporate policy and practice.

11 14. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees
12 with a second off-duty meal period on workdays in which these employees were required by
13 DEFENDANT to work ten (10) hours of work from time to time. As a result,
14 DEFENDANT’S failure to provide PLAINTIFF and the Aggrieved Employees with legally
15 required meal breaks is evidenced by DEFENDANT’s business records which contain no
16 record of these breaks.

17 15. In addition, DEFENDANT failed to compensate PLAINTIFF and Aggrieved
18 Employees for their rest periods as required by the applicable Wage Order and Labor Code.
19 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
20 PLAINTIFF and the other Aggrieved Employees. As a result, DEFENDANT’s failure to
21 provide PLAINTIFF and the Aggrieved Employees with all the legally required paid rest
22 periods is evidenced by DEFENDANT’s business records.

23 16. On numerous occasions, PLAINTIFF and other Aggrieved Employees were required
24 to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
25 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked, even during training.
26 Specifically, DEFENDANT maintained a company-wide pattern and practice of altering
27 employees’ timecards to eliminate numerous hours worked. As a result, DEFENDANT
28 failed to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

1 17. Under California law, every employer shall pay to each employee, on the established
2 payday for the period involved, not less than the applicable minimum wage for all hours
3 worked in the payroll period, whether the remuneration is measured by time, piece,
4 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the
5 time during which an employee is subject to the control of an employer, and includes all the
6 time the employee is suffered or permitted to work, whether or not required to do so.

7 18. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and
8 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper
9 minimum wages, the wage statements issued to PLAINTIFF and other Aggrieved
10 Employees by DEFENDANT violated California law, and in particular, Labor Code Section
11 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
12 issue PLAINTIFF and Aggrieved Employees an itemized wage statement that lists all the
13 requirements under California Labor Code 226 *et seq.*

14 19. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
15 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other
16 Aggrieved Employees for required business expenses incurred by the PLAINTIFF and other
17 Aggrieved Employees in direct consequence of discharging their duties on behalf of
18 DEFENDANT. Under California Labor Code Section 2802, employers are required to
19 indemnify employees for all expenses incurred in the course and scope of their employment.
20 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions
23 of the employer, even though unlawful, unless the employee, at the time of obeying the
24 directions, believed them to be unlawful."

25 20. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
27 as a matter of company policy, practice and procedure, intentionally, knowingly and
28 systematically failed to compensate PLAINTIFF and the other Aggrieved Employees for

1 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
2 to purposefully avoid the payment for all time worked as required by California law which
3 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. To the extent equitable tolling operates to toll claims by the
5 Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted
6 accordingly.

7 21. As a result of DEFENDANT's intentional disregard of the obligation to meet this
8 burden, DEFENDANT failed to properly calculate and/or pay all required compensation for
9 work performed by the members of the CALIFORNIA CLASS and violated the California
10 Labor Code and regulations promulgated thereunder as herein alleged.

11 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
12 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
13 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her
14 missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not
15 prevent her from being relieved of all of her duties for the legally required off-duty meal
16 periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal
17 period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10)
18 hours of work. As a result, DEFENDANT'S failure to provide PLAINTIFF with the legally
19 required second off-duty meal period is evidenced by DEFENDANT's business records.
20 From time to time, and as a result of DEFENDANT not accurately recording all missed meal
21 and rest periods, and failing to pay minimum wages due for all time worked, the wage
22 statements issued to PLAINTIFF by DEFENDANT violated California law, and in
23 particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF
24 all of her wages due to him and all premiums due to him for missed meal and rest breaks
25 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
26 Code Section 203.

27 23. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
28 employees with an accurate itemized wage statement in writing showing, among other

1 things, gross wages earned and all applicable hourly rates in effect during the pay period and
2 the corresponding amount of time worked at each hourly rate. From time to time,
3 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide accurate wage
4 statements. DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
5 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
6 provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
7 which violate Cal. Lab. Code § 226 *et seq.*

8 24. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
11 requires employers to pay employees all wages owed within seven (7) days of the close of
12 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
14 the payroll period.

15 25. Another component of the Aggrieved Employee’s compensation was
16 DEFENDANT’s flat-sum non-discretionary incentive program that paid AGGRIEVED
17 EMPLOYEES and PLAINTIFF flat-sum incentive wages based on their performance for
18 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid
19 on an hourly basis with flat-sum bonus compensation when the employee met various
20 performance goals set by DEFENDANT. These flat-sum incentive payments are identified
21 as “INCENTIVE EARNINGS” in the wage statements issued by DEFENDANTS to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

23 26. However, from time-to-time, when calculating the regular rate of pay, in those
24 pay periods, where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime
25 and earned this flat-sum non-discretionary compensation, DEFENDANT failed to
26 accurately include the flat-sum non-discretionary compensation as part of the employees’
27 “regular rate of pay” and/or calculate all hours worked rather than just all non-overtime
28 hours worked. Management and supervisors described the incentive program to potential

1 and new employees as part of the compensation package. AS a matter of law, the incentive
2 compensation received by PLAINRIFF and other Aggrieved Employees must be included
3 in the “regular rate of pay.” The failure to do so has resulted in a systemic underpayment of
4 overtime compensation to Plaintiff and other AGGRIEVED EMPLOYEES by
5 DEFENDANT.

6 27. From time to time, Defendant failed to pay the Aggrieved Employees all
7 wages and entitlements due under the labor code, including but not limited to compensating
8 its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor
9 Code section 246(l). This resulted from Defendant’s failure to appropriately factor in any
10 additional compensation, including but not limited to, incentives and nondiscretionary
11 bonuses earned by Aggrieved Employees for the purpose of computing the employees’ rate
12 of pay for sick leave. This violation resulted in an underpayment of wages to the Aggrieved
13 Employees which also resulted in derivative violations of other Labor Code sections
14 including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and
15 1197.1.

16 28. From time to time, Defendant failed to provide the Aggrieved Employees with
17 the appropriate accrual of vacation hours on a per pay period basis which resulted in a
18 violation of Labor Code section 227.3. Upon information and belief, Defendant would
19 provide Aggrieved Employees with accrual at less than what they were legally entitled to.

20 29. The above violations resulted in derivative violations including, but not
21 limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3,
22 246, 510, 512, 558, 1194, 1197.1, 1198, 2802, 2698, and 2699 et seq.

23 30. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
26 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
27 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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31. This Court has jurisdiction over this Action pursuant to California Code of Civil

32. Venue is proper in this Court pursuant to California Code of Civil Procedure, sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times maintained restaurants and hotels in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Alleged by PLAINTIFF against all DEFENDANTS)

33. PLAINTIFF realleges and incorporates by this reference, as though fully set
 herein, the prior paragraphs of this Complaint.

34. PAGA is a mechanism by which the State of California itself can enforce labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or compensation, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it is in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

35. PLAINTIFF, and such persons that may be added from time to time who
the requirements and exhaust the administrative procedures under the Private
y General Act, bring this Representative Action on behalf of the State of California
spect to herself and all individuals who are or previously were employed by

1 DEFENDANTS in California during the time period of December 13, 2022 until the
2 present (the "AGGRIEVED EMPLOYEES").

3 36. On December 13, 2022, PLAINTIFF gave written notice via online
4 submission to the Labor and Workforce Development Agency (the "Agency") and the
5 employer of the specific provisions of this code alleged to have been violated as required
6 by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this
7 reference herein. The statutory waiting period for PLAINTIFF to add these allegations to
8 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
9 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
10 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
11 defined.

12 37. The policies, acts and practices heretofore described were and are an
13 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
14 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
15 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
16 rest breaks, (c) failed to provide accurate itemized wage statements, (d) failed to pay
17 commissions, and (e) failed to timely pay wages, all in violation of the applicable Labor
18 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
19 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*,
20 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
21 2698, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
22 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
23 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
24 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES.

26 38. Some or all of the conduct and violations alleged herein occurred during the
27 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
28 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*

1 Corp. (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
2 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
3 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
4 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
5 added, reh'g denied (June 13, 2018).)

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and severally,
8 as follows:

- 9 1. On behalf of the State of California and with respect to all AGGRIEVED
EMPLOYEES:
- 10 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
11 General Act of 2004;
- 12 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law,
13 including, but not limited to, pursuant to Labor Code §§ 201, 202, 203, 204, 226,
14 226.7, 510, 512(a) 1174(d), §1194, 1197, 1197.1, 2800, 2802 and §2699(g); and
- 15 c. For such other relief as the Court deems just and proper.

16 Dated: February 17, 2023

17 **BARVIÉ LAW, APC**
By: 
18 Nicole Barvié
19 Attorney for Plaintiff
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“EXHIBIT 1”

December 13, 2022

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	MNRO Holdings, LLC Db a Tire Choice Auto Service Centers 200 Holleder Parkway Rochester, NY 14615 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq. 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 et seq., 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff Daniel Alonso (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against MNRO Holdings, LLC, dba Tire Choice Auto Service Centers, a Delaware Corporation (“Defendant”). Plaintiff was been employed by Defendant in Spring Valley, California beginning July 2022 to October 2022 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime, premium pay, and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204 et seq. 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 et seq., 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,





1198.5, 2698, 2800, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Barvié
Attorney for Plaintiff

1 **BARVIÉ LAW, APC**
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8 Attorney for DANIEL ALONSO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 DANIEL ALONSO, an individual, on behalf of
12 himself, and on behalf of other aggrieved
13 employees pursuant to the California Private
14 Attorneys General Act;

15 Plaintiff,

16 v.

17 MNRO HOLDINGS, LLC, a Delaware
18 Corporation; and DOES 1 through 50,
19 Inclusive;

20 Defendants.

Case No.

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT:**

1. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the California Code of Regulations

21 Plaintiff Daniel Alonso (“PLAINTIFF”), individually, and on behalf of other aggrieved
22 employees pursuant to the California Private Attorneys General Act on behalf of the people of the
23 State of California and as “AGGRIEVED EMPLOYEES” acting as a private attorney general
24 under the Labor Code Private Attorney General Action of 2004, §2699, *et seq.* (“PAGA”) only,
25 alleges on information and belief, except for his own acts and knowledge which are based on
26 personal knowledge, the following:

27 **INTRODUCTION**

- 28 1. PLAINTIFF brings this action against MNRO HOLDINGS, LLC

1 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for
2 himself, and on behalf of all current and former aggrieved employees that worked for
3 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
4 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
5 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
6 damages for those violations in this action, but simply the civil penalties permitted by
7 California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to
8 pursue his individual claims for, *inter alia*, Defendant’s wage violations, and/or general or
9 special damages arising from those violations, and he fully intends to, at a future date,
10 pursue claims for those individual claims and damages.

11 2. California has enacted the PAGA to permit an individual to bring an action on
12 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
13 sole nature of this action.

14 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
15 DEFENDANT’S violations under PAGA and solely for the relief as permitted by PAGA –
16 that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing
17 in this complaint should be construed as attempting to obtain any relief that would not be
18 available in a PAGA-only action.

19 **PRELIMINARY ALLEGATIONS**

20 1. Defendant MNRO HOLDINGS, LLC (“DEFENDANT” or “DEFENDANTS”) is
21 a DELAWARE limited liability company, and at all relevant times mentioned herein conducted
22 and continues to conduct substantial and regular business in California.

23 2. DEFENDANT is a Delaware limited liability company and at all relevant times
24 mentioned herein operates Tire and Auto Maintenance/Repair Stores in California, including in
25 San Diego County.

26 3. PLAINTIFF is an individual residing in the State of California.

27 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
28 employee entitled to minimum wages, overtime pay, commissions, and meal and rest periods from

1 July 2022 to October 2022. PLAINTIFF was at all times during his employment with
2 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
3 meal, rest periods and paid training. PLAINTIFF from time to time was unable to take off duty
4 meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was also
5 required to be paid for his rest periods and training. DEFENDANT did not separately and/or
6 properly compensate PLAINTIFF for his meal, rest periods and training. PLAINTIFF was at all
7 times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in
8 whole or in part on an hourly basis.

9 5. PLAINTIFF was at all times during his employment with DEFENDANT entitled
10 to be paid minimum wages, entitled to commission payments, and entitled to the legally required
11 off-duty meal, rest periods and paid training. PLAINTIFF from time to time were unable to take
12 off duty meal and rest periods as a result of DEFENDANT's work obligations. PLAINTIFF was
13 also required to be paid for his meal periods, rest periods and training. DEFENDANT did not
14 separately and/or properly compensate PLAINTIFF for his, meal periods, rest periods and
15 training. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
16 non-exempt employee paid in whole or in part on an hourly basis.

17 6. PLAINTIFF, and such persons that may be added from time to time who satisfy the
18 requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 herself and all individuals who are or previously were employed by DEFENDANT in
21 California (the "AGGRIEVED EMPLOYEES") during the time period of December 13,
22 2021 until the present (the "PAGA PERIOD").

23 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
24 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
25 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S
26 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226(a)(8),
27 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12,
28 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698, 2800, 2802 and the applicable Wage
Orders. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are

1 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

2 8. The true names and capacities, whether individual, corporate, subsidiary, partnership,
3 associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown
4 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to
5 Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
6 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
7 PLAINTIFF is informed and believes, and based upon that information and belief alleges,
8 that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
9 responsible in some manner for one or more of the events and happenings that proximately
10 caused the injuries and damages hereinafter alleged.

11 9. The agents, servants and/or employees of the Defendants and each of them acting on
12 behalf of the Defendants acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants
16 and all Defendants are jointly and severally liable to PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of
18 the Defendants' agents, servants and/or employees.

19 **THE CONDUCT**

20 10. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
21 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including
22 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
23 accurately calculate wages for time worked and penalties for meal and rest periods owed to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these
25 employees the correct compensation. As a result, PLAINTIFF and other AGGRIEVED
26 EMPLOYEES forfeited wages due to them for working without compensation at the correct
27 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice to not pay
28 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in

1 accordance with applicable law is evidence by DEFENDANT's business records.

2 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
3 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. DEFENDANT required
6 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time
7 they are under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
8 to work while clocked out. As a result, the PLAINTIFF and other AGGRIEVED
9 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
10 without their time being accurately recorded and without compensation at the applicable
11 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
12 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
13 DEFENDANT's business records.

14 12. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Orders, DEFENDANT
16 as a matter of company policy, practice and procedure, intentionally and knowingly failed
17 to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate
18 of pay for all overtime worked and correct meal premium pay for all meal period violations.
19 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
20 payment of the correct overtime compensation as required by California law which allowed
21 DEFENDANT to illegally profit and gain an unfair advantage over competitors who
22 complied with the law. To the extent equitable tolling operates to toll claims by the
23 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be
24 adjusted accordingly.

25 13. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required
26 off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the
27 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF
28 and Aggrieved Employees did not prevent these employees from being relieved of all of

1 their duties for the legally required off-duty meal periods. DEFENDANT'S meal period
2 policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees
3 were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal
4 period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved
5 Employees were often not fully relieved of duty by DEFENDANT for their meal periods.
6 Additionally, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees
7 with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
8 DEFENDANT's business records. As a result, PLAINTIFF and other members of the
9 Aggrieved Employees forfeited meal breaks without additional compensation and in
10 accordance with DEFENDANT's strict corporate policy and practice.

11 14. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees
12 with a second off-duty meal period on workdays in which these employees were required by
13 DEFENDANT to work ten (10) hours of work from time to time. As a result,
14 DEFENDANT'S failure to provide PLAINTIFF and the Aggrieved Employees with legally
15 required meal breaks is evidenced by DEFENDANT's business records which contain no
16 record of these breaks.

17 15. In addition, DEFENDANT failed to compensate PLAINTIFF and Aggrieved
18 Employees for their rest periods as required by the applicable Wage Order and Labor Code.
19 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
20 PLAINTIFF and the other Aggrieved Employees. As a result, DEFENDANT's failure to
21 provide PLAINTIFF and the Aggrieved Employees with all the legally required paid rest
22 periods is evidenced by DEFENDANT's business records.

23 16. On numerous occasions, PLAINTIFF and other Aggrieved Employees were required
24 to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
25 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked, even during training.
26 Specifically, DEFENDANT maintained a company-wide pattern and practice of altering
27 employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT
28 failed to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

1 17. Under California law, every employer shall pay to each employee, on the established
2 payday for the period involved, not less than the applicable minimum wage for all hours
3 worked in the payroll period, whether the remuneration is measured by time, piece,
4 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the
5 time during which an employee is subject to the control of an employer, and includes all the
6 time the employee is suffered or permitted to work, whether or not required to do so.

7 18. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and
8 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper
9 minimum wages, the wage statements issued to PLAINTIFF and other Aggrieved
10 Employees by DEFENDANT violated California law, and in particular, Labor Code Section
11 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
12 issue PLAINTIFF and Aggrieved Employees an itemized wage statement that lists all the
13 requirements under California Labor Code 226 *et seq.*

14 19. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
15 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other
16 Aggrieved Employees for required business expenses incurred by the PLAINTIFF and other
17 Aggrieved Employees in direct consequence of discharging their duties on behalf of
18 DEFENDANT. Under California Labor Code Section 2802, employers are required to
19 indemnify employees for all expenses incurred in the course and scope of their employment.
20 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions
23 of the employer, even though unlawful, unless the employee, at the time of obeying the
24 directions, believed them to be unlawful."

25 20. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
27 as a matter of company policy, practice and procedure, intentionally, knowingly and
28 systematically failed to compensate PLAINTIFF and the other Aggrieved Employees for

1 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
2 to purposefully avoid the payment for all time worked as required by California law which
3 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. To the extent equitable tolling operates to toll claims by the
5 Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted
6 accordingly.

7 21. As a result of DEFENDANT's intentional disregard of the obligation to meet this
8 burden, DEFENDANT failed to properly calculate and/or pay all required compensation for
9 work performed by the members of the CALIFORNIA CLASS and violated the California
10 Labor Code and regulations promulgated thereunder as herein alleged.

11 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
12 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
13 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her
14 missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not
15 prevent her from being relieved of all of her duties for the legally required off-duty meal
16 periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal
17 period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10)
18 hours of work. As a result, DEFENDANT'S failure to provide PLAINTIFF with the legally
19 required second off-duty meal period is evidenced by DEFENDANT's business records.
20 From time to time, and as a result of DEFENDANT not accurately recording all missed meal
21 and rest periods, and failing to pay minimum wages due for all time worked, the wage
22 statements issued to PLAINTIFF by DEFENDANT violated California law, and in
23 particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF
24 all of her wages due to him and all premiums due to him for missed meal and rest breaks
25 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
26 Code Section 203.

27 23. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
28 employees with an accurate itemized wage statement in writing showing, among other

1 things, gross wages earned and all applicable hourly rates in effect during the pay period and
2 the corresponding amount of time worked at each hourly rate. From time to time,
3 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide accurate wage
4 statements. DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
5 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
6 provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
7 which violate Cal. Lab. Code § 226 *et seq.*

8 24. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
11 requires employers to pay employees all wages owed within seven (7) days of the close of
12 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
14 the payroll period.

15 25. Another component of the Aggrieved Employee’s compensation was
16 DEFENDANT’s flat-sum non-discretionary incentive program that paid AGGRIEVED
17 EMPLOYEES and PLAINTIFF flat-sum incentive wages based on their performance for
18 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid
19 on an hourly basis with flat-sum bonus compensation when the employee met various
20 performance goals set by DEFENDANT. These flat-sum incentive payments are identified
21 as “INCENTIVE EARNINGS” in the wage statements issued by DEFENDANTS to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

23 26. However, from time-to-time, when calculating the regular rate of pay, in those
24 pay periods, where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime
25 and earned this flat-sum non-discretionary compensation, DEFENDANT failed to
26 accurately include the flat-sum non-discretionary compensation as part of the employees’
27 “regular rate of pay” and/or calculate all hours worked rather than just all non-overtime
28 hours worked. Management and supervisors described the incentive program to potential

1 and new employees as part of the compensation package. AS a matter of law, the incentive
2 compensation received by PLAINRIFF and other Aggrieved Employees must be included
3 in the “regular rate of pay.” The failure to do so has resulted in a systemic underpayment of
4 overtime compensation to Plaintiff and other AGGRIEVED EMPLOYEES by
5 DEFENDANT.

6 27. From time to time, Defendant failed to pay the Aggrieved Employees all
7 wages and entitlements due under the labor code, including but not limited to compensating
8 its employees for use of their sick leave pursuant to the correct rate of pay mandated in Labor
9 Code section 246(l). This resulted from Defendant’s failure to appropriately factor in any
10 additional compensation, including but not limited to, incentives and nondiscretionary
11 bonuses earned by Aggrieved Employees for the purpose of computing the employees’ rate
12 of pay for sick leave. This violation resulted in an underpayment of wages to the Aggrieved
13 Employees which also resulted in derivative violations of other Labor Code sections
14 including, but not limited to, Labor Code sections 201, 202, 203, 204, 246, 246(l) and
15 1197.1.

16 28. From time to time, Defendant failed to provide the Aggrieved Employees with
17 the appropriate accrual of vacation hours on a per pay period basis which resulted in a
18 violation of Labor Code section 227.3. Upon information and belief, Defendant would
19 provide Aggrieved Employees with accrual at less than what they were legally entitled to.

20 29. The above violations resulted in derivative violations including, but not
21 limited to, Labor Codes sections 201, 202, 203, 204, 226, 226(a)(1)-(9), 226.3, 226.7, 227.3,
22 246, 510, 512, 558, 1194, 1197.1, 1198, 2698, and 2699 et seq.

23 30. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
26 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
27 2018 AJDAR 12157 (Certified for Publication 12/19/18).

28 **JURISDICTION AND VENUE**

1 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
2 Procedure, Section 410.10.

3 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant
5 times maintained restaurants and hotels in this County and/or conducts substantial business
6 in this County, and (ii) committed the wrongful conduct herein alleged in this County
7 against AGGRIEVED EMPLOYEES.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

10 **[Cal. Lab. Code §§ 2698 *et seq.*]**

11 **(Alleged by PLAINTIFF against all DEFENDANTS)**

12 33. PLAINTIFF realleges and incorporates by this reference, as though fully set
13 forth herein, the prior paragraphs of this Complaint.

14 34. PAGA is a mechanism by which the State of California itself can enforce
15 state labor laws through the employee suing under the PAGA who does so as the proxy or
16 agent of the state's labor law enforcement agencies. An action to recover civil penalties
17 under PAGA is fundamentally a law enforcement action designed to protect the public and
18 not to benefit private parties. The purpose of the PAGA is not to recover damages or
19 restitution, but to create a means of "deputizing" citizens as private attorneys general to
20 enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it
21 was ... in the public interest to allow aggrieved employees, acting as private attorneys
22 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1).
23 Accordingly, PAGA claims cannot be subject to arbitration.

24 35. PLAINTIFF, and such persons that may be added from time to time who
25 satisfy the requirements and exhaust the administrative procedures under the Private
26 Attorney General Act, bring this Representative Action on behalf of the State of California
27 with respect to herself and all individuals who are or previously were employed by
28 DEFENDANTS in California during the time period of December 13, 2022 until the
present (the "AGGRIEVED EMPLOYEES").

1 36. On December 13, 2022, PLAINTIFF gave written notice via online
2 submission to the Labor and Workforce Development Agency (the "Agency") and the
3 employer of the specific provisions of this code alleged to have been violated as required
4 by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this
5 reference herein. The statutory waiting period for PLAINTIFF to add these allegations to
6 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
7 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
8 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
9 defined.

10 37. The policies, acts and practices heretofore described were and are an
11 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
12 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
13 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
14 rest breaks, (c) failed to provide accurate itemized wage statements, (d) failed to pay
15 commissions, and (e) failed to timely pay wages, all in violation of the applicable Labor
16 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
17 201, 202, 203, 204, 210, 226(a), 226(a)(8), 226(b), 226(c), 226.3, 226.7, 227.3, 246 *et seq.*,
18 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
19 2698, 2800, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
20 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
21 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
22 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
and the other AGGRIEVED EMPLOYEES.

23 38. Some or all of the conduct and violations alleged herein occurred during the
24 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
25 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
26 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
27 *Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*
28 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person

1 affected by **at least one** Labor Code violation committed by an employer—to pursue
2 **penalties for all the Labor Code violations committed by that employer.”]**, Emphasis
3 added, reh'g denied (June 13, 2018).)

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and severally,
6 as follows:

- 7 1. On behalf of the State of California and with respect to all AGGRIEVED
8 EMPLOYEES:
- 9 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
10 General Act of 2004;
- 11 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
12 including, but not limited to, pursuant to Labor Code §§ 201, 202, 203, 204, 226,
13 226.7, 510, 512(a) 1174(d), §1194, 1197, 1197.1, 2800, 2802 and §2699(g); and
- 14 c. For such other relief as the Court deems just and proper.

15 Dated: December 13, 2022

16 **BARVIÉ LAW, APC**

17 **By:** _____

18 Nicole Barvié
19 Attorney for Plaintiff
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“EXHIBIT 1”

DRAFT