

Joseph Lavi, Esq. (SBN 209776)
 Vincent C. Granberry, Esq. (SBN 276483)
 Courtney M. Miller, Esq. (SBN 327850)
 LAVI & EBRAHIMIAN, LLP
 8889 W. Olympic Boulevard, Suite 200
 Beverly Hills, California 90211
 Telephone: (310) 432-0000
 Facsimile: (310) 432-0001
 Email: jlavi@lelawfirm.com
 vgranberry@lelawfirm.com
 cmiller@lelawfirm.com
 WHT1@lelawfirm.com

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

MAY 01 2023

BY: 
 Matthew Stutte, Deputy

Attorneys for Plaintiff MICHAEL NYX,
 on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO**

MICHAEL NYX, on behalf of himself and
 current and former aggrieved employees

Case No.:

CIV SB 2312107

PAGA ACTION

**PLAINTIFF MICHAEL NYX'S
 COMPLAINT FOR:**

Plaintiff,
 vs.
 CHEP SERVICES, LLC; and DOES 1 to 100,
 inclusive,
 Defendants.

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

COMES NOW Plaintiff MICHAEL NYX ("Plaintiff"), who alleges and complains
 against Defendants CHEP SERVICES, LLC; and DOES 1 to 100, inclusive (collectively
 "Defendants") as follows:

I. INTRODUCTION

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

1 wages for overtime hours worked at one and one half times employees' regular rate of pay; failure
2 to pay meal break premium wages at the regular rate of compensation; failure to pay rest break
3 premium wages at the regular rate of compensation; failure to pay sick pay at the regular rate of
4 pay; statutory penalties for failure to provide accurate wage statements; statutory waiting time
5 penalties in the form of continuation wages for failure to timely pay employees all wages due upon
6 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
7 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
8 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
9 others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to San Bernardino County, at 2053 Miguel Bustamante Pkwy,
19 Colton, CA 92324.

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

24 **III. PARTIES**

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

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
4 employed by Defendants in an hourly position at Defendants' location in San Bernardino from in
5 or around December 10, 2021, until on or about August 19, 2022.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant CHEP
7 SERVICES, LLC is authorized to do business within the State of California and is doing business
8 in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto
9 were persons acting on behalf of Defendant CHEP SERVICES, LLC in the establishment of, or
10 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant CHEP
11 SERVICES, LLC operates in San Bernardino County and employed Plaintiff and aggrieved
12 employees in San Bernardino County, including but not limited to, at 2053 Miguel Bustamante
13 Pkwy, Colton, CA 92324.

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

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

25 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
26 sues said defendants by said fictitious names, and will amend this complaint when the true names
27 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
28 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously

1 named defendants is in some manner responsible for the events and allegations set forth in this
2 complaint.

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

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

8 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

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

11 11. During the period beginning one (1) year preceding Plaintiff sending the initial
12 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
13 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, and the applicable Wage Orders.

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

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

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

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

1 Labor Code section 510.

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

6 16. In this case, Defendants maintained a policy, practice, and/or procedure whereby,
7 during pay periods Defendants paid Plaintiff and other current and former aggrieved California-
8 based hourly non-exempt employees overtime wages, they failed to the overtime wages at one and
9 one half times the regular rate of pay because they failed to include all remuneration when
10 computing the regular rate of pay for purposes of calculating and paying overtime wages
11 including, but not limited to the following:

- 12 (a) Attendance incentive;
13 (b) GTL;
14 (c) Fuel;
15 (d) Vaccine Bonus; and/or
16 (e) Pallet Bonus

17 For example:

18 (a) During the pay period beginning April 24, 2022, and ending April 30, 2022,
19 with a pay day of May 6, 2022, Plaintiff worked 30 regular hours at \$18/hour and .083334
20 overtime hours at \$27/hour, which was exactly one- and one-half times Plaintiff's base rate of
21 \$18/hour during this pay period. However, during this same pay period Plaintiff earned an
22 additional \$.52 of "GTL" pay. Because Plaintiff's overtime rate of \$27/hour during this pay
23 period was exactly one- and one-half times his base rate of \$18/hour, his "GTL" pay was
24 necessarily not included in his regular rate of pay for purposes of calculating his overtime rate and
25 paying his overtime wages;

26 (b) During the pay period beginning May 1, 2022, and ending May 7, 2022,
27 with a pay day of May 13, 2022, Plaintiff worked 40 regular hours at \$20/hour and .283334
28 overtime hours at \$30/hour, which was exactly one- and one-half times Plaintiff's base rate of

1 \$20/hour during this pay period. However, during this same pay period Plaintiff earned an
2 additional \$.69 of "GTL" pay. Because Plaintiff's overtime rate of \$30/hour during this pay
3 period was exactly one- and one-half times his base rate of \$20/hour, his "GTL" pay was
4 necessarily not included in his regular rate of pay for purposes of calculating his overtime rate and
5 paying his overtime wages.

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

14 18. **Failure to pay meal period premium wages at the regular rate of**
15 **compensation:** Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more
17 than ten (10) hours in length.

18 19. California law requires an employer to authorize or permit an employee an
19 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
20 all duties and the employer relinquishes control over the employee's activities prior to the
21 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
22 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
23 employee for a work period of more than ten (10) hours per day without providing the employee
24 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
25 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
26 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
27 period is only permitted when: (1) the nature of the work prevents an employee from being
28 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

1 20. If an employer fails to provide an employee a meal period in accordance with the
2 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
3 for each workday that a legally required and compliant meal period was not provided. Labor Code
4 section 226.7; Wage Order 4 at §11.

5 21. In this case, Defendants maintained a policy, practice, and/or procedure whereby,
6 during pay periods Defendants paid Plaintiff and other current and former aggrieved California-
7 based hourly non-exempt employees meal break premium wages, Defendants failed to pay them at
8 the regular rate of compensation because they failed to include all remuneration when computing
9 the regular rate of compensation for purposes of calculating and paying meal break premium
10 wages including, but not limited to the following:

11 (a) Attendance incentive;

12 (b) GTL;

13 (c) Fuel;

14 (d) Vaccine Bonus; and/or

15 (e) Pallet Bonus

16 For Example:

17 (a) During the pay period beginning May 1, 2022, and ending May 7, 2022,
18 with a pay day of May 13, 2022, Plaintiff worked 40 regular hours at \$20/hour and was paid a
19 "California Penalty" premium pay of \$20 for a missed and/or noncompliant meal break. However,
20 during this same pay period Plaintiff earned an additional \$.69 of "GTL" pay. Because Plaintiff's
21 meal break premium pay of \$20 during this pay period was exactly equal to his base rate of
22 \$20/hour, his "GTL" pay was necessarily not included in his regular rate of compensation for
23 purposes of calculating and paying his meal break premium wage.

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

1 section 226.7.

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

6 24. **Failure to pay rest period premiums at the regular rate of compensation:**
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
8 regularly worked shifts of more than three-and-a-half (3.5) hours.

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

20 26. If the employer fails to authorize or permit a required rest period, the employer
21 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
22 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
23 Wage Order 4 at § 12.

24 27. Because "regular rate of compensation" under Lab. Code § 226.7(c), has the same
25 meaning as "regular rate of pay" under Lab. Code § 510 (a), the calculation of premium pay for a
26 noncompliant meal, rest, or recovery period, like the calculation of overtime pay, must account for
27 not only hourly wages but also other nondiscretionary payments, and thus an employer calculating
28 premium pay for noncompliant meal or rest breaks according to the employee's base hourly rate

1 while omitting nondiscretionary incentive payments failed to pay in accordance with the
2 employee's regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
3 5th 858, 878.

4 28. In this case, Defendants maintained a policy, practice, and/or procedure whereby,
5 during pay periods Defendants paid Plaintiff and other current and former aggrieved California-
6 based hourly non-exempt employees rest break premium wages, Defendants failed to pay them at
7 the regular rate of compensation because they failed to include all remuneration when computing
8 the regular rate of compensation for purposes of calculating and paying rest break premium wages
9 including, but not limited to the following:

- 10 (a) Attendance incentive;
- 11 (b) GTL;
- 12 (c) Fuel;
- 13 (d) Vaccine Bonus; and/or
- 14 (e) Pallet Bonus.

15 For Example:

16 (a) During the pay period beginning May 1, 2022, and ending May 7, 2022,
17 with a pay day of May 13, 2022, Plaintiff worked 40 regular hours at \$20/hour and was paid a
18 "California Penalty" premium pay of \$20 for a missed and/or noncompliant meal rest. However,
19 during this same pay period Plaintiff earned an additional \$.69 of "GTL" pay. Because Plaintiff's
20 rest break premium pay of \$20 during this pay period was exactly equal to his base rate of
21 \$20/hour, his "GTL" pay was necessarily not included in his regular rate of compensation for
22 purposes of calculating and paying his rest break premium wage.

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

27 30. **Failure to pay sick pay at the regular rate of pay:** Defendants maintained a
28 policy, practice, and/or procedure whereby Plaintiff and other current and former aggrieved

1 California-based non-exempt hourly employees' accrued sick pay.

2 31. Labor Code section 246, subdivision (a), in relevant part requires that "[a]n
3 employee who...works in California for the same employer for 30 or more days within a year
4 from the commencement of employment is entitled to paid sick days." Additionally, an employee
5 accrues paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
6 beginning at the commencement of employment. Labor Code section 246(b).

7 32. Labor Code section 246, subdivision (l), provides that an employer shall calculate
8 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
9 workweek in which the employee elected to use paid sick time.

10 33. "The regular rate at which an employee is employed shall be deemed to include all
11 remuneration for employment paid to, or on behalf, of the employee." See Division of Labor
12 Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

13 34. In In this case, Defendants maintained a policy, practice, and/or procedure
14 whereby, during pay periods Defendants paid Plaintiff and other current and former aggrieved
15 California-based non-exempt hourly employees' sick pay they failed to pay the sick pay at the
16 regular rate of pay because they failed to include all remuneration when computing the regular rate
17 of pay for purposes of calculating and paying sick pay including, but not limited to, the following:

- 18 (a) Attendance incentive;
- 19 (b) GTL;
- 20 (c) Fuel;
- 21 (d) Vaccine Bonus; and/or
- 22 (e) Pallet Bonus.

23 35. For example:

24 (a) During the pay period beginning May 22, 2022, and ending May 28, 2022,
25 with a pay day of June 3, 2022, Plaintiff worked 31.93333 regular hours at \$20/hour and was paid
26 for 8 hours sick pay at \$20/hour. However, during this same pay period Plaintiff earned an
27 additional \$.69 of "GTL" pay. Because Plaintiff's sick pay rate of \$20 during this pay period was
28 exactly equal to his base rate of \$20/hour, his "GTL" pay was necessarily not included in his

1 regular rate of compensation for purposes of calculating and paying his sick pay.

2 36. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
3 failing to pay Plaintiff and other current and former aggrieved California-based non-exempt hourly
4 employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor
5 Code section 246.

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

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

22 39. **Failure to provide complete and accurate wage statements:** Labor Code section
23 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
24 employee his or her wages, the employer must "furnish each of his or her employees ... an
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
26 employee, except for any employee whose compensation is solely based on a salary and who is
27 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
28 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
2 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
3 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
4 name of the employee and his or her social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.”

7 40. In direct violation of Labor Code section 226(a)(9), Defendants failed to provide
8 Plaintiff and similarly situated employees with wage statements that listed the applicable hourly
9 rates for the following pay codes:

10 (a) Attendance Incentive;

11 i. For example, for the pay period beginning February 13, 2022, and
12 ending February 19, 2022 with a pay day of February 25, 2022, Plaintiff earned Attendance
13 Incentive pay in the amount of \$18.00, but his wage statement did not reflect a corresponding rate
14 or hours;

15 (b) Bonus Incentive;

16 i. For example, for the pay period beginning February 13, 2022, and
17 ending February 19, 2022 with a pay day of February 25, 2022, Plaintiff earned Attendance
18 Incentive pay in the amount of \$18.00, but his wage statement did not reflect a corresponding rate
19 or hours;

20 (c) Bonus GU;

21 i. For example, for the pay period beginning February 20, 2022, and
22 ending February 26, 2022 with a pay day of March 4, 2022, Plaintiff earned Bonus GU pay in the
23 amount of \$401.21, but his wage statement did not reflect a corresponding rate or hours;

24 (d) GTL;

25 i. For example, for the pay period beginning February 20, 2022, and
26 ending February 26, 2022 with a pay day of March 4, 2022, Plaintiff earned GTL pay in the
27 amount of \$.52, but his wage statement did not reflect a corresponding rate or hours

28 41. Additionally, as a derivative of his claims above, Plaintiff alleges that Defendants

1 failed to provide accurate wage and hour statements to him and other similarly situated employees
2 who did not receive all their earned wages (including overtime wages, meal period premium
3 wages, and/or rest period premium wages), in violation of Labor Code section 226.

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

9 43. **Failure to pay employees all wages due at time of termination/resignation:** An
10 employer is required to pay all unpaid wages timely after an employee's employment ends. The
11 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
12 hours of resignation (Labor Code section 202).

13 44. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
14 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
15 all their earned wages (including overtime wages, meal period premium wages, and/or rest period
16 premium wages), Defendants failed to pay those employees timely after each employee's
17 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

18 45. Defendants' violations of Wage Order 4 constituted violations of Labor Code
19 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

24 47. Plaintiff has complied with the procedures for bringing suit specified in Labor
25 Code section 2699.3. On February 23, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
26 and provided notice to Defendants by certified mail which provided notice of the specific
27 provisions of the Labor Code alleged to have been violated, including the facts and theories to
28 support the violations alleged.

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

49. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, 1197beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

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

PRAYER FOR RELIEF

1 WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER
2 AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

3 ON THE FIRST CAUSE OF ACTION:

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

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

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

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

13
14 Dated: May 1, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

15
16 By: *Vincent C. Granberry*
17 Joseph Lavi, Esq.
18 Vincent C. Granberry, Esq.
19 Courtney M. Miller, Esq.
20 Attorneys for Plaintiff
21 MICHAEL NYX,
22 on behalf of himself and current and former
23 aggrieved employees
24
25
26
27
28