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Assigned for all purposes:
Judge Lon F. Hurwitz
Dept. CX103

Attorneys for Plaintiff RODERICK GRAJEDA,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RODERICK GRAJEDA, on behalf of himself
and current and former aggrieved employees

Plaintiff,

vs.

PEPPER TREE, INC. dba WILDWATER
EXPRESS CARWASH; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 30-2023-01325392-CU-OE-CXC

PAGA ACTION

**PLAINTIFF RODERICK
GRAJEDA'S COMPLAINT FOR:**

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

COMES NOW Plaintiff RODERICK GRAJEDA ("Plaintiff"), who alleges and complains
against Defendants PEPPER TREE, INC. dba WILDWATER EXPRESS CARWASH; 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' failure to pay wages for all

1 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
2 required and legally compliant meal and rest periods, failure to timely pay earned wages during
3 employment, failure to produce requested employment records failure to provide complete and
4 accurate wage statements, and failure to timely pay all unpaid wages following separation of
5 employment. Plaintiff seeks on a representative basis, following notice to the Labor and
6 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
7 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
8 others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to Orange County at 1195 Baker Street, Costa Mesa, CA
18 92626.

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

23 **III. PARTIES**

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

1 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
2 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
3 employed by Defendants in an hourly position at Defendants' location in Orange from in or
4 around February 17, 2022, until on or about March 14, 2022.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant PEPPER
6 TREE, INC. dba WILDWATER EXPRESS CARWASH is authorized to do business within the
7 State of California and is doing business in the State of California and/or that Defendants DOES
8 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant PEPPER
9 TREE, INC. dba WILDWATER EXPRESS CARWASH in the establishment of, or ratification of,
10 the aforementioned illegal wage and hour practices or policies. Defendant PEPPER TREE, INC.
11 dba WILDWATER EXPRESS CARWASH operates in Orange County and employed Plaintiff
12 and aggrieved employees in Orange County, including but not limited to, at 1195 Baker Street,
13 Costa Mesa, CA 92626.

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, 223.7, 226, 226.7, 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 all hours worked at the legal minimum wage:**
17 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 which inure to the benefit of the employer.

22 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
23 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
24 Wage Orders.

25 15. In this case, Plaintiff and other current and former aggrieved California-based
26 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
27 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
28 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum

1 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
2 not limited to:

- 3 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
4 non-exempt employees to remain on-duty during their off-the-clock meal breaks.

5 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
6 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
7 control without paying wages for that time. This resulted in Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees working time for which they were not
9 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
10 Wage Order.

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

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

20 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
21 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
22 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
23 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
24 (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.

25 Labor Code section 510.

26 19. In this case, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
28 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

1 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees to remain on-duty during their off-the-clock meal breaks.

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

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

15 22. California law requires an employer to authorize or permit an employee an
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
17 all duties and the employer relinquishes control over the employee's activities prior to the
18 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker*
19 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the employee
21 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
22 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
23 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
24 period is only permitted when: (1) the nature of the work prevents an employee from being
25 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26 23. If an employer fails to provide an employee a meal period in accordance with the
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 9 at §11.

2 24. In this case, Defendants failed to authorize or permit legally required and compliant
3 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
4 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
5 limited to:

6 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
7 hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes
8 for every five hours worked.

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

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

19 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
20 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
21 current and former aggrieved California-based hourly non-exempt employees regularly worked
22 shifts of more than three-and-a-half (3.5) hours.

23 28. California law requires every employer to authorize and permit an employee a rest
24 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
25 Code section 226.7; Wage Order 9 at §12. Under California law, "[e]mployees are entitled to 10
26 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
27 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
28 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code

1 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
2 each work period. Wage Order 9 at §12. Additionally, the rest period requirement “obligates
3 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
4 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
5 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

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

10 30. In this case, Defendants failed to authorize or permit all legally required and
11 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
13 limited to:

14 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
15 non-exempt employees to remain on the premises during their rest breaks; and

16 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours worked
18 or major fraction thereof.

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

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

28 33. **Failure to pay accrued and vested vacation wages:** Defendants had a policy

1 and/or procedure of providing its employees with paid vacation time and/or personal time off
2 (“PTO”).

3 34. Vacation/PTO wages are deferred wages that vest once accrued. California Labor
4 Code § 227.3 provides that an employer must pay its employees all unused vested vacation/PTO at
5 the time of termination at the employees’ final rate of pay.

6 35. Defendants had a vacation policy in which Plaintiff and other current and former
7 aggrieved California-based hourly non-exempt employees accrued vacation/PTO wages.

8 36. Defendants terminated Plaintiff and other current and former aggrieved California-
9 based hourly non-exempt employees without paying them the full amount of their earned
10 vacation/PTO wages, in violation of California law, and employed policies and procedures which
11 ensured Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees would not receive their accrued and vested vacation/PTO wages upon termination.

13 37. **Failure to timely pay earned wages during employment:** In California, wages
14 must be paid at least twice during each calendar month on days designated in advance by the
15 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
16 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
17 16th and the 26th day of that month and wages earned between the 16th and the last day,
18 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
19 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
20 paid within seven (7) calendar days following the close of the payroll period in which wages were
21 earned. Labor Code section 204(d).

22 38. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed
23 to timely pay Plaintiff’s and other current and former aggrieved California-based hourly non-
24 exempt employees’ earned wages (including minimum wages, overtime wages, meal period
25 premium wages, and/or rest period premium wages), in violation of Labor Code section 204.
26 Defendants’ aforementioned policies, practices, and/or procedures resulted in their failure to pay
27 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
28 their earned wages within the applicable time frames outlined in Labor Code section 204.

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

14 **40.** As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees all wages
16 earned including minimum wages, overtime wages, meal period premium wages, and/or rest
17 period premium wages), rendered Plaintiff’s and other current and former aggrieved California-
18 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
19 section 226.

20 **41. Failure to pay employees all wages due at time of termination/resignation:** An
21 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
22 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
23 hours of resignation (Labor Code section 202).

24 **42.** As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
26 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
27 and/or rest period premium wages), Defendants failed to pay those employees timely after each
28 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

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

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

45. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On March 7, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

46. 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.

47. 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, 223.7, 226, 226.7, 510, 512, 1194, 1197, beginning 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, 223.7, 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].

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

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

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

11 **PRAYER FOR RELIEF**

12 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
13 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

14 **ON THE FIRST CAUSE OF ACTION:**

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

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

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

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

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1 Dated: May 15, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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3 By: 

4 Joseph Lavi, Esq.
5 Vincent C. Granberry, Esq.
6 Danielle E. Montero, Esq.
7 Attorneys for Plaintiff
8 RODERICK GRAJEDA,
9 on behalf of himself and current and former
10 aggrieved employees
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