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individually, and on behalf of other aggrieved
employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – EAST DISTRICT

RAMON MUÑIZ RODRIGUEZ, individually,
and on behalf of other aggrieved employees,

Plaintiff,

vs.

WALLCRAFT DRYWALL, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 23PSCV01455

**COMPLAINT AND ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510, 1194, and 1198 (Failure to Pay Regular and Overtime Wages);
- (2) Violation of California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods or Pay Premium Compensation in Lieu Thereof);
- (3) Violation of California Labor Code §§ 201 – 203 (Failure to Pay Wages Timely Upon Termination);
- (4) Violation of California Labor Code § 204 (Failure to Pay Wages Timely During Employment);
- (5) Violation of California Labor Code

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	§§ 226(a) (Failure to Provide Accurate Itemized Wage Statements);
	(6) Violation of California Business & Professions Code §§ 17200, <i>et seq.</i> ; and
	(7) Penalties pursuant to California Labor Code §§ 2698, <i>et seq.</i> (Private Attorneys General Act).

Plaintiff RAMON MUÑIZ RODRIGUEZ, individually and on behalf of all other aggrieved employees pursuant to the Private Attorneys General Act, alleges as follows:

THE PARTIES

1. Plaintiff RAMON MUÑIZ RODRIGUEZ (“Plaintiff”) is at least 18 years of age and is a resident of the State of California.
2. Defendant WALLCRAFT DRYWALL, INC. (“WALLCRAFT”) was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.
3. Plaintiff is unaware of the true names or capacities of defendants sued herein under the fictitious names DOES 1 through 100, but prays for leave to amend and serve such fictitiously named defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.
4. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are the partners, agents, owners, shareholders, managers or employees of WALLCRAFT were acting on behalf of WALLCRAFT at all relevant times.
5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to WALLCRAFT and DOES 1 through 100 (collectively “Defendants”), each acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants were in accordance with, and represent the official policy of Defendants.

5 7. Plaintiff is informed and believes, and thereon alleges, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
7 omissions, occurrences, and transactions alleged herein.

JURISDICTION AND VENUE

8. This is an individual action for wage-and-hour violations against Defendants and a representative enforcement action is brought pursuant to California Labor Code § 2698, *et seq.* on behalf of other aggrieved employees for the recovery of civil penalties thereunder. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” The statutes under which this action is brought do not specify any other basis for jurisdiction.

17 9. This Court has jurisdiction over all Defendants because, upon information and
18 belief, each party is either a citizen of California, has sufficient minimum contacts in California, or
19 otherwise intentionally avails itself of the California market so as to render the exercise of
20 jurisdiction over it by the California courts consistent with traditional notions of fair play and
21 substantial justice.

22 10. Venue is proper in this Court because, upon information and belief, one or more of
23 the named Defendants reside, transact business, or have offices in this county and the acts and
24 omissions alleged herein took place in this county.

GENERAL ALLEGATIONS

11. At all relevant times set forth herein, Defendants employed Plaintiff and other aggrieved employees as non-exempt employees throughout the State of California. As used

1 herein, the term “aggrieved employees” refers to all of Defendant’s non-exempt employees in the
2 State of California as set forth herein.

3 12. Defendants employed Plaintiff as a non-exempt, hourly-paid employee from
4 approximately December 8, 2021 to approximately March 3, 2022. Plaintiff’s job duties included
5 plastering, drywall installation, and insulation work.

6 13. At all relevant times set forth herein, Plaintiff and other aggrieved non-exempt
7 employees were not paid correctly for all of the hours they worked because of Defendants’
8 unlawful policies and practices.

9 14. Plaintiff and other aggrieved employees regularly worked more than 8 hours per
10 day and/or more than 40 hours per week. Defendants’ policy and practice was to pay Plaintiff and
11 other aggrieved employees for their scheduled hours. Plaintiff and other aggrieved employees
12 Plaintiff and other aggrieved employees were typically scheduled to work Monday through Friday
13 beginning at 7:00 a.m. and ending at 3:30 p.m. Defendants compensated employees for their
14 scheduled hours only even when employees worked before or after the scheduled shift, and/or
15 worked an additional workday on Saturday. For example, Defendants would regularly require that
16 employees begin working at 6:30 a.m., but employees were not compensated for hours worked
17 between 6:30 a.m. and 7:00 a.m. Moreover, Defendants failed to compensate employees at their
18 correct overtime rate of pay because Defendants failed to account for the non-discretionary bonus
19 in calculating employees’ overtime rates of pay. Further, employees regularly worked during rest
20 periods but were not compensated for those hours worked.

21 15. At all relevant times set forth herein, Defendants failed to provide employees with
22 a 10-minute rest period for every 4 hours worked or major fraction thereof. Defendants failed to
23 provide employees with any rest periods, and failed to pay rest period premium wages as required
24 by California law.

25 16. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
26 aggrieved employees all wages owed upon the separation of their employment, including the
27 unpaid overtime wages and premium wages described herein.

28 17. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other

1 aggrieved employees all wages owed timely during employment, including the unpaid overtime
2 wages and premium wages described herein.

3 18. At all relevant times set forth herein, Defendants failed to provide Plaintiff and
4 other aggrieved employees with accurate itemized wage statements, as required by California
5 Labor Code § 226(a). The number of hours worked and the corresponding hourly rates are
6 inaccurate as a consequence of Defendants' failure to pay wages, as set forth herein.

7 19. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
9 advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other aggrieved employees were entitled to be paid at least
13 minimum wage for all hours worked, and that Plaintiff and other aggrieved employees worked
14 hours for which they were not paid at least minimum wage.

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other aggrieved employees were entitled to receive overtime
17 pay for hours worked in excess of 8 hours per day and/or 40 hours per week and double time pay
18 for hours worked in excess of 12 hours per day, and that Plaintiff and other aggrieved employees
19 worked overtime hours and did not receive overtime pay.

20 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiffs and other aggrieved employees were entitled to receive all rest
22 periods as required by California law, or payment of one additional hour of pay at the regular rate
23 of pay when a compliant rest period was not provided.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
26 of all wages—including, without limitation, regular and overtime wages—due upon termination or
27 discharge in accordance with California law, and that they were not timely paid such wages.

28 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
2 of all wages—including, without limitation, regular and overtime wages—during employment in
3 accordance with California law, and that they were not timely paid such wages.

4 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other aggrieved employees were entitled to receive complete
6 and accurate wage statements in accordance with California law, and that such wage statements
7 were not provided.

8 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
10 and other aggrieved employees, and that Defendants had the financial ability to pay such
11 compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to
12 Plaintiff and other aggrieved employees that they were properly denied wages, all in order to
13 increase Defendants' profits.

14
15 **FIRST CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 510, 1194, and 1198**

17 **Failure to Pay Regular and Overtime Wages**

18 **(Plaintiff Individually Against All Defendants)**

19 27. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
20 material allegations set out in paragraphs 1 through 26.

21 28. California Labor Code §§ 1194 and 1198 and the applicable Industrial Welfare
22 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
23 compensating them at the legal minimum wage and at a rate of pay either time-and-one-half or
24 two-times that person's regular rate of pay, depending on the number of hours worked by the
25 person on a daily or weekly basis.

26 29. Specifically, the applicable IWC Wage Order provides that Defendants are and
27 were required to pay employees working more than eight (8) hours in a day or more than forty
28 (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight

1 (8) hours in a day or more than forty (40) hours in a workweek.

2 30. The applicable IWC Wage Order further provides that Defendants are and were
3 required to pay employees working more than twelve (12) hours in a day, overtime compensation
4 at a rate of two times their regular rate of pay.

5 31. California Labor Code § 510 codifies the right to overtime compensation at one-
6 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
7 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
8 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
9 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

10 32. Plaintiff regularly worked more than 8 hours per day and/or more than 40 hours per
11 week. Defendants' policy and practice was to pay Plaintiff for his scheduled hours. Plaintiff was
12 typically scheduled to work Monday through Friday beginning at 7:00 a.m. and ending at 3:30
13 p.m. Defendants compensated Plaintiff for his scheduled hours only even when he worked before
14 or after the scheduled shift, and/or worked an additional workday on Saturday. For example,
15 Defendants would regularly require that Plaintiff begin working at 6:30 a.m., but Plaintiff was not
16 compensated for hours worked between 6:30 a.m. and 7:00 a.m.

17 33. Moreover, Defendants failed to compensate Plaintiff at his correct overtime rate of
18 pay because Defendants failed to account for non-discretionary bonus in calculating Plaintiff's
19 overtime rates of pay.

20 34. Further, Plaintiff regularly worked during rest periods but was not compensated for
21 those hours worked

22 35. Defendants' failure to pay Plaintiff regular wages and overtime compensation, as
23 required by California laws, violates the provisions of California Labor Code §§ 510, 1194 and
24 1198, and is therefore unlawful.

25 36. Pursuant to California Labor Code § 1194, Plaintiff is entitled to recover his unpaid
26 regular wages, overtime compensation, as well as interest, costs, and attorneys' fees.

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SECOND CAUSE OF ACTION

Violation of California Labor Code § 226.7

Failure to Provide Rest Periods

(Plaintiff Individually Against All Defendants)

37. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 36.

38. At all times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7 were applicable to Plaintiff's employment by Defendants.

39. At all times herein set forth, California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

40. At all times herein set forth, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

41. Defendants failed to provide Plaintiff with a duty-free rest period of at least 10 minutes for every 4 hours worked or major fraction thereof. Defendants only provided one one-hour meal period per workday.

42. During the relevant time period, Defendants failed to pay Plaintiff the full rest period premiums due for non-compliant rest periods pursuant to California Labor Code § 226.7.

43. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code § 226.7.

44. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiff is entitled to recover from Defendants one additional hour of pay at her regular hourly rate of compensation for each work day that the rest period was not provided.

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THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 201, 202 and 203

Failure to Pay Waiting Time Penalties

(Plaintiff Individually Against All Defendants)

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 44.

46. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

47. During the relevant time period, Defendants willfully failed to pay Plaintiff, who is no longer employed by Defendants, his wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of his leaving Defendants' employ.

48. Defendants' failure to pay Plaintiff her wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of her leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

49. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

50. Plaintiff is entitled to recover from Defendants the statutory penalty for each day he was not paid, at his regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

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FOURTH CAUSE OF ACTION

Violation of California Labor Code § 204

Failure to Pay Wages Timely During Employment

(Plaintiff Individually Against All Defendants)

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 50.

52. At all material times set forth herein, California Labor Code § 204 provides that the wages earned by any person in any employment (other than final wages, the wages of temporary employees, commissions, and the salaries of some exempt employees) are due and payable twice during each calendar month. Labor performed between the 1st and 15th days of the calendar month must be paid for between the 16th and 26th days of the calendar month, and labor performed between the 16th and last days of the calendar month must be paid for between the 1st and 10th days of the following month.

53. During the relevant time period, Defendants willfully failed to pay Plaintiff a timely manner for all wages earned during his employment. This occurred as a result of Defendants' failure to pay regular and overtime wages and rest break premium wages, as set forth above.

54. Defendants' failure to pay Plaintiff his wages timely during employment is in violation of California Labor Code § 204.

55. As a result of Defendants' violation of California Labor Code § 204, Plaintiff suffered injury and damage to his statutorily-protected rights.

56. Pursuant to California Labor Code § 210, Plaintiff is entitled to recover from Defendants the statutory penalty of \$100 per initial violation, and \$200 plus 25% of the amount of wages unlawfully withheld for each subsequent violation or any willful or intentional violation.

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FIFTH CAUSE OF ACTION

Violation of California Labor Code § 226(a)

Failure to Provide Compliant Wage Statements

(Plaintiff Individually Against All Defendants)

57. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 56.

58. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of its employees an accurate itemized wage statement in writing showing the following information: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

59. During the relevant time period, Defendants intentionally and willfully failed to provide Plaintiff with complete and accurate wage statements. The number of hours worked and the corresponding hourly rates are inaccurate as a consequence of Defendants' failure to pay regular and overtime wages, as set forth herein.

60. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff has suffered injury and damage to his statutorily-protected rights.

61. Specifically, Plaintiff has been injured by Defendants' intentional violation of California Labor Code § 226(a) because he was denied both his legal right to receive, and his

1 protected interest in receiving, accurate, itemized wage statements under California Labor Code §
2 226(a). Plaintiff has been injured by Defendants' intentional violation of California Labor Code §
3 226(a) in that it has caused confusion over whether he received all of the wages owed to him, in
4 addition to his difficulty and expense in reconstructing pay records and making mathematical
5 computations to analyze whether the wages paid to him did in fact compensate him for all hours
6 worked.

7 62. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
8 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
9 information and the employee cannot promptly and easily determine such information from the
10 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
11 deemed to suffer injury if the wage statement does not accurately and completely state the total
12 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate.

14 63. Plaintiff is deemed to have suffered injury because his wage statements did not
15 provide complete and accurate information regarding the total number of hours he worked in a
16 given pay period, the applicable hourly rates in effect during the pay period, and the corresponding
17 number of hours worked at each hourly rate.

18 64. Plaintiff is entitled to recover from Defendants the greater of the actual damages
19 caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate
20 penalty not exceeding \$4,000.

21 22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code §§ 17200, *et seq.***

24 **Unfair Competition**

25 **(Plaintiff Individually Against All Defendants)**

26 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
27 material allegations set out in paragraphs 1 through 64.

28 66. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful, and harmful to Plaintiff and to the general public. Plaintiff seeks to enforce important
2 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

3 67. Defendants' activities, as alleged herein, are violations of California law, and
4 constitute unlawful business acts and practices in violation of California Business & Professions
5 Code §§ 17200, *et seq.*

6 68. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
7 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
8 practice of failing to pay Plaintiff for regular and overtime wages is a violation of California Labor
9 Code §§ 510, 1194, and 1198. Additionally, Defendants' policy and practice of requiring Plaintiff
10 to work through his rest periods without paying him proper compensation violates California
11 Labor Code §§ 226.7 and 512(a). Further, Defendants' policy and practice of not providing wages
12 earned timely during employment is a violation of Labor Code § 204. Defendants' policy and
13 practice of failing to pay timely all wages dues at time of discharge or resignation and not
14 providing accurate wage statements violates California Labor Code §§ 201-203 and 226(a),
15 respectively.

16 69. Plaintiff has been personally injured by Defendants' unlawful business acts and
17 practices as alleged herein, including but not necessarily limited to the loss of money or property.

18 70. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff is
19 entitled to restitution of the wages withheld and retained by Defendants during a period that
20 commences four years prior to the filing of this complaint; a permanent injunction requiring
21 Defendants to pay all outstanding wages due to Plaintiff; an award of attorneys' fees pursuant to
22 California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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24 **SEVENTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 2698, *et seq.***

26 **Private Attorneys General Act**

27 **(Representative Claim Against All Defendants)**

28 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein the

1 material allegations set out in paragraphs 1 through 70.

2 72. At all relevant times set forth herein, the Private Attorneys General Act, California
3 Labor Code § 2698, *et seq.* (“PAGA”) was applicable to Plaintiff’s employment and the aggrieved
4 employees’ employment by Defendants.

5 73. At all relevant times set forth herein, PAGA provides that any civil penalties under
6 the California Labor Code which may be assessed and collected by the Labor and Workforce
7 Development Agency may, as an alternative, be recovered through a civil action brought by an
8 aggrieved employee on behalf of him or herself and other aggrieved employees pursuant to the
9 procedures set forth in California Labor Code § 2699.3.

10 74. A civil action under PAGA may be brought by an aggrieved employee, which is
11 defined as any person who was employed by the alleged violator and against whom one or more of
12 the alleged violations was committed.

13 75. Plaintiff was employed by Defendants and the alleged violations were committed
14 against him during his employment. Therefore, Plaintiff is an aggrieved employee as defined by
15 California Labor Code § 2699(c).

16 76. Pursuant to California Labor Code § 2699.3 and 2699.5, an aggrieved employee
17 may pursue a PAGA action after the following requirements have been met:

18 a. The aggrieved employee shall give written notice by online filing with the
19 Labor and Workforce Development Agency (“LWDA”) and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated,
21 including the facts and theories to support the alleged violation.

22 b. The LWDA shall provide notice to the employer and the aggrieved
23 employee by certified mail that it does not intend to investigate the alleged
24 violation within sixty (60) days of the postmark date of the employee’s notice.
25 Upon receipt of this notice, or if this notice is not provided within sixty-five (65)
26 calendar days of the postmark date of the employee’s notice, the aggrieved
27 employee may commence a civil action pursuant to California Labor Code § 2699
28 to recover civil penalties in addition to any other penalties to which the employee

1 may be entitled.

2 c. On March 1, 2023, Plaintiff provided the requisite written notice by online
3 filing to the LWDA and by certified mail to Defendants, informing them of the
4 specific provisions of the California Labor Code alleged to have been violated,
5 including the facts and theories to support the alleged violations. As of the filing
6 date of this complaint, the LWDA has not responded to Plaintiff's PAGA notice.

7 77. Plaintiff has satisfied the administrative prerequisites under California Labor Code
8 § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for
9 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 558, 1194, and 1198.

10 78. Defendants' conduct, as alleged herein, violates the following sections of the
11 California Labor Code:

- 12 a. Violation of California Labor Code §§ 510, 1194 and 1198 (Failure to Pay
13 Regular and Overtime Wages);
- 14 b. Violation of California Labor Code § 226.7 (Failure to Provide Rest
15 Periods);
- 16 d. Violation of California Labor Code §§ 201, 202, and 203 (Failure to Pay
17 Wages Timely Upon Termination);
- 18 e. Violation of California Labor Code § 204 (Failure to Pay Wages Timely
19 During Employment); and
- 20 f. Violation of California Labor Code § 226(a) (Failure to Provide Compliant
21 Wage Statements).

22 79. California Labor Code § 510 codifies the right to overtime compensation at one-
23 and-one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40
24 hours in a week or for the first 8 hours worked on the seventh day of work, and to overtime
25 compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day or in
26 excess of 8 hours in a day on the seventh day of work.

27 80. California Labor Code § 1194 and the applicable Industrial Welfare Commission
28 ("IWC") Wage Order provide that employees are entitled to the applicable minimum wage or

1 overtime compensation for all hours worked.

2 81. California Labor Code § 1198 and the applicable IWC Wage Order provide that it
3 is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half
4 or two-times that person's regular rate of pay, depending on the number of hours worked by the
5 person on a daily or weekly basis.

6 82. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and other aggrieved employees employed by Defendants, and
8 working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of time-and-
9 one-half for all hours worked in excess of 8 hours in a day or more than 40 hours in a workweek.

10 83. During the relevant time period, During the relevant time period, Plaintiff and other
11 aggrieved employees consistently worked in excess of 8 hours in a day, and/or in excess of 40
12 hours in a week. Defendants willfully failed to pay all wages, including regular and overtime
13 wages, owed to Plaintiff and other aggrieved employees.

14 84. Plaintiff regularly worked more than 8 hours per day and/or more than 40 hours per
15 week. Defendants' policy and practice was to pay Plaintiff for his scheduled hours. Plaintiff was
16 typically scheduled to work Monday through Friday beginning at 7:00 a.m. and ending at 3:30
17 p.m. Defendants compensated Plaintiff for his scheduled hours only even when he worked before
18 or after the scheduled shift, and/or worked an additional workday on Saturday. For example,
19 Defendants would regularly require that Plaintiff begin working at 6:30 a.m., but Plaintiff was not
20 compensated for hours worked between 6:30 a.m. and 7:00 a.m. Defendants did not keep records
21 of Plaintiff's hours worked.

22 85. Moreover, Defendants failed to compensate Plaintiff at his correct overtime rate of
23 pay because Defendants failed to account for non-discretionary bonus in calculating Plaintiff's
24 overtime rates of pay.

25 86. Further, Plaintiff regularly worked during rest periods but was not compensated for
26 those hours worked.

27 87. Defendants' failure to pay Plaintiff's and other aggrieved employees' regular and
28 overtime wages violates the provisions of California Labor Code §§ 510, 1194 and 1198, and is

1 therefore unlawful.

2 88. At all relevant times herein set forth, the applicable IWC Wage Order and
3 California Labor Code § 226.7 were applicable to Plaintiff's and other aggrieved employees'
4 employment by Defendants.

5 89. At all relevant times, California Labor Code § 226.7 provides that no employer
6 shall require an employee to work during any rest period mandated by an applicable order of the
7 California IWC.

8 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
12 or major fraction thereof" unless the total daily work time is less than three and one-half (3½)
13 hours.

14 91. During the relevant time period, Defendants failed to provide Plaintiff and other
15 aggrieved employees with a duty-free rest period of at least 10 minutes for every four hours of
16 work or major fraction thereof.

17 92. During the relevant time period, Defendants failed to pay Plaintiff and other
18 aggrieved employees the rest period premiums due for non-compliant rest periods pursuant to
19 California Labor Code § 226.7. Defendants only provided one one-hour meal period per workday.

20 93. Defendants' conduct violates the applicable IWC Wage Orders and California
21 Labor Code § 226.7.

22 94. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
23 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
24 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
25 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
26 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
27 quit, in which case the employee is entitled to his or her wages at the time of quitting.

28 95. The unpaid wages owed to Plaintiff and other aggrieved employees at the time of

1 termination of their employment include unpaid regular and overtime and premium wages for non-
2 compliant rest periods, as set forth herein.

3 96. Defendants' failure to pay Plaintiff and other aggrieved employees who are no
4 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
5 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
6 Code §§ 201, 202 and 203.

7 97. All California employers know or should know that employees must be paid for all
8 time spent under the employer's control and that overtime wages are paid at one and a half times
9 the regular rate of pay. Defendant's failure to abide by these well-established laws is willful and
10 not in good faith.

11 98. California Labor Code § 203 provides that if an employer willfully fails to pay
12 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as
13 a penalty from the due date, and at the same rate until paid or until an action is commenced; but
14 the wages shall not continue for more than thirty (30) days.

15 99. Plaintiff and other aggrieved employees are entitled to recover from Defendants the
16 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant
17 to California Labor Code § 203.

18 100. At all material times set forth herein, California Labor Code § 204 provides that
19 the wages earned by any person in any employment (other than final wages, the wages of
20 temporary employees, commissions, and the salaries of some exempt employees) are due and
21 payable twice during each calendar month. Labor performed between the 1st and 15th days of the
22 calendar month must be paid for between the 16th and 26th days of the calendar month, and labor
23 performed between the 16th and last days of the calendar month must be paid for between the 1st
24 and 10th days of the following month.

25 101. During the relevant time period, Defendants failed to pay Plaintiff and other
26 aggrieved employees in a timely manner for all wages earned during their employment. This
27 occurred as a result of Defendants' failure to pay regular and overtime wages and rest period
28 premium wages, as set forth above.

102. As a result of Defendants' violation of California Labor Code § 204, Plaintiff and other aggrieved employees have suffered injury and damage to their statutorily-protected rights.

103. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing the following information: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. Defendants have intentionally and willfully failed to provide Plaintiff and other aggrieved employees with complete and accurate wage statements because the number of hours worked and the corresponding hourly rates are inaccurate as a consequence of Defendants' failure to pay regular and overtime wages and premium wages, as set forth herein.

105. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and other aggrieved employees have suffered injury and damage to their statutorily-protected rights.

106. Specifically, Plaintiff and other aggrieved employees have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a). Plaintiff and other aggrieved employees have been injured by Defendants' intentional violation of California Labor Code § 226(a) in that it has

1 caused confusion over whether they received all of the wages owed them, in addition to their
2 difficulty and expense in reconstructing pay records and making mathematical computations to
3 analyze whether the wages paid them did in fact compensate them for all hours worked

4 107. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
5 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
6 information and the employee cannot promptly and easily determine such information from the
7 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
8 deemed to suffer injury if the wage statement does not accurately and completely state the total
9 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
10 period and the corresponding number of hours worked at each hourly rate.

11 108. Plaintiff and the aggrieved employees are deemed to have suffered injury because
12 their wage statements did not provide complete and accurate information regarding the total
13 number of hours they worked in a given pay period, the applicable hourly rates in effect during the
14 pay period, and the corresponding number of hours worked at each hourly rate.

15 109. California Labor Code §§ 558 and 558.1 provide that an employer or “other person
16 acting on behalf of an employer” who violates, or causes to be violated, a provision of Labor Code
17 §§ 500 through 558, or a provision of the IWC Wage Orders regarding hours and days of work, is
18 liable for civil penalties of \$50 to \$100 per pay period to each underpaid employee, in addition to
19 other civil penalties provided for by law. As set forth herein, Defendants have violated provisions
20 of the California Labor Code and IWC Wage Order 9-2001, and is thus liable for penalties under
21 Labor Code § 558.

22 23 **PRAYER FOR RELIEF**

24 Plaintiff, on behalf of himself and other aggrieved employees, prays for relief and
25 judgment against Defendants, jointly and severally, as follows:

26 **As to the First Cause of Action**

27 1. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code §§ 510, 1194 and 1198 and applicable IWC Wage Orders by wilfully failing to pay

1 all wages, including regular and overtime wages, due to Plaintiff;

2 2. For general unpaid wages at the applicable overtime wage rates and such general
3 and special damages as may be appropriate;

4 3. For pre-judgment interest on any unpaid overtime compensation commencing
5 from the date such amounts were due;

6 4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
7 California Labor Code § 1194(a); and

8 5. For such other and further relief as the Court may deem equitable and appropriate.

9 As to the Second Cause of Action

10 6. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code § 226.7 and applicable IWC Wage Orders by wilfully failing to provide all rest
12 periods to Plaintiff;

13 7. That the Court make an award to Plaintiff of one (1) hour of pay at her regular
14 rate of compensation for each workday that a rest period was not provided;

15 8. For all actual, consequential, and incidental losses and damages, according to
16 proof; and

17 9. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Third Cause of Action

19 10. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
21 termination of the employment of Plaintiff;

22 11. For all actual, consequential and incidental losses and damages, according to
23 proof;

24 12. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff; and

25 13. For such other and further relief as the Court may deem equitable and appropriate.

26 As to the Fourth Cause of Action

27 14. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code § 204 by willfully failing to pay all compensation owed timely during the

1 employment of Plaintiff;

2 15. For all actual, consequential and incidental losses and damages, according to
3 proof;

4 16. For statutory penalties pursuant to California Labor Code § 210 for Plaintiff; and

5 17. For such other and further relief as the Court may deem equitable and appropriate.

6 As to the Fifth Cause of Action

7 18. That the Court declare, adjudge and decree that Defendants violated the record
8 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to
9 Plaintiff, and wilfully failed to provide accurate itemized wage statements thereto;

10 19. For all actual, consequential and incidental losses and damages, according to
11 proof;

12 20. For statutory penalties pursuant to California Labor Code § 226(e);

13 21. For injunctive relief to ensure compliance with this section, pursuant to California
14 Labor Code § 226(g); and

15 22. For such other and further relief as the Court may deem equitable and appropriate.

16 As to the Sixth Cause of Action

17 23. That the Court declare, adjudge, and decree that Defendants violated California
18 Business and Professions Code §§ 17200, *et seq.* by failing to provide Plaintiff all wages due to
19 him under California Labor Code §§ 510, 1194, and 1198; failing to provide compliant rest
20 periods or pay premium compensation as required by California Labor Code §§ 226.7 and 512;
21 failing to pay all wages due upon separation of employment under California Labor Code §§
22 201-203; and failing to provide accurate wage statements under California Labor Code § 226.

23 24. For restitution of unpaid wages and expenses to Plaintiff and prejudgment interest
24 from the day such amounts were due and payable;

25 25. For the appointment of a receiver to receive, manage, and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code §§ 17200, *et seq.*;

28 26. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

California Labor Code § 1021.5;

27. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and

28. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

29. For civil penalties pursuant to California Labor Code § 2699(f) & (g) in the amount of \$100 for each aggrieved employee per pay period for initial violations and \$200 for each aggrieved employee per pay period for subsequent violations, plus attorneys' fees and costs;

30. For civil penalties pursuant to California Labor Code § 558 in the amount of \$50 per pay period for each initial violation and \$100 per pay period for each subsequent violation, for all affected employees, in addition to an amount sufficient to recover underpaid wages; and

31. For such other and further relief as the Court may deem equitable and appropriate.

Dated: May 12, 2023

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