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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DIOGENES GARCIA on behalf of all
aggrieved employees,

Plaintiff,

vs.

CONGO BRANDS, LLC, a Kentucky
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00028251-CU-OE-CTL

**recovery Of Civil Penalties Pursuant To The
Private Attorneys General Act**

- 1. PAGA Civil Penalties for Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 218, 1194, 1194.2);**
- 2. PAGA Civil Penalties for Failure to Pay Overtime Wages (Cal. Lab. Code §§ 204, 210, 218, 510, 1194);**
- 3. PAGA Civil Penalties for Failure to Provide Timely and Compliant Meal Periods and Rest Breaks (Cal. Lab. Code §§ 226.7 and 512)**
- 4. PAGA Civil Penalties for Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174, 1174.5); and**
- 5. PAGA Civil Penalties for Waiting Time Penalties (Cal. Labor Code §§ 201-203); and**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

1 1. Plaintiff DIOGENES GARCIA (“Plaintiff”), on behalf of all aggrieved employees,
2 files this PAGA Complaint against defendant CONGO BRANDS, LLC. a Kentucky Limited
3 Liability Company: and DOES 1 through 50 (collectively, “Defendants”), and alleges as follows:
4

5 **I. INTRODUCTION AND FACTUAL BACKGROUND**

6 2. Plaintiff brings this action pursuant to PAGA for, among other things: (a)
7 nonpayment of wages (including minimum wage and overtime wages); (b) non-complaint meal
8 periods and rest breaks; (c) failure to provide accurate wage statements; and (d) for failure to
9 pay all wages due upon termination of employment.

10 3. On April 24, 2023, Plaintiff provided written notice by certified mail to the
11 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
12 have been violated, including the facts and theories to support the alleged violations.

13 4. During the PAGA Period starting one year and 65 days prior to the filing of this
14 Complaint and continuing through trial (“PAGA Period”), Defendants have and continue to employ
15 non-exempt hourly employees.

16 5. Plaintiff seeks to recover civil penalties for all non-exempt employees (including
17 those misclassified/improperly treated as exempt employees) who worked for Defendant in
18 California during the PAGA Period who incurred wage and hour violations and losses as hereinafter
19 described. (“Aggrieved Employees”)

20 6. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
22 advisors knowledgeable about California labor and wage law, employment and personnel practices,
23 and about the requirements of California law.

24 7. Labor Code § 1198 provides: “The maximum hours of work and the standard
25 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

1 8. In accordance with its power under section 1198, the Industrial Welfare
2 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
3 conditions of employment for employees in this state.

4 9. Defendants failed to comply with California law regarding a variety of items
5 which non-exempt employees are entitled to, such as payment for each hour worked, overtime
6 pay, meal periods and rest breaks. Instead it treated its non-exempt employees essentially as if
7 they were exempt (paying them only a set amount and listing only a pre-set number of hours
8 on paychecks), even though they do not meet any exemptions including based on their
9 compensation and duties.

10 10. During the course of the PAGA Period, Defendants failed to compensate
11 Plaintiff and Aggrieved Employees for all hours worked (including minimum wage and
12 overtime wages). This includes that they regularly worked daily and/or weekly overtime but
13 were not paid for this time and also worked on weekends without compensation. As a result
14 they have failed to properly pay minimum wage, regular wages and overtime wages.

15 11. Despite Plaintiff and Aggrieved employees regularly working in excess of eight
16 hours per day and/or 40 hours per week, and working the above hours off the clock, they were
17 not paid all wages, or wages at the proper rate, for this time as required by Labor Code §§ 510
18 and 1194 in one or more of the following manners:

- 19
- 20 1. By failing to pay for all hours worked;
 - 21 2. By failing to pay for all hours worked at the appropriate rate;
 - 22 3. By arbitrarily reducing hours worked;
 - 23 4. Through failure to maintain proper records; and
 - 24 5. Through other methods to be discovered.

25 12. Plaintiff and Aggrieved Employees also received non-discretionary bonuses
26 based on meeting specific goals. Despite working overtime, Defendant did not properly include
27 these amounts in calculating the regular rate of pay used to calculate overtime Aggrieved
28 Employees. This results in violations of, among other things, Labor Code §§204, 210, 558,

1 510 and 1194.

2 13. Plaintiff Aggrieved Employees were regularly not provided with all compliant
3 meal periods to which they were entitled, including for a second meal period. This includes
4 that Defendants exercised control over Aggrieved Employees and that Defendant appears to
5 have treated the Aggrieved Employees as if they were exempt employees and failed to pay
6 compliant meal period premiums.

7 14. Furthermore, meal periods (to the extent any were actually taken) were regularly
8 untimely, short or not taken at all including because of the press of business and pressure of
9 Defendants to complete tasks. Again, compliant meal period premiums were not paid.

10 15. Additionally, Defendants' non-exempt employees were not authorized and
11 permitted lawful rest breaks as required. Plaintiff and Aggrieved Employees were not permitted
12 or authorized to take these, and in fact did not take them, due to, among other things, the press
13 of business and Defendants' requirements as well as the above treatment as exempt employees.
14 Defendant was aware of this but did not pay Plaintiff and Aggrieved Employees a compliant
15 rest break premium.

16 16. As such, Plaintiff and Aggrieved Employees were not authorized and permitted
17 lawful meal periods and rest breaks and were not provided with one hour's wages in lieu thereof in
18 violation of, among others, California Labor Code §§ 512 and 226.7 and applicable IWC Wage
19 Orders. This has also resulted in a failure to pay for all wages for hours worked during meal
20 periods. The wages include regular time wages, overtime, and minimum wages (with its
21 resulting liquidated damages)

22 17. Defendants' non-exempt employees were not authorized and permitted lawful meal
23 periods and rest breaks and were not provided with one hour's wages in lieu thereof, in one or more
24 of the following manners.

- 25
26 a. employees were regularly not authorized and permitted full and timely thirty-minute
27 meal periods for workdays in excess of five and/or ten hours and were not compensated
28 one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7,

1 512, and applicable IWC Wage Orders;

- 2 b. employees were regularly not authorized and permitted full and timely ten-minute rest
3 breaks for workdays in excess of four and/or eight and/or twelve hours and were not
4 compensated one hour's wages in lieu thereof, all in violation of, among others, Labor
5 Code §§ 226.7 and applicable IWC Wage Orders;
- 6 c. employees were required to work through their daily meal period(s) and rest break(s);
7
8 d. employees were required to work longer than five hours before being allowed to take a meal
9 period;
10
11 e. employees were required to work longer than four hours before being allowed to take a rest
12 break; and
13
14 f. employees were severely restricted in their ability to take a meal period or rest break.

15 18. On information and belief, Plaintiff allege that he and the Aggrieved Employees
16 did not waive meal periods during the PAGA period.

17 19. Defendant also failed to provide compliant wage statements as they did not
18 accurately list the hours worked. For example, they would simply list 86.67 regular hours for wage
19 statements that are issued twice per month(including any PTO time), regardless of the actual hours
20 worked. As a result, Defendant has violated California Labor Code §§ 226 and 226.3 by failing
21 to list the actual hours worked. This is separate from the fact that, due to the above items,
22 Defendant failed to provide accurate itemized wage statements in violation of California Labor
23 Code §§ 226 and 226.3 including, among other things, that they did not list the accurate gross
24 and net wages earned, hours worked and applicable rates. Due to the above actions, Defendant
25 also failed to record hours in violation of, among others, Labor Code § 1174 and the Industrial
26 Wage Order, and failed to maintain accurate payroll records as required by California Labor
27 Code §§ 226, 226.3 and 1198, as well as the Industrial Wage Order.

28 20. Furthermore, Defendants failed to timely pay for all wages owed to Aggrieved
Employees upon termination of employment as a result of the above.

21. Defendants have willfully refused to pay Plaintiff and Aggrieved Employees the required compensation for all hours worked (including overtime and at the correct rate), failed to provide compliant meal periods and authorize and permit compliant rest breaks, failed to provide complaint wage statements, and failed to pay all wages due at the time employment ends.

22. Defendants’ company-wide policies and practices violate California law as pled herein. Plaintiff, on behalf of all aggrieved employees , brings this action pursuant to California Labor Code §§ 201-203, 204, 210, 218, 226, 226.3, 226.7 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, and 1198, and the applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), seeking unpaid wages, reimbursement of business expenses, penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

23. Plaintiff, on behalf of himself and the non-exempt employees, pursuant to Business & Professions Code §§ 17200, *et seq.*, also seeks injunctive relief, and restitution, from Defendants for their failure to pay the wages and penalties as set forth above.

II. THE PARTIES

A. The Plaintiff

24. Plaintiff is a resident of the state of California. He worked for Defendant as a non-exempt employee from October 2021 through approximately October 2022.

25. As detailed above, Plaintiff was not paid for all hours worked (including at the correct rate) during the PAGA Period. He was also not provided compliant meal periods or authorized and permitted compliant rest breaks and did not receive compliant wage statements.

26. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

B. The Defendants

27. Defendants employed Plaintiff and other non-exempt employees in California. The illegal and unlawful policies and practices described herein were performed by Defendants in

1 California.

2 28. Defendant CONGO BRANDS, LLC was and is, upon information and belief, a
3 Kentucky Limited Liability Company with the capacity to sue and to be sued, and doing
4 business, in the State of California, including in this county. At all times hereinafter mentioned,
5 Defendant CONGO BRANDS, LLC was an employer whose employees were engaged
6 throughout this county and the State of California.

7 29. The true names and capacities, whether individual, corporate, associate or
8 otherwise, of defendants DOES 1 through 50 are unknown to Plaintiff, who therefore sues these
9 defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges
10 that each of these fictitious defendants is in some manner responsible for the acts and occurrences
11 herein set forth. Plaintiff will amend this Complaint to show these defendants' true names and
12 capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

13 30. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
14 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
15 of, and/or injured Plaintiff and aggrieved employees in the State of California.

16 31. Any person who is an owner, officer or managing agent, whether known now or
17 later, named as a DOE Defendant is personally liable for civil penalties and wages pursuant to
18 California Labor Code section 558.1, which provides: "Any employer or other person acting
19 on behalf of an employer, who violates, or causes to be violated, any provision regulating
20 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
21 or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
22 held liable as the employer for such violation." Plaintiff does not know the identities of the
23 officers and managers responsible for the labor code violations alleged herein but will seek
24 personal liability against such individuals when their identity is discovered.

25 32. At all times mentioned herein, each Defendant was the agent, servant, or
26 employee of the other Defendants and in acting and omitting to act as alleged herein did so
27 within the course and scope of that agency or employment.
28

III. JURISDICTION AND VENUE

33. The unlawful acts alleged herein arise under the laws of the State of California and have a direct effect on Plaintiff and other employees who work and/or performed work within the State of California.

34. The relief sought by Plaintiff on behalf of all Aggrieved Employees below exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court has personal jurisdiction over each of the parties because they are either citizens of this State, doing business in this State or otherwise have minimum contacts with this State. Further, (1) they operate within this County; (2) are qualified with the California Secretary of State to do business and is doing business in California, and in this County; and (3) many of the acts complained of occurred and arose in California, and specifically, this County.

35. Based on information and belief, Plaintiff alleges that this entire action arises solely under the laws of the State of California and applicable regulations of the health, safety and wages of the employees residing in the State of California. Plaintiff alleges, on information and belief, that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal jurisdiction.

36. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

37. California Labor Code sections 2699 et seq., (the "PAGA"), authorizes aggrieved employees to sue directly for various civil penalties under the California Labor Code.

38. Plaintiff timely provided notice to the California Labor Workforce Development Agency ("LWDA") and to Defendants, pursuant to California Labor Code section 2699.3(a). Therefore, he may proceed with this action for penalties pursuant to California Labor Code § 2699, et seq.

1 39. Pursuant to PAGA, Plaintiff has given notice to the LWDA of the Labor Code
2 violations alleged in this Complaint. The Complaint seeks all recoverable penalties for Labor
3 Code violations as permitted and proscribed by the PAGA. This cause of action includes
4 allegations and remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among
5 others. *See* Cal. Labor Code § 2933.3(a)(2)(C) (“Notwithstanding any other provisions of law,
6 a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
7 under this part within 65 days of the time periods specified in this part.”)

8 40. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the
9 Labor Code sections enumerated in Labor Code § 2699.5.

10 41. At all times herein set forth, PAGA was applicable to Plaintiff’s employment
11 by Defendants.

12 42. At all times herein set forth, PAGA provides that any provision of law under the
13 California Labor Code that provides for a civil penalty to be assessed and collected by the
14 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
15 a civil action brought by an aggrieved employee on behalf of himself and other current or
16 former employees pursuant to procedures outlined in California Labor Code § 2699.3.

17 43. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
18 employee,” who is any person that was employed by the alleged violator and against whom one
19 or more of the alleged violations was committed.

20 44. Plaintiff and Aggrieved Employees as defined by California Labor Code §
21 2699(c) in that they are all current or former employees of Defendants who are or were
22 employed by Defendants, and one or more of the alleged violations were committed against
23 them.

24 45. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
26 requirements have been met:
27
28

- 1 a. The aggrieved employee shall give written notice (“Employee’s Notice”) to the
2 LWDA and by certified mail to the employer of the specific provisions of the
3 California Labor Code alleged to have been violated, including the facts and theories
4 to support the alleged violations.
- 5 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
6 aggrieved employee by certified mail that it does not intend to investigate the alleged
7 violation within sixty (60) calendar days of the postmark date of the Employee’s
8 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
9 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
10 the aggrieved employee may commence a civil action pursuant to California Labor
11 Code § 2699 to recover civil penalties in addition to any other penalties to which the
12 employee may be entitled.

13 46. Plaintiff has satisfied the administrative prerequisites under California Labor
14 Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
15 for violations of California Labor Code including sections 201-203, 204, 210, 218, 226, 226.3,
16 226.7 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, and 1198, and Industrial Welfare
17 Orders including, but not limited to, Section 7.

18 47. Defendants’ conduct, as alleged herein, violates numerous sections of the
19 California Labor Code including but not limited to the following:
20

- 21 a. Violation of Labor Code § 226(a) and 226.3 for failing to provide accurate wage
22 statements, as herein alleged.
- 23 b. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all wages
24 owed upon termination, as herein alleged.
- 25 c. Violation of Labor Code § § 204, 210 and 558 for failing to pay all wages owed,
26 as herein alleged.
- 27 d. Violation of Labor Code § 510 for failing to pay all overtime wages, as herein
28 alleged.

- 1 e. Violation of Labor Code §§ 1194, 1194.2, 1197 and 1197.1 for failing to pay
2 minimum wage.
- 3 f. Violation of Labor Code § § 226.7 and 512 for failing to provide compliant meal
4 periods and authorize and permit compliant rest breaks.
- 5 g. Violation of Labor Code § 1174 and Industrial Welfare Orders including, but
6 not limited to, Section 7, for failure to maintain records.
- 7 h. Violation of Labor Code §1198 for failure to comply with standard conditions
8 of labor.
- 9 i. Violation of Labor Code §558.1.

10 48. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and
11 all other aggrieved employees are entitled to recover civil penalties against Defendants, in
12 addition to other remedies, for violations of California Labor Code sections 201-203, 204, 210,
13 218, 226, 226.3, 226.7 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, and 1198, and
14 Industrial Welfare Orders including, but not limited to, Section 7.

15 49. Further Plaintiff is entitled to seek and recover reasonable attorneys' fees and
16 costs pursuant to California Labor Code § 2699 and any other applicable statute.

17 **IV. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **(PAGA Civil Penalties For Failure to Pay Wages For All Hours Worked)**

20 **(Labor Code §§ 204, 210, 218 and 1194, 1194.2)**

21 **(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)**

22 50. Plaintiff realleges and incorporates by this reference each of the preceding and
23 foregoing paragraphs as if fully set forth herein.

24 51. At all times herein relevant, Labor Code §§ 204, 218, 1194 and 1194.2, and the
25 applicable Wage Orders were in full force and effect. Labor Code § 204 requires employers to
26 pay all wages earned by any employee due and payable twice during each calendar month.

27 52. Pursuant to Labor Code § 218, Plaintiff may bring a civil action for such
28

1 violations directly against the employer.

2 53. At all times herein relevant, the Wage Orders and applicable California Code of
3 Regulations have applied and continue to apply to Plaintiff's and the Aggrieved Employees'
4 employment with Defendants, which state that "every employer shall pay to each employee
5 wages. . . for all hours worked."

6 54. "Hours worked" is defined as "the time during which an employee is subject to
7 the control of an employer and includes all the time the employee is suffered or permitted to
8 work, whether or not required to do so."

9 55. At all times pertinent hereto, Labor Code § 1194 provided: "Notwithstanding
10 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
11 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
12 civil action the unpaid balance of the full amount of this minimum wage or overtime
13 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

14 56. At all times pertinent hereto, Labor Code § 1194.2 provides for the recovery of
15 prejudgment interest at the rate specified in Civil Code § 3289.

16 57. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
17 who has not been paid the legal wage may also recover attorney's fees and costs of suit, as well
18 as liquidated damages and interest thereon.

19 58. At all relevant times herein, Defendants were required to compensate Plaintiff
20 and the Aggrieved Employees for all hours worked pursuant to Labor Code § 1194.

21 59. By uniformly failing to track and record all of the hours worked by Plaintiff and
22 Aggrieved Employees, including requiring them to work off the clock, , Defendants were able
23 to skim wages from employees by not paying them a separate hourly wage for each and every
24 hour worked as required by California law. Through this unlawful and illegal policy and
25 practice, Defendants have failed to pay Plaintiff and Aggrieved Employees all wages owed to
26 them.

27 60. By the course of conduct set forth above, Defendants failed to pay all wages and
28 violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

61. Plaintiff is informed and believes and based thereupon alleges that the result of the unlawful and illegal policy and practice caused the nonpayment of minimum and regular wages to all Aggrieved Employees (and resulting civil penalties), in an amount according to proof at trial.

62. Consequently, Plaintiff, on behalf of all aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof and subject to Court approval.

63. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

SECOND CAUSE OF ACTION

(PAGA Civil Penalties For Failure to Pay Overtime Wages)

(Labor Code §§ 204, 210, 218, 510 and 1194)

(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)

64. Plaintiff realleges and incorporates by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

65. Plaintiff seeks to represent the Aggrieved Employees as a basis to enforce equal or greater protections for wages owed that are offered by California law. .

66. Plaintiff and Aggrieved Employees were at all times subject to California's laws and regulations protecting the employees' entitlement to be paid and presumption to be paid overtime wages for requisite hours worked beyond a normal workday or a normal work week, as specified, without limitation, by Cal. Labor Code §§ 510, 1194 and the Wage Orders.

67. California law requires employers, such as Defendants, to pay overtime compensation to all nonexempt employees for all hours worked over 40 hours per week or over 8 hours per day. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion

1 for their work. This precludes any waiver for unpaid due and owing wages that remain unpaid
2 at the time of separation.

3 68. Labor Code § 204 requires employers to pay all wages earned by any employee
4 due and payable twice during each calendar month.

5 69. Pursuant to Labor Code § 218, Plaintiff may bring a civil action for these
6 violations directly against the employer.

7 70. At all times herein relevant, the Wage Orders and applicable California Code of
8 Regulations have applied and continue to apply to Plaintiff's and Aggrieved Employees;
9 employment with Defendants, which state that "every employer shall pay to each employee
10 wages. . . for all hours worked."

11 71. "Hours worked" is defined as "the time during which an employee is subject to
12 the control of an employer and includes all the time the employee is suffered or permitted to
13 work, whether or not required to do so."

14 72. At all times pertinent hereto, Labor Code § 1194 provided: "Notwithstanding
15 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
16 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
17 civil action the unpaid balance of the full amount of this minimum wage or overtime
18 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

19 73. At all relevant times herein, Defendants were required to compensate Plaintiff
20 and Aggrieved Employees for all hours worked pursuant to Labor Code § 1194.

21 74. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours
22 in one workday and any work in excess of 40 hours in any one workweek ... shall be
23 compensated at the rate of no less than one and one-half times the regular rate of pay for any
24 employee." In addition, Labor Code § 510(a) provides that "[a]ny work in excess of 12 hours
25 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
26 employee."

27 75. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
28 the hours set by the IWC.

76. As set forth above, Plaintiff and Aggrieved Employees were entitled to be paid overtime compensation for all overtime hours worked. They were regularly and consistently required to work overtime during the PAGA Period, but were not paid at all and/or at the correct rate of pay including due to non-discretionary bonuses not being accounted for in calculating the regular rate of pay.

77. Throughout the PAGA Period, Plaintiff and Aggrieved Employees worked in excess of 8 hours in a workday and/or 40 hours in a workweek.

78. During the PAGA Period, Defendants did not pay Plaintiff and Aggrieved Employees overtime pay for all overtime hours worked and/or at the correct overtime rate of pay.

79. By the course of conduct set forth above, Defendants failed to pay all such wages. Plaintiff is informed and believes and based thereupon alleges that the result of the unlawful and illegal policy and practice caused the nonpayment such wages to all Aggrieved Employees (and resulting civil penalties), in an amount according to proof at trial.

80. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof and subject to Court approval.

81. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

THIRD CAUSE OF ACTION

(PAGA Civil Penalties For Failure to Provide Compliant Meal Periods and Rest Breaks)

(Labor Code §§ 226.7, 512, and Industrial Wage Order)

(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)

82. Plaintiff realleges and incorporates by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

1 83. Labor Code § 226.7(b) provides that “[a]n employer shall not require an employee
2 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the [IWC] ...”

4 84. Labor Code 512(a) provides that “[a]n employer may not employ an employee for
5 a work period of more than five hours per day without providing the employee with a meal period
6 of not less than 30 minutes, except that if the total work period per day of the employee is no more
7 than six hours, the meal period may be waived by mutual consent of both the employer and
8 employee.”

9 85. Labor Code § 512(a) further provides that “[a]n employer may not employ an
10 employee for a work period of more than 10 hours per day without providing the employee with a
11 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
12 12 hours, the second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.”

14 86. Labor Code § 516 provides that the IWC may adopt or amend working condition
15 orders with respect to meal periods for any workers in California consistent with the health and
16 welfare of those workers.

17 87. The Wage Order provides that “[u]nless the employee is relieved of all duty during
18 a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
19 as time worked.” “An ‘on duty’ meal period shall be permitted only when the nature of the work
20 prevents an employee from being relieved of all duty and when by written agreement between the
21 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
22 employee may, in writing, revoke the agreement at any time.”

23 88. The Wage Order further provides that “[i]f an employer fails to provide an employee
24 a meal period in accordance with the applicable provisions of this order, the employer shall pay the
25 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
26 the meal period is not provided.”
27
28

1 89. The Aggrieved Employees consistently worked over 5 hours per shift and therefore
2 were entitled to a meal period of not less than 30 minutes prior to exceeding 5 hours of work.

3 90. In addition, the Aggrieved Employees worked over 10 hours per shift and therefore
4 were entitled to a second meal period of not less than 30 minutes prior to exceeding 10 hours of
5 work.

6 91. Throughout the PAGA Period, Defendants failed to consistently allow and provide
7 the meal periods required by applicable California law, including the Wage Orders. Plaintiff and
8 Aggrieved Employees regularly worked a full day and did not receive proper meal periods (as
9 detailed above).

10 92. Defendants failed to provide Plaintiff and Aggrieved Employees compliant meal
11 periods as required by law or compensate them at one hour of “premium wage” at the employee’s
12 regular rate of pay for each day that a meal period was not provided or otherwise compliant with
13 California law.

14 93. The Aggrieved Employees did not waive their meal periods by mutual consent with
15 Defendants or otherwise.

16 94. The Aggrieved Employees did not enter into any written agreement with Defendants
17 agreeing to an on-the-job paid meal period.

18 95. Similarly, Plaintiff and Aggrieved Employees were entitled to be authorized and
19 permitted paid, duty-free, uninterrupted 10-minute rest break for every four hours worked (or every
20 major fraction thereof)

21 96. Plaintiff and the Aggrieved Employees regularly worked shifts in excess of 3.5
22 hours without being permitted the opportunity to take a paid rest break of at least ten (10)
23 consecutive minutes, uninterrupted, relieved of all job duties; worked more than six (6) hours at a
24 time without being allowed a second paid ten (10) consecutive minute, uninterrupted, rest break,
25 relieved of all job duties; worked shifts in excess of ten hours without being allowed a third paid ten
26 (10) consecutive minute, uninterrupted, rest break, relieved of all job duties.
27
28

1 97. Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take
2 adequate rest breaks as required by law or compensate them at one hour of “premium wage” at the
3 employee’s regular rate of pay for each day that a rest break was not authorized, permitted or
4 otherwise compliant with California law.

5 98. Defendants failed to comply with the required meal period and rest break laws
6 established by Labor Code §§ 226.7, 512, 516 and the Wage Orders.

7 99. Therefore, Aggrieved Employees were effectively deprived of their legally required
8 meal-and-rest periods.

9 100. Consequently, Plaintiff, on behalf of all aggrieved employees, seeks to recover civil
10 penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
11 subject to Court approval.

12 101. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
13 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
14 enforcement of California labor laws and applicable regulations is determined to be in the public
15 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
16 according to proof and subject to Court approval.

17
18 **FOURTH CAUSE OF ACTION**

19 **(PAGA Civil Penalties for Failure to Provide Accurate Wage Statements)**

20 **(Labor Code §§ 226, 226.3, 1174, 1174.5, and Industrial Wage Order)**

21 **((Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants))**

22 102. Plaintiff realleges and incorporates by this reference each of the preceding and
23 foregoing paragraphs as if fully set forth herein.

24 103. Defendants knowingly and intentionally failed to provide accurate, itemized wage
25 statements including, *inter alia*, total hours worked, gross and net wages earned, all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate by the employee in accordance with Labor Code § 226(a).

28 104. Labor Code § 226(a) states, in pertinent part, that “[e]very employer shall,

1 semimonthly or at the time of each payment of wages, furnish each of his or his employees, either
2 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when
3 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
4 gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned, (6) the
5 inclusive dates of the period for which the employee is paid ..., and (9) all applicable hourly rates
6 in effect during the pay period and the corresponding number of hours worked at each hourly rate
7 by the employee ...”

8 105. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
9 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
10 Code section 2699(f)(2), cited above.

11 106. Labor Code section 226.3 provides in pertinent part: “Any employer who violates
12 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
13 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
14 employee for each violation in a subsequent citation, for which the employer fails to provide the
15 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
16 Section 226. The civil penalties provided for in this section are in addition to any other penalty
17 provided by law...”

18 107. From the outset, Defendants have failed to comply with Labor Code § 226. As a
19 matter of common policy and practice, Defendants did not include the non-exempt hourly
20 employees’ “corresponding number of hours worked at each hourly rate by the employee.” In
21 addition, the wage statements distributed to Plaintiff and Aggrieved Employees did not contain all
22 wages earned or meal period and rest break premiums.

23 108. At all times relevant herein, Defendants failed to maintain records of hours worked
24 by Plaintiff and Aggrieved Employees as required under Labor Code § 1174(d).

25 109. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover
26 civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
27 subject to Court approval.
28

1 110. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
2 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
3 enforcement of California labor laws and applicable regulations is determined to be in the public
4 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
5 according to proof and subject to Court approval.

6 **FIFTH CAUSE OF ACTION**

7 **(PAGA Civil Penalties for Failure to Timely Pay All Wages Due Upon Separation)**

8 **(Labor Code §§ 201, 202, and 203)**

9 **(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)**

10 111. Plaintiff realleges and incorporates by this reference each of the foregoing
11 paragraphs as if fully set forth herein.

12 112. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
13 due within the time specified by law. California Labor Code § 203 provides that if an employer
14 willfully fails to timely pay such wages, the employer must continue to pay the subject employees'
15 wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days
16 of wages.

17 113. All Aggrieved Employees who ceased employment with Defendants are entitled to
18 unpaid compensation (including meal period and rest break premiums), but to date have not received
19 such compensation.

20 114. More than 30 days have passed since certain Aggrieved Employees left Defendants'
21 employ.

22 115. As a consequence of Defendants' willful conduct in not paying compensation for all
23 hours worked, Aggrieved Employees whose employment ended during the PAGA Period are
24 entitled to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys'
25 fees and costs.

26 116. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover
27 civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
28

1 subject to Court approval.

2 117. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
3 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
4 enforcement of California labor laws and applicable regulations is determined to be in the public
5 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
6 according to proof and subject to Court approval.

7 **V. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself Aggrieved Employees he seeks to represent,
9 prays for relief as follows:

- 10 1. Designation of Plaintiff as the PAGA Representative for the Aggrieved Employees
11 and Plaintiff's attorneys as PAGA Counsel for the Aggrieved Employees;
12 2. Civil penalties, under PAGA;
13 3. Pre-judgment and post-judgment interest, as provided by law;
14 4. Such other equitable relief as the Court may deem just and proper; and
15 5. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among
16 others, California Labor Code §§ 218.5, 226, 1194, PAGA, Code of Civil Procedure
17 § 1021.5, and other applicable California laws.
18

19 Dated: July 3, 2023

20 **BISNAR | CHASE LLP/ CULVER LAW**
FIRM

21
22 By: *Ian M. Silvers*
23 Brian D. Chase
24 Ian M. Silvers
25 Farid Masoud
26 Attorneys for Plaintiff and Aggrieved
27 Employees
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