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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

MARK OTENBRIET, in his representative
capacity on behalf of himself, the State of
California, and all other similarly situated
current and former aggrieved employees,

Plaintiff,

vs.

GIOVANETTI INC. and DOES 1-15,

Defendants.

Case No. 23CV039876

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

Plaintiff MARK OTENBRIET ("PLAINTIFF"), on behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES, defined below, against Defendant Giovanetti Inc. ("Defendant GIOVANETTI), and DOES 1-15 ("Defendants DOES") (collectively "DEFENDANTS"), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

I. INTRODUCTION

1. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA") on behalf of other current and former

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

08/02/2023 at 07:32:33 PM

By: Darnekia Oliver,
Deputy Clerk

1 AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of
2 wage and hour violations under the California Labor Code.

3 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased
4 their employment-related costs by systematically violating California wage and hour laws.

5 3. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order violations
6 toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter*
7 *alia*:

8 a. Failure to provide meal periods;

9 b. Failure to provide rest periods;

10 c. Failure to pay all regular and overtime wages;

11 d. Failure to provide accurate payroll records;

12 e. Failure to provide accurate itemized wage statements;

13 f. Failure to timely pay wages due during, and upon termination of employment.

14 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
15 and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California, seeking all civil
16 penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

17 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
18 California.

19 **II. PARTIES**

20 6. Plaintiff MARK OTENBRIET ("PLAINTIFF"), an individual, has resided, and at all times
21 mentioned in this Complaint, continues to reside in Alameda County.

22 7. Defendant Giovanetti, Inc. ("DEFENDANT Giovanetti") is a California corporation
23 registered with the Secretary of State as Entity No. 1891941, that at all relevant times
24 mentioned herein conducted and continues to conduct substantial and regular business in
25 Alameda County, California.

26 8. Defendant DOES 1-15 ("Defendant DOES") are persons and/or entities that at all relevant
27 times mentioned herein conducted and continue to conduct substantial and regular business
28 throughout California.

- 1 9. DEFENDANTS own, operate, and/or manage retail hardware stores in Alameda, California.
- 2 10. DEFENDANTS employed PLAINTIFF from June 2022 through March 2023 at
- 3 DEFENDANT Giovanetti, located at 650 F Central Avenue, Alameda CA 94501.
- 4 11. At all times, DEFENDANTS paid PLAINTIFF on an hourly basis.
- 5 12. PLAINTIFF brings this action in his representative capacity on behalf of the State of
- 6 California and on behalf of all individuals who are or previously were employed by
- 7 DEFENDANT Giovanetti in California who suffered one or more Labor Code violations
- 8 enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and
- 9 who worked for DEFENDANTS between April 26, 2022, and the present (“PAGA
- 10 PERIOD”).
- 11 13. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
- 12 2699(c) because he was employed by DEFENDANTS and suffered one or more of the
- 13 alleged Labor Code violations committed by DEFENDANTS.
- 14 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times were,
- 15 employees of DEFENDANTS, within the meanings set forth in the California Labor Code
- 16 and the applicable Industrial Welfare Commission Wage Order.

17 **III. JOINT EMPLOYER**

- 18 15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any
- 19 provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
- 20 2699(a).)
- 21 16. Section 558 of the California Labor Code provides that “any employer *or other person* acting
- 22 on behalf of an employer who violates, or causes to be violated, a section of this chapter or
- 23 any provision regulating hours and days of work in any order of the Industrial Welfare
- 24 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)
- 25 17. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
- 26 either individually or as an officer, agent, or employee of another person, who pays or causes
- 27 to be paid to any employee a wage less than the minimum fixed by an applicable state or
- 28 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code*

§ 1197.1(a).)

18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

20. At all relevant times, each DEFENDANT, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

21. Each DEFENDANT, whether named or fictitious, exercised control over PLAINTIFF'S wages, working hours, and/or working conditions.

22. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

23. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 15, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants has participated in the acts alleged in this Complaint.

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1 **IV. JURISDICTION AND VENUE**

2 24. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure,
3 Section 410.01.

4 25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395
5 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
6 DEFENDANTS (i) currently maintains and at all relevant times maintained offices and
7 facilities in this County, and (ii) committed the wrongful conduct herein alleged in this
8 County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

9 **V. FACTUAL ALLEGATIONS**

10 A. Rest Period Violations

11 26. From time to time during PLAINTIFF'S employment, and during the PAGA PERIOD,
12 DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work in
13 excess of four (4) hours without being provided ten (10) minute rest periods as a result of
14 DEFENDANTS' policies, practices, and inadequate staffing. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof.

16 27. From time to time during PLAINTIFF'S employment, and during the PAGA PERIOD,
17 DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work in
18 excess of eight (8) hours or more, without being provided a second ten (10) minute rest
19 period. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with
20 one-hour wages *in lieu* thereof. As a result of DEFENDANTS' policies and inadequate
21 staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest
22 periods by DEFENDANTS and DEFENDANTS' managers. Specifically, DEFENDANTS
23 did not provide PLAINTIFF and other AGGRIEVED EMPLOYEES a rest period after 4:00
24 P.M., or if the store was busy.

25 28. When PLAINTIFF was able to take a rest break, from time to time, DEFENDANTS required
26 PLAINTIFF to remain on duty and on call. PLAINTIFF was also not provided with one-
27 hour wages *in lieu* thereof. As a result of the work requirements and inadequate staffing,
28 PLAINTIFF was from time to time denied his proper rest periods by DEFENDANTS' and

DEFENDANTS' managers.

B. Meal Period Violations

29. DEFENDANTS routinely required PLAINTIFF and other AGGRIEVED EMPLOYEES to work in excess of the allowable amount of time before being granted the meal break. In doing so, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work during what was supposed to be PLAINTIFF'S off-duty meal break due to DEFENDANTS' policies and inadequate staffing practices.

30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. During the entirety of PLAINTIFF'S employment and during the PAGA PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT'S control.

31. Specifically, as a result of DEFENDANTS' practice of stacking PLAINTIFF and other AGGRIEVED EMPLOYEES' meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to take their meal period until the employee before them returned from their meal period. Resulting in DEFENDANTS routinely requiring PLAINTIFF and other AGGRIEVED EMPLOYEES to partially work through their meal break during what was supposed to be an off-duty meal break. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their regular wage and overtime wage by regularly working without their time being accurately recorded and without compensation at the applicable wage and overtime rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked.

32. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. The nature of the work performed by PLAINTIFF and other AGGRIEVED

1 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period
2 exception. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANTS’ policies
4 and practices.

5 33. Additionally, and as described in detail below, PLAINTIFF additionally forfeited his meal
6 periods when he performed off-the-clock work for DEFENDANTS in Sacramento.

7 34. DEFENDANTS required PLAINTIFF to work during what was supposed to be
8 PLAINTIFF’S off-duty meal break when PLAINTIFF performed off-the-clock and under
9 the table work for DEFENDANTS in Sacramento. PLAINTIFF regularly worked without
10 his time being accurately recorded and without compensation at the applicable wage and
11 overtime rates.

12 C. PLAINTIFF’S Under the Table and Off-the-Clock Work

13 35. Between approximately July 2023 and August 2023, PLAINTIFF performed off-the-clock
14 work for DEFENDANT and at DEFEDNATS direction and control.

15 36. Over the span of approximately one month, PLAINTIFF performed under the table work for
16 DEFENDANTS two days a week, on his days off. DEFENDANTS direct PLAINTIFF to
17 meet DEFENDANTS’ owner THOMAS TOGNETTI at his warehouse in the hayward area
18 by 8:00 a.m. PLAINTIFF was driven to the warehouse on his off days by one of
19 DEFENDANTS’ other employees. DEFENDANTS’ owner, THOMAS TOGNETTI, then
20 drove PLAINTIFF to another store located in Sacramento to set up and organize the store.

21 37. PLAINTIFF did not return to DEFENDANTS’ Warehouse until approximately 6:30 p.m..
22 PLAINTIFF was under the direction and control of DEFENDANT between 8:00 a.m. and
23 6:30 p.m.

24 38. PLAINTIFF performed this work for DEFENDANTS for approximately 12 days.

25 39. During this time, DEFENDANTS paid PLAINTIFF in cash and under the table.

26 40. DEFENDANTS additionally did not provide PLAINTIFF with any rest period during this
27 period.

28 41. DEFENDANTS failed to accurately pay PLAINTIFF for all hours worked during this

1 period.

2 D. Off-the-Clock Work Resulting in Minimum Wage Violations

3 42. During the PAGA PERIOD, from time-to-time DEFENDANTS failed to accurately pay
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

5 43. DEFENDANTS did not provide PLAINTIFF and AGGRIEVED EMPLOYEES meal breaks
6 and/or rest breaks and required PLAINTIFF and AGGRIEVED EMPLOYEES to perform
7 off-the-clock work. DEFENDANTS' failed to pay PLAINTIFF and other AGGRIEVED
8 EMPLOYEES necessary wages for attending and performing work at DEFENDANTS'
9 direction, request and benefit, while off-the-clock.

10 44. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work
11 performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

12 45. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments,
13 and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

14 46. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
16 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and
17 owed for all the work they performed, including during off-the-clock work.

18 47. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
19 subject to the requirements of the California Labor Code.

20 48. DEFENDANTS' policies and practices deprived PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES of all regular, overtime, and double time wages owed for the off-the-clock
22 work activities.

23 49. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES' off-the-clock work was compensable under the law.

25 50. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
26 them for all hours worked at DEFENDANTS' direction, control and benefit for the time
27 spent while off-the-clock. DEFENDANTS have a uniform policy and practice to not pay
28 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in

1 accordance with applicable law.

2 51. For instance, PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically unable
3 to take off duty meal and rest breaks and was not fully relieved of duty for rest and meal
4 periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform
5 work as ordered by DEFENDANTS for more than five (5) hours during a shift without
6 receiving an off-duty meal break.

7 52. Further, PLAINTIFF often worked forty (40) hours in the workweek and DEFENDANTS
8 failed to pay overtime wages for hours worked in excess of 40 hours, and instead paid all
9 time at the normal hourly rate of \$16.00. DEFENDANTS' policy caused PLAINTIFF to
10 forfeit his off-duty meal and rest breaks without additional compensation. Moreover,
11 DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal.
12 Lab. Code § 226.

13 53. DEFENDANTS refused, and may continue to do so, to compensate PLAINTIFF and other
14 AGGRIEVED EMPLOYEES for missed meal and rest periods.

15 E. Inaccurate Itemized Wage Statements

16 54. California Labor Code Section 226 requires an employer to furnish its employees an accurate
17 itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
18 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)
19 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
20 the name of the employee and only the last four digits of the employee's social security
21 number or an employee identification number other than a social security number, (8) the
22 name and address of the legal entity that is the employer and, (9) all applicable hourly rates
23 in effect during the pay period and the corresponding number of hours worked at each hourly
24 rate by the employee

25 55. From time to time during PLAINTIFF'S employment and the PAGA PERIOD, when
26 PLAINTIFF and other AGGRIEVED EMPLOYEES missed meal and rest breaks, worked
27 overtime, or were not paid missed meal and rest period premiums, or were not paid for all
28 hours worked, DEFENDANTS also failed to provide PLAINTIFF and other AGGRIEVED

1 EMPLOYEES with complete and accurate wage statements which failed to show, among
2 other things, the total hours worked and all applicable hourly rates in effect during the pay
3 period and the corresponding amount of time worked at each hourly rate, correct rates of pay
4 for penalty payments or missed meal and rest periods, overtime pay.

5 56. Additionally, PLAINTIFF received partial compensation in the form of cash. DEFENDANT
6 violated California Labor Codes section 226 by failing to list this remuneration, or the
7 applicable hourly rate and the corresponding number of hours worked at the applicable
8 hourly rate for this remuneration. PLAINTIFF, suffered damage as a result of
9 DEFENDANTS' aforementioned violation because she could not promptly and easily
10 determine from the wage statement alone the applicable hourly rate and the corresponding
11 number of hours worked at the applicable hourly rate for this remuneration.

12 57. Further, DEFENDANTS routinely failed to keep, maintain and store accurate payroll
13 records which reflected when PLAINTIFF and other AGGRIEVED EMPLOYEES missed
14 their meal and/or rest periods.

15 58. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED EMPLOYEES
16 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations
17 are knowing and intentional, and were not isolated or due to an unintentional payroll error
18 due to clerical or inadvertent mistake.

19 **VI. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 For Unfair Competition

22 (Cal. Bus. & Prof. Code §§ 17200 et seq.)

23 (Against All DEFENDANTS)

24 59. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every
25 allegation set forth above.

26 60. PLAINTIFF seeks to enforce important rights affecting the public interest within the
27 meaning of Code of Civil Procedure section 1021.5.

28 61. California's public policy is to protect employees by mandating that employees receive meal

1 and rest periods or one hour of wages in lieu thereof.

2 62. Defendants' failure to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with

3 meal and rest periods has been and continues to be unfair, unlawful, and harmful to

4 PLAINTIFF, other AGGRIEVED EMPLOYEES, and the general public.

5 63. A violation of California Business & Professions Code sections 17200 et seq. may be

6 predicated on the violation of any state or federal law. Defendants' violations, as alleged

7 herein, including Cal. Lab. Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 515, 1174,

8 and 2802, are violations of California law, and constitute unlawful business acts and

9 practices in violation of California Business & Professions Code sections 17200 et seq.

10 64. PLAINTIFF and other AGGRIEVED EMPLOYEES are wage workers dependent on

11 DEFENDANTS for their livelihood and do not have the same bargaining advantage as their

12 employer.

13 65. DEFENDANTS controlled the activities of all employee labor, including PLAINTIFF and

14 other AGGRIEVED EMPLOYEES. DEFENDANTS thereby saved on employment costs

15 by directing PLAINTIFF and other AGGRIEVED EMPLOYEES to perform off-the-clock

16 work, including performing work during what was supposed to be PLAINTIFF and other

17 AGGRIEVED EMPLOYEES' rest and/or meal periods without providing additional wages.

18 66. Throughout the time relevant to this action, DEFENDANTS failed and/or refused to abide

19 by these long-standing employee protections, including the guarantees of proper meal and

20 rest periods or an additional hour of pay.

21 67. Under its unlawful scheme, DEFENDANTS evaded its other legal responsibilities as an

22 employer and instead systematically saved on costs at the expense of PLAINTIFF and other

23 AGGRIEVED EMPLOYEES.

24 68. With this unlawful scheme, DEFENDANTS unjustly appropriated for itself significant

25 amounts of money that it otherwise should have paid to employees as wages.

26 69. DEFENDANTS reduced wages due, in violation of Labor Code section 226.7.

27 70. DEFENDANTS' unfair business practices have reaped undue benefits and illegal profits,

28 and unjustly enriched DEFENDANTS, at the expense of PLAINTIFF and other

1 AGGRIEVED EMPLOYEES.

2 71. PLAINTIFF and other AGGRIEVED EMPLOYEES have been personally injured by
3 DEFENDANTS' unlawful business practices, including the loss of money.

4 72. Pursuant to California Business & Professions Code sections 17200 et seq., PLAINTIFF and
5 other AGGRIEVED EMPLOYEES are also entitled to disgorgement of illegally acquired
6 profits by DEFENDANTS during the period of employment. PLAINTIFF is also entitled to
7 an award of attorneys' fees and costs under the common fund doctrine, California Code of
8 Civil Procedure section 1021.5, and other applicable laws.

9 **SECOND CAUSE OF ACTION**

10 For Failure to Pay Minimum Wages

11 (Cal. Lab. Code § 1194, 1197& 1197.1)

12 (Against All DEFENDANTS)

13 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every
14 allegation set forth above.

15 74. PLAINTIFF and other AGGRIEVED EMPLOYEES bring a claim for DEFENDANT'S
16 willful and intentional violations of California Labor Code and the Industrial Welfare
17 Commission requirements for DEFENDANTS' failure to accurately calculate and pay
18 minimum wages to PLAINTIFF and AGGRIEVED EMPLOYEES.

19 75. Pursuant to Cal. Lab. Code §204, other applicable laws and regulations, and public policy,
20 an employer must timely pay its employees for all hours worked.

21 76. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
22 minimum wage compensation and interest thereon, together with the costs of suit.

23 77. DEFENDANTS maintained a uniform policy of failing to appropriately track missed or late
24 meal and rest periods for the purposes of accurately paying PLAINTIFF and other
25 AGGRIEVED EMPLOYEES. As set forth herein, DEFENDANTS' uniform policy and
26 practice was to unlawfully and intentionally deny timely payment of wages due to
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

28 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without

1 limitation, applicable to AGGRIEVED EMPLOYEES as a whole, as a result of
2 implementing a uniform policy and practice that denied accurate compensation to
3 PLAINTIFF and the other AGGRIEVED EMPLOYEES in regard to listing the correct hours
4 worked and compensation for missed meal and rest periods.

5 79. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
6 calculated the amount of time worked and consequently underpaid the actual time worked
7 by PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the
9 California Labor Code, the Industrial Welfare Commission requirements and other
10 applicable laws and regulations.

11 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other AGGRIEVED EMPLOYEES did not receive the correct wage
13 compensation for their time worked for DEFENDANTS.

14 81. During the PAGA PERIOD, PLAINTIFF and the other AGGRIEVED EMPLOYEES were
15 paid less for time worked than they were entitled to, constituting a failure to pay all earned
16 wages.

17 82. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to
18 PLAINTIFF and the other AGGRIEVED EMPLOYEES for the true time they worked,
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES have suffered and will continue to
20 suffer an economic injury in amounts which are presently unknown to them, and which will
21 be ascertained according to proof at trial.

22 83. DEFENDANTS knew or should have known that PLAINTIFF and the other AGGRIEVED
23 EMPLOYEES were under-compensated for their time worked. DEFENDANTS
24 systematically elected, either through intentional malfeasance or gross nonfeasance, to not
25 pay employees for their labor as a matter of uniform corporate policy, practice and
26 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES the correct wages for their time
28 worked.

1 84. In performing the acts and practices herein alleged in violation of California labor laws, and
2 refusing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
3 worked and provide them with the requisite compensation, DEFENDANTS acted and
4 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES with a conscious and utter disregard for their legal
6 rights, or the consequences to them, and with the despicable intent of depriving them of their
7 property and legal rights, and otherwise causing them injury in order to increase company
8 profits at the expense of these employees.

9 85. PLAINTIFF and the other AGGRIEVED EMPLOYEES, therefore, request recovery of all
10 unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
11 statutory penalties against DEFENDANTS, in a sum as provided by the California Labor
12 Code and/or other applicable statutes. To the extent minimum wage compensation is
13 determined to be owed to the PLAINTIFF and other AGGRIEVED EMPLOYEES who have
14 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201
15 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
16 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of the PLAINTIFF
17 and other AGGRIEVED EMPLOYEES. DEFENDANTS' conduct as alleged herein was
18 willful, intentional and not in good faith. Further, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 For Failure to Pay Wages When Due

22 Cal. Lab. Code §§ 201, 202, 203, and 204

23 (Against All DEFENDANTS)

24 86. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every
25 allegation set forth above.

26 87. If an employer willfully fails to pay, without abatement or reduction, in accordance with
27 Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages
28 of the employee shall continue as a penalty from the due date thereof at the same rate until

1 paid or until an action therefor is commenced; but the wages shall not continue for more than
2 30 days. (Cal. Lab. Code § 203).

3 88. To date, DEFENDANTS, have yet to pay PLAINTIFF and OTHER AGGRIEVED
4 EMPLOYEES all of the wages and all premiums due to them for off-the-clock work, missed
5 meal breaks and missed rest breaks and DEFENDANTS have failed to pay any penalty
6 wages owed to them under California Labor Code section 203. As a result of
7 DEFENDANTS' failure to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
8 hours worked, pay meal premiums at the correct rate, and separately compensate
9 PLAINTIFF for under the table work, DEFENDANTS also failed to pay all wages to
10 PLAINTIFF and other AGGRIEVED EMPLOYEES at the time of termination, thereby
11 violating California Labor Code section 203.

12 89. Additionally, the employment of PLAINTIFF and many AGGRIEVED EMPLOYEES
13 terminated, and DEFENDANTS have not tendered payment of wages to these employees
14 who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest
15 breaks, as required by law.

16 90. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and other
17 AGGRIEVED EMPLOYEES whose employment has terminated, PLAINTIFF demands up
18 to thirty (30) days of pay as penalty for not paying all wages due at time of termination for
19 all employees who terminated employment during the PAGA PERIOD and demand an
20 accounting and payment of all wages due, plus interest and statutory costs as allowed by
21 law.

22 91. Further, every person who fails to pay the wages of each employee as provided in Sections
23 204 is liable for \$100.00 for the initial violations, \$200 for each subsequent failure to pay an
24 employee, plus 25% of the amount unlawfully withheld.

25 92. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code sections 203,
26 204, and 210 for the violations committed by DEFENDANTS.

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1 **FOURTH CAUSE OF ACTION**

2 For Failure to Provide Accurate, Itemized Wage Statements

3 (Cal. Lab. Code § 226)

4 (Against All DEFENDANTS)

5 93. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every
6 allegation set forth above.

7 94. Section 226(a) of the California Labor Code requires employers to provide itemized wage
8 statements accurately reporting total hours worked, wages earned, and all deductions made
9 from wages earned by such employees.

10 95. DEFENDANTS did not accurately record PLAINTIFF'S and other AGGRIEVED
11 EMPLOYEES' wages, off-the-clock work, and missed meal and rest breaks.
12 DEFENDANTS failed to provide an accurate wage statement in writing that properly and
13 accurately itemizes all wages and missed meal and rest periods and reporting time wages
14 owed to PLAINTIFF and the other AGGRIEVED EMPLOYEES and thereby also failed to
15 set forth the correct wages earned by the employees.

16 96. DEFENDANTS knowingly and intentionally failed to comply with Labor Code section
17 226(a) on each and every wage statement that they should have provided to PLAINTIFF and
18 other AGGRIEVED EMPLOYEES.

19 97. By failing to keep adequate records, as required by Labor Code section 226, DEFENDANTS
20 injured PLAINTIFF, making it difficult for PLAINTIFF to calculate the expenditures the
21 employer did not reimburse. Those injuries include unpaid wages, interest, and penalties
22 thereon.

23 98. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section 226(e)
24 for the wage statement violations committed by DEFENDANTS.

25 99. Additionally, under Cal. Lab. Code 206 subdivisions (b) and (c), current and former
26 employees may obtain copies of payroll records within 21 days of a request. Labor Code
27 Section 432 requires employers to provide copies of documents relating to employees'
28 employment. Employers must provide these records "upon request." Labor Code Section

1 1198.5 requires employers to provide employees and former employees copies of personnel
2 records relating to that employee's performance or to any grievance concerning the
3 employee. The employer must make the personnel file/performance documents available to
4 the worker or his representative within 30 days from the date it receives a written request.
5 To date, DEFENDANTS have failed to provide PLAINTIFF his employment personnel
6 records. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code
7 sections 1198.5, including costs and reasonable attorney's fees for DEFENDANTS failure
8 to comply.

9 **FIFTH CAUSE OF ACTION**

10 For Failure to Pay Overtime Compensation

11 (Cal. Lab. Code §§ 510, 1194, 1198 et seq.)

12 (All DEFENDANTS)

13 100. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
14 every allegation set forth above.

15 101. PLAINTIFF bring a claim for DEFENDANTS' willful and intentional violations of
16 the California Labor Code and the Industrial Welfare Commission requirements for
17 DEFENDANTS' failure to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
18 overtime worked, including, work performed in excess of eight (8) hours in a workday,
19 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

20 102. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
21 policy, an employer must timely pay its employees for all hours worked.

22 103. Cal. Lab. Code § 510 further provides that employees in California shall not be
23 employed more than eight (8) hours per workday and more than forty (40) hours per
24 workweek unless they receive additional compensation beyond their regular wages in
25 amounts specified by law. Beyond that, Cal. Lab. Code § 510 also specifically states that
26 "the first eight hours worked on the seventh day of work in any one workweek shall be
27 compensated at no less than one and one-half times the regular rate of pay for an employee"
28 and that "any work in excess of eight hours on any seventh day of a workweek shall be

1 compensated at the rate of no less than twice the regular rate of pay of an employee.”

2 104. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
3 including minimum wage and overtime compensation and interest thereon, together with the
4 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
5 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

6 105. PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
7 DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked,
8 including overtime.

9 106. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the AGGRIEVED EMPLOYEES, as a result of
11 implementing a uniform policy and practice that failed to accurately record overtime worked
12 by PLAINTIFF and other AGGRIEVED EMPLOYEES and denied accurate compensation
13 to PLAINTIFF and the AGGRIEVED EMPLOYEES for overtime worked, including, the
14 overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours
15 in a workday, and/or forty (40) hours in any workweek

16 107. In committing these violations of the California Labor Code, DEFENDANTS
17 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
18 PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS acted in an illegal
19 attempt to avoid the payment of all earned wages, and other benefits in violation of the
20 California Labor Code, the Industrial Welfare Commission requirements and other
21 applicable laws and regulations.

22 108. As a direct result of DEFENDANTS’ unlawful wage practices as alleged herein,
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES did not receive full compensation
24 for overtime worked.

25 109. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
26 the overtime requirements of the law. None of these exemptions are applicable to
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES. Further, PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES were not subject to a valid collective bargaining agreement

1 that would preclude the causes of action contained herein this Complaint. Rather,
2 PLAINTIFF bring this Action on behalf of himself, and other AGGRIEVED EMPLOYEES
3 based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
4 the State of California.

5 110. DEFENDANTS paid PLAINTIFF and the AGGRIEVED EMPLOYEES less
6 overtime than they are entitled to, constituting a failure to pay all earned wages.

7 111. DEFENDANTS failed to accurately pay PLAINTIFFS and the other AGGRIEVED
8 EMPLOYEES overtime wages for the time they worked which was in excess of the
9 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
10 even though PLAINTIFF and the other AGGRIEVED EMPLOYEES were required to work,
11 and did in fact work from time-to-time, overtime as to which DEFENDANTS failed to
12 accurately record and pay as witnessed by employees.

13 112. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other AGGRIEVED EMPLOYEES for all overtime
15 worked by these employees, PLAINTIFF and the AGGRIEVED EMPLOYEES have
16 suffered and will continue to suffer an economic injury in amounts which are presently
17 unknown to them, and which will be ascertained according to proof at trial.

18 113. DEFENDANTS knew or should have known that PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES were under-compensated for all overtime worked.
20 DEFENDANTS systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
22 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing
23 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for overtime worked.

24 114. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES for
26 all overtime worked and provide them with the requisite overtime compensation,
27 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously
28 toward PLAINTIFF and the other AGGRIEVED EMPLOYEES with a conscious and utter

disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

115. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to PLAINTIFF and other AGGRIEVED EMPLOYEES who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these AGGRIEVED EMPLOYEES. DEFENDANTS' conduct, as alleged herein, was willful, intentional, and not in good faith. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to seek and recover statutory costs.

SIXTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7& 512)

(Against All DEFENDANTS)

116. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

117. DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other AGGRIEVED EMPLOYEES as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and AGGRIEVED EMPLOYEES did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their work schedules and inadequate staffing practices by DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES were often not fully relieved of duty by DEFENDANTS for their meal periods.

118. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited meal

breaks without additional compensation and in accordance with DEFENDANT's strict policies and practice.

119. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and AGGRIEVED EMPLOYEES who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

120. As a proximate result of the aforementioned violations, PLAINTIFF and AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SEVENTH CAUSE OF ACTION

For Failure to Provide Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Against All DEFENDANTS)

121. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

122. From time to time, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their work schedules and inadequate staffing practices by DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

123. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and AGGRIEVED EMPLOYEES who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday
2 that rest period was not provided.

3 124. As a proximate result of the aforementioned violations, PLAINTIFF and
4 AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **EIGHTH CAUSE OF ACTION**

7 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act

8 (Cal. Lab. Code §§ 2698 et seq.)

9 (Against All DEFENDANTS)

10 125. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 126. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED EMPLOYEE
13 within the meaning of Labor Code section 2699, subdivision (c), on behalf of himself and
14 all other AGGRIEVED EMPLOYEES of DEFENDANTS, seek the recovery of civil
15 penalties against DEFENDANTS pursuant to California Labor Code sections 2698 et seq.,
16 for the following knowing and intentional violations of the California Labor Code:

- 17 a. For failing to pay wages promptly or when due and payable, in violation of Labor
18 Code sections 201, 202, 203, and 204;
- 19 b. For failing to maintain for and provide to PLAINTIFF and other AGGRIEVED
20 Employees the accurate, itemized wage statements required by Labor Code Section
21 226.
- 22 c. For failing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES who
23 were not provided a meal period in violation of Labor Code Section 226.7; and
- 24 d. For failing to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES who
25 were not provided a rest period in violation of Labor Code Section 226.7; and
- 26 e. For failing to provide employees who worked more than eight (8) hours per workday
27 and more than forty (40) hours per workweek additional compensation beyond their
28 regular wages in violation of Labor Code Section 510.

127. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, and 2699, subdivisions (a) and (f).

128. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to consider PLAINTIFF'S notice of DEFENDANTS' Labor Code violations and of PLAINTIFF'S intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the PLAINTIFF:

- a. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- b. An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other AGGRIEVED EMPLOYEES; and
- c. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation, due to PLAINTIFF and the other AGGRIEVED EMPLOYEES, during the applicable PAGA PERIOD plus interest thereon at the statutory rate;
- d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF.
- e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- f. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the AGGRIEVED

1 EMPLOYEES for each violation in a subsequent pay period, not exceeding an aggregate
2 penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal.
3 Lab. Code § 226.

4 g. The wages of all terminated employees from the AGGRIEVED EMPLOYEES as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore
6 is commenced, in accordance with Cal. Lab. Code §203.

7 h. Punitive damages.

8 i. Liquidates damages pursuant to Cal. Lab. Code § 1194.2.

9 On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

10 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act
11 of 2004;

12 On all claims:

13 A. An award of interest, including prejudgment interest at the legal rate;

14 B. Such other and further relief as the Court deems just and equitable; and

15 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

16
17 DATED: July 8, 2023

EMRAN LAW

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20 By: Harris Emran

21 Harris Emran
22 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: July 8, 2023

EMRAN LAW

By: 

Harris Emran
Attorney for PLAINTIFF